

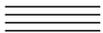
Adam Sitze

Denialism

Perhaps the most coherent expression of President Thabo Mbeki's position on the relationship between HIV, AIDS, and antiretroviral (ARV) therapy is set forth in a document entitled "Castro Hlongwane, Caravans, Cats, Geese, Foot and Mouth Statistics: HIV/AIDS and the Struggle for the Humanisation of the African." The text was distributed throughout the African National Congress (ANC) National Executive in March 2002, and is rumored to have been authored by Peter Mokaba, whose subsequent death on June 9, 2002, at age forty-three of "acute pneumonia linked to a respiratory problem" gave rise to speculations that he died of AIDS. It is not a document to be written off, even though this is how its critics have treated it.¹ On the contrary, whether one interprets it as Mokaba's oblique, extended suicide note (explaining why he would not take ARVs even though he could afford them) or as Mbeki's unwilling political last will and testament (allowing a name to be given to his disavowal of a deadly condition's given name), it must be read as a distinctly necropolitical text. In it we find the strongest sustained argument in support of the Mbeki administration's

decision to delay the provision of ARVs to South Africans between 1999 and 2003. This argument may be summarized as follows: HIV is not the only cause of the many immune deficiencies weakening the South African body politic; poverty also causes the acquisition of immune deficiencies; the science grounding HIV's existence and treatment is not only questionable but racist; ARVs can neither prevent nor treat the acquisition of poverty-based immune deficiencies; ARVs are linked to the interests of multinational capital; ARVs are not even a cure for HIV and are toxic besides.² Whatever the merits of these claims are on their own terms (the racism of HIV/AIDS epidemiology certainly has been well documented), "Castro Hlongwane" adds them up, by a kind of kettle logic, to reach what seems to have been a presupposed conclusion: the Ministry of Health need not rush to include ARV treatments as a part of the fight against HIV/AIDS in South Africa. The Treatment Action Campaign (TAC) estimates that this conclusion has led to the unnecessary deaths of thousands of poor people.

It is tempting to read "Castro Hlongwane" as a mere effect of a more fundamental economic logic, such that the Mbeki administration's hesitation to provide ARVs could be explained because they are too expensive, or because providing generic ARVs would somehow scare off foreign direct investment. But the disturbing probability is that the Mbeki administration's theories about HIV and AIDS operate with a high degree of relative autonomy. Providing ARVs for HIV-positive South Africans is not only economically possible for the Mbeki administration, but may be its most cost-effective policy option.³ The decision not to provide ARVs cannot then be considered a decision made of economic necessity. As Mandisa Mbali argues, the very opposite is true: there is every indication that the theory that HIV is not the exclusive cause of AIDS *is* the exclusive cause of the Mbeki administration's deadly delay of ARVs.⁴ "Castro Hlongwane," as the single most coherent formulation of this theory, must be read for the performative force of its death sentences.



The dominant accounts of the Mbeki administration's denialism tend to frame the question as a variation on the tradition of humanistic and social-scientific thought Mahmood Mamdani has called "South African exceptionalism."⁵ Grasped within this frame, Mbeki's theories would be unique to South Africa, intelligible as only another intriguing turn in the history of a particularly fascinating nation, the politics and culture of which are unlike any other. The corollary of this approach would be the reduction of denial-

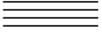
ism to an exceptionalism of a second sort. As the only leader in contemporary world politics to publicly question accepted scientific opinion on the question of HIV/AIDS, Mbeki would appear purely and simply irrational. He would emerge as the embodiment of every postulate of Enlightenment racism.

Aside from its capitulation to the eternal imperialist suspicion of post-colonial self-government, the problem with the exceptionalist approach is that it would obscure a more general economy of denialism, a denialism *writ large*. By this, I mean the denialism programmed into not only the circuits and institutions of globalizing capital, but also the U.S. mass media's apocalyptic accounts of AIDS in Africa that have circulated since at least 1986.⁶ Discussing these accounts in 1988, Susan Sontag objected to the "proliferation of reports or projections of unreal (that is, ungraspable) doomsday eventualities," arguing that the narrative of inevitability structuring the latter is bound "to produce a variety of reality-denying responses."⁷ On Sontag's read, there is a denialist kernel lodged in the very discourse of emergency that has framed the northern approach to the pandemic from the beginning. To the extent that Africa already signified nihilism (death, sickness, nothingness, despair) in and for the Euro-American social imaginary,⁸ it cannot come as a surprise that the subjects of the same would prefer merely to shudder at the thought of Africans' lack of access to essential medicines (for HIV/AIDS or for malaria or tuberculosis). In South Africa, meanwhile, the earliest accounts of the epidemic emerged in 1983.⁹ In the next eight years, more than fifty studies would be published in South Africa in the fields of actuarial science, epidemiology, business management, demography, and public health.¹⁰ These studies, many of which were conducted in the ministries of the apartheid state, the labs, libraries, and archives of white-only universities, and the offices of white-owned capitals, openly calculated and speculated on the effect of HIV on South Africa's black population.¹¹ By 1989, the same apartheid ministers who, in 1985, had rebuked a sensationalist media for blowing the epidemic out of proportion¹² were musing publicly about the disease's destructive power.¹³ Between 1990 and 1995, hundreds more studies of HIV/AIDS in South Africa emerged.¹⁴ The methodologies, disciplinary status, institutional supports, and *problématique* of these studies were more or less the same as the studies of the late 1980s, but they were now marked by one critical difference. By the late 1980s to mid-1990s, the discourse on HIV/AIDS, in South Africa as elsewhere,¹⁵ had been altered by the emergence of "miracle drugs." After the FDA approved Zidovudine (AZT) in 1987, it was clear that the medi-

cation, while toxic and by no means a cure for HIV/AIDS, could significantly inhibit the replication of HIV, and that people with low white blood cell counts could—like Lazarus, it was said—return from the grave.¹⁶ By early 1994, further studies established that AZT could reduce mother-to-child-transmission (MTCT) of HIV to as low as 8.3 percent.¹⁷ A second HIV/AIDS drug, Didanosine (ddI), would be approved by the FDA in October 1991, while Nevirapine, which the FDA approved in September 1996, was shown in 1999 to be 50 percent more powerful than AZT in reducing intrapartum MCTC.

What this means is that even prior to the emergence between 1994 and 1996 of nonnucleoside reverse transcriptase inhibitors, protease inhibitors, and powerful “triple therapies,” knowledge about the horrible scope of the pandemic had been multiplied by a decisive coefficient. For at least a decade, it has been possible to block the replication of the virus with antiretroviral treatment. In Foucauldian terms, biomedical technologies like AZT and ddI brought a new diagram of power/knowledge into effect.¹⁸ Because ARVs reduced AIDS-related mortality by 75 percent, an HIV-positive diagnosis could be reclassified as a chronic condition rather than a death sentence. This irreversibly changed the percepts that enable us to see and speak about the virus. The new diagram introduced a set of urgent political questions related to the power relations of *access*. Now that life with HIV/AIDS could be extended with regular doses of ARVs, corporate entities entered into direct relations of biopolitical regulation of the bodies of people with HIV/AIDS. Even as people with HIV/AIDS acquired a new form of life, the laws of the deregulated market acquired a new power to live and let die. In 1989, an emergent AIDS Coalition to Unleash Power (ACT UP), which was largely responsible for constituting the new diagram in the first place,¹⁹ placed political economic questions regarding the cost and distribution of ARVs at the very center of the struggle against the pandemic.²⁰ The major pharmaceutical corporations acknowledged as much by entertaining questions of the global affordability of ARVs in a set of meetings hosted by the World Health Organization (WHO) between 1991 and 1993.²¹ Claiming to be at the mercy of the same laws of capital they mercilessly enforced, these corporations raised those questions in convoluted terms that permitted them to be immediately dropped. And so, more than ten years after AZT was approved by the FDA as a treatment for HIV/AIDS, researchers in Geneva could still report, writing in an evasive passive voice, that “unfortunately, the biomedical advance demonstrating the dramatic

reduction of mother-to-child transmission of HIV with Zidovudine (ZDV) treatment has yet to be translated into widespread use of antiviral treatment to help prevent HIV infection in infants.”²²



Indeed, to inquire into denialism today is to ask how “only a fraction of those in need were receiving antiretroviral treatment at the end of 2002—about 800,000 people worldwide, 500,000 of whom live in high-income countries. In sub-Saharan Africa, where 2.4 million died of AIDS in 2002, only about 50,000 people were receiving treatment.”²³ It is impossible to respond to this question without first charting the ways that a certain denialism has informed not only northern discourses on the pandemic, but also the decisions of the dominant institutions of globalizing capital, which have acted precisely to refuse the biopower called into being by the new biomedical technologies on the basis of a fundamentally racist approach to global populations.²⁴ In the same year that apartheid formally ended in Pretoria, the groundwork for what some have called “global apartheid” was finalized in Washington, D.C.²⁵ In 1994, the year that studies definitively established the power of perinatal AZT treatment, the best available projections warned that the pandemic could soon double in size in the world’s poorest regions.²⁶ Yet in that same year, the United States not only entered into a four-year period of stagnant international HIV/AIDS funding,²⁷ but also accelerated its distinctly imperial economic policy by concluding the Uruguay round of the General Agreement on Tariffs and Trade (GATT).²⁸ The Final Act of GATT established the World Trade Organization (WTO) and codified a set of highly contested clauses pertaining to Trade-Related Aspects of Intellectual Property Rights (TRIPs).²⁹ The TRIPs clauses, formulated in large part by multinational pharmaceutical corporations,³⁰ gave the same corporations significant powers to secure their intellectual property patents, and thus their monopolies, on essential medications.³¹ At a moment when effective HIV/AIDS treatments had been available for years, and when the scope of the pandemic was plainly known to all decision makers, the United States and Big Pharma acted not to support people with HIV/AIDS in their struggle against the virus, but to protect patents from the claims of people with HIV/AIDS. Not to be outdone where cruel mismanagement is concerned, the World Bank and the International Monetary Fund (IMF), acting with their signature incompetence,³² responded to HIV/AIDS not only by adding fuel to the fire, but also, during the late 1990s, by accusing Afri-

cans of arson. As scores of analysts have shown, it is no accident that the states which implemented structural adjustment plans in the 1980s were the same ones that found themselves most unable to respond effectively to the spread of HIV/AIDS in the 1990s.³³ Forced to cut social spending and even urged to charge for health care services in IMF-designed plans to stabilize currencies and facilitate WB debt repayment, these states and their diminished health care systems were incapable of addressing the manifold medical needs of people living with HIV/AIDS.³⁴ It was thus adding insult to injury when, after years of creating this incapacity as a reality, the World Bank issued a 1996 study regretfully confirming the unaffordability of HIV/AIDS treatment in sub-Saharan Africa on the basis of a “realistic estimate” of the region’s low total health expenditure rates.³⁵

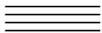
The cost-benefit analyses by which these institutions arrived at their decisions are, as David Fidler has argued, intelligible as a mix of vicious racism and cynical *Realpolitik*.³⁶ But what Fidler’s dialectic misses is the universal equivalent that renders the heat of the one commensurable with the coldness of the other. It is neither hyperbole nor catachresis but arithmetic to hear in these institutions’ murmured solipsistic calculations so many hissed whispers of Marx’s blunt word on the fate of life abandoned by the replication of surplus value: “The surplus populations would have to die.”³⁷ “It is our view that the impact of AIDS *via* these mechanisms [labor supply shortages and significant reductions in aggregate demand (via reductions in total consumption)] has been exaggerated in both cases. As we argued earlier, in the presence of high unemployment, even the large numbers of deaths from AIDS that our model projects are likely to result in temporary labour supply bottlenecks and frictional replacement costs, rather than substantial and lasting labour supply shortages.”³⁸ “In the presence of large-scale unemployment, it is likely that a significant proportion of those disabled by, or dying from, HIV/AIDS will be replaced. The [indirect costs] model [of the human capital approach, which ‘takes lost earnings as a proxy for lost production attributable to the disease’] thus adjusts estimates of total production downwards to account for the replacement of a proportion of lost workers in these sectors. Note that non-marketed production (such as household work) has not been included in the calculation of lost production costs.”³⁹ “Over the short term at the macro level, and to some extent determined by the nature of the economic groups affected [by HIV/AIDS], the indicators suggest that the economy as a whole may benefit, even while a range of households are forced ever further into a state

of unsustainability and poverty.”⁴⁰ “If the only effect of the AIDS epidemic were to reduce the population growth rate, it would increase the growth rate of *per capita* income in any plausible economic model.”⁴¹ “Dean Jamison of the World Bank introduced the concept of a ‘disability-adjusted life year,’ or DALY, to measure the number of productive years lost to illness or death. By his calculus, for example, a country that spent \$1,000 a year to save the life of someone earning \$500 a year would suffer a net economic loss.”⁴² “It is helpful, even crucial, to calculate the cost of disease and the resultant loss of earnings. Health is clearly a factor in development. Bismarck knew that in the late 19th century. He was the first to persuade management to create a mutual health insurance system for workers so the factories could go on running. But it is naive to think that business people will be persuaded to invest in healthcare in a globalised labor market.”⁴³ “I think to provide treatment to the bulk of the people is just not feasible. I think to provide treatment for instance to qualified workers actually saves money for companies. . . . I think [of] the cost of providing actual treatment to everyone at the present. I don’t think it’s realistic. It’s not achievable.”⁴⁴

Because capital is constrained only ever to be able to approach ARV treatments, not to mention people with HIV/AIDS, on the basis of an M-C-M circuit,⁴⁵ the degree to which a chemical compound or a living being cannot generate surplus value for capital is the degree to which it becomes superfluous in and to a capitalist economy. Though the HIV/AIDS pandemic is hardly reducible to the old laws of capital, capital’s contradictions nevertheless determine its shape and scope. As of 2000, “92 percent of the world population have to make do with only 8 percent of total expenditure [on ARV treatments].”⁴⁶ The dizzying interconnections of globalism’s parochial flows thus correlate with a striation of sobering global proportions: the locations of the markets where the most HIV/AIDS treatments are sold are almost mutually exclusive with the places where most people with HIV/AIDS live. Despite appearances, this is not so much a “market failure”⁴⁷ as a distinctly neoliberal overextension of the law of the market itself.⁴⁸ By insisting that it derive a surplus from the production of ARV treatments, capital prevents the intrinsic capacities of the chemical compounds in those treatments from doing what they can do in the bodies of people living with HIV/AIDS. To the extent that essential medicines cannot generate capital, capital renders them inessential, withholding them from the vast majority of the people they are designed to treat. Conversely, by refusing to commit to the health of people living with HIV/AIDS unless those people satisfy

a condition extraneous to health (the capacity to produce surplus value), capital separates people with HIV/AIDS from what they could do with ARV treatments. In short, by introducing into a problem of global health the completely extrinsic criteria of surplus value, capital separates individuals from the inorganic nature they cannot live without.⁴⁹

Yet because the chemical compounds in ARV treatments are one of the forms through which people create a life on the body-without-organs, those compounds are not and cannot be the private property of this or that corporation, but are and must remain the products of what Marx calls the “general intellect.”⁵⁰ The common notion that *access to essential medicines is constitutive of a life* expresses ontologically what activist intellectuals express politically when they argue that “essential drugs must be considered a global public good.”⁵¹ More so than a call to return to the violated innocence of the commons (which, despite its attractions, has its own problems⁵²), a common notion of this type opens up the practical generality, which is not to say universality, adequate for reregulating, if not also dechartering, the corporations that are the worst enemies of the intrinsically generic compounds they commodify. Patrick Bond is correct to call the struggle against HIV/AIDS a confrontation with capital-in-general,⁵³ as was Leslie Doyal when she argued that “the demand for health is in itself a revolutionary demand,”⁵⁴ and the late Jonathan Mann, who proposed that the struggle against HIV/AIDS is by definition revolutionary.⁵⁵ Loss of life from HIV/AIDS is less a structural asymptote beyond which capital accumulation cannot occur⁵⁶ than a symptom of a globalism already ready to absorb just such a loss.⁵⁷ The compulsion to deny essential medicines to the poor is programmed into the circuits by which globalizing capital attempts to reproduce its own constant rate of growth. Multiplying capital cannot but multiply the virus.



How, if at all, does this help us read “Castro Hlongwane”? No doubt the text’s arguments about poverty would not be so misleading were they limited to the claim that the spread of HIV/AIDS cannot be understood apart from the conditions of extreme poverty that are one of the legacies of apartheid. This claim is all too true, and Zackie Achmat, chairperson of the TAC, makes it frequently.⁵⁸ All the same, it is pointless to draw on the traditional terms of philosophical logic to critique the sophistry of “Castro Hlongwane.” Even focusing on its confused substitution of the pandemic’s necessary condition (poverty) for its sufficient condition (HIV) distracts

from the fundamental problem. More than the market's failure to ensure the poor access to ARVs, denialism *writ large* describes a condition defined by the immanence of HIV/AIDS and capital. In the general economy we are charting, the replication of deregulated capital and the unblocked replication of the virus are so tightly linked that, in effect, they constitute a single double helix.⁵⁹ Where capital finds that it can extract surplus value from a body or molecule, there ARVs will block the reverse transcription of HIV RNA in the DNA of T-cells. But where capital finds no commodities to convert to surplus value, there the nucleic acid of the virus copies itself without limit in the living cells of the body. Under conditions of capitalist political economy, the intervals of one repeat themselves in direct inverse proportion to the intervals of the other. What's more, as two of the most fundamental forces defining the diagram that today goes by the name *globalization*, and as forces that are by definition neither dead nor alive, HIV/AIDS and globalizing capital generate a situation in which the ontological limit between life and death becomes more difficult than ever to fix. Marx established long ago that capital is, as dead labor time, a nonliving yet undead force that requires laboring beings for its own reproduction.⁶⁰ Medical researchers, meanwhile, approach the HIV virus as a complex molecular (inorganic) structure the only specifically organic characteristic of which—reproduction—it borrows parasitically from the enzymes, energy, and ribosomes of its host cells.⁶¹ Given the structural similarity between these two circuits, ought we consider the relation between them a mere matter of homology? Or does their relation indicate that they exist on the same plane of consistency and pursue a single global program? If so, how are we to understand that plane, given that the striated disciplines that today remain in charge of the study of the virus (macroeconomics, epidemiology, and virology, not to mention actuarial science, business management, and demography) are incapable of posing the question of their immanence? If both circuits determine the shape, extent, and quality of what we call globalization, won't they each also intensify the other's rendering indistinct of the limit between life and death? If so, how might that indistinction require us to rethink the series of political, legal, moral, and epistemological concepts founded on that limit?⁶²

Before responding to these questions, let me consider the strongest counterargument against the immanence of HIV/AIDS and global capital, namely, that the latter is sufficiently elastic to allow the former to disappear without also altering its own fundamental structure. For the strongest proof

that deregulated capital cannot help but not help poor people with HIV/AIDS, we unfortunately need look no further than capital's own attempts at largesse. Prior to the emergence of Bush's Emergency Plan for AIDS Relief (PEPFAR), capital's best effort to address the pandemic on its own terms came in the form of a series of "price cuts."

The most important agreement of recent years to reduce the cost of antiretrovirals in developing countries, the accelerating access initiative, has made it possible to cut the annual cost per patient from \$12,000 in 2000 to \$420 in 2003. It was launched in May 2000 by UNAIDS, in partnership with several UN agencies and five drug companies (Boehringer Ingelheim, Bristol-Meyers Squibb, GlaxoSmith-Kline, Merck & Co., and Hoffmann-La Roche), but there is little to show for it. Over three years, 80 countries expressed interest; 39 have developed action plans, but less than half have finally concluded agreements with the companies, and under 1% of the patients in those countries are receiving antiretroviral treatments: a total of 27,000 people benefit in Africa where 30 million people are HIV+.⁶³

Even though these price cuts had, as an unintended side-effect, boomeranging calls for lower drug prices in G8 states,⁶⁴ they nevertheless failed as an attempt to break with capital's laws of restricted economy. Like the charitable donations of major philanthropists, they arrived wrapped in restrictions and bound with "conditionalities."⁶⁵ Hence Dr. Mohammed Abdullah's (chair of Kenya's AIDS Control Council) riposte to the UNAIDS offer: "If the international mafia—the drug companies—really mean business, they should waive their patent rights and let developing countries make the drugs themselves under their supervision. Kenya already has the capacity to make most of these drugs. It is the big five who are stopping us."⁶⁶ Bush's PEPFAR, which, like the Global Fund to Fight AIDS, Tuberculosis, and Malaria (GFATM),⁶⁷ was forced into existence by the tireless efforts of AIDS activists, nevertheless does not break with this system of cynical subsidies but, on the contrary, institutionalizes it.⁶⁸ Even though Bush's speechwriters included in his 2003 State of the Union address an unusually candid remark regarding the "immense possibility" offered by generic HIV/AIDS treatments, PEPFAR's only notable achievement since then has been how quickly it has thrown the immense powers of the U.S. executive branch behind Big Pharma's suppression of that very possibility.⁶⁹

Neoliberalism's abandonment of sub-Saharan Africa is all the more an-

gering because of the significant gains against HIV/AIDS accomplished by the few states that have been able to decommodify HIV/AIDS treatments. In 1996, drawing on a long history of opposition to drug patents,⁷⁰ Brazil passed its Patent Property Law, which allowed the Brazilian Health Ministry to combine prevention efforts with universal and free access to locally produced generic ARVs. The results were good. The virus's transmission rate was reduced, Brazil's AIDS-related deaths were halved, and the general state of public health improved.⁷¹ *Pharmaceutical Executive* magazine dutifully warned its readers.⁷² And so, even though Brazil's law was consistent with TRIPs,⁷³ which fully allows for compulsory licensing, because of what one legal scholar generously calls "rampant confusion" over TRIPs in the Office of the U.S. Trade Representative (USTR),⁷⁴ which has consistently and aggressively misinterpreted TRIPs as a merely minimum standard for patent compliance,⁷⁵ Brazil's trade law was opposed first by the Clinton administration, which filed formal complaints against the law with the WTO on January 19, 2001, and then by the Bush administration, which refiled the same complaint two weeks later.⁷⁶

But even with the threat of U.S. trade sanctions added into the equation, Brazil's example demonstrated the possibility and desirability of breaking patents in order to implement a coordinated program of ARV treatment and prevention. It was to emulate the successes of the Brazilian model that the Mandela administration drafted the Medicines and Related Substances Control Amendment Act, Number 90, of 1997. The bill gave the South African government the power to eliminate patent protections for pharmaceuticals in order to reduce the price of medicines vital to public health.⁷⁷ Its section 15(c) vested the executive branch, *via* the minister of health, with the power to compulsorily license HIV/AIDS medications and/or to parallel import the same.⁷⁸ Yet even though this "quite mild" law (as Jonathan King rightly characterized it⁷⁹) was completely TRIPs-compliant, the United States threatened South Africa just as it had threatened not only Brazil but also, earlier, Thailand.⁸⁰ The United States placed South Africa on its Special 301 watch list in 1998 and again in 1999. It initiated what the USTR explicitly called a "full court press," even deploying the personal charms of then vice president Al Gore to strike down the law.⁸¹ This "massive bullying effort," as Robert Weissman aptly renamed it, met in April 1999 with sustained resistance organized and led by ACT UP activists like Paul Davis, Asia Russell, and Sharonann Lynch, supported by public relations efforts from Médecins Sans Frontières (MSF) and informed

by research from the Consumer Project on Technology.⁸² Though many *altermondialistes* cite Seattle as the first significant victory over the ostensibly anonymous and abstract forces of multinational capital, we must not forget that, two months earlier, seven hundred motivated and highly organized people forced the USTR to announce, against a supposedly invincible Big Pharma lobby, that “the trade dispute was resolved and that the U.S. government would cease pressuring South Africa on the issues of compulsory licensing and parallel imports.”⁸³ This victory obviously worried PhRMA, which, besides being impatient with the impotence of the U.S. executive branch, was nervous about the combination of intensifying treatment access activism in South Africa and the offer of inexpensive generic ARVs by a number of Thai and Indian pharmaceuticals.⁸⁴ Along with its twin organization in South Africa (the South African Pharmaceutical Manufacturers’ Association [PMA]), PhRMA filed suit against the South African government in 1999, naming Mandela as a defendant in an attempt to strike section 15(c) from the books. What happened next is difficult to forget, if only because its force as an event is still resonating today. On April 19, 2001, thirty-nine of the richest pharmaceutical companies, acting as a cartel of the single-most profitable sector of multinational capital in the world, withdrew their case against South Africa, having been outmaneuvered in and out of court by the South African government, the TAC, and the bright-red protest of the global multitude.



What this cursory chart indicates is that what today goes by the name *denialism* is not and cannot be limited either to Mbeki or even to a text like “Castro Hlongwane.” On the contrary, after turning a cold hard stare toward the problem of HIV/AIDS in sub-Saharan Africa in the late 1980s and early 1990s, the dominant institutions of international finance, multinational capital, global governance, and developed states, up to and including the U.S. executive branch, refused sub-Saharan Africa access to the potent combination of generic medicines and capital necessary to stall the epidemic. The emergence of this general economy of denialism is both *datable* and *demonstrable*. It is *datable* because the potentialities it suppressed emerged at a very specific conjuncture defined by the emergence of ARV therapies. It is *demonstrable* because it is based on an easily reconstructed set of cost-benefit calculations that continue to be shamelessly computed in public today. And it is *general* because it marked an abyssal consensus reached by

globalism's leading institutions. Because global capital would not suffer the expenditure necessary to halt the replication of the virus, the replication of the virus could not be halted. People with HIV/AIDS would just have to suffer.⁸⁵

To propose the existence of a “denialism *writ large*” or a “general economy of denialism” is neither merely to return the insult nor to exonerate the Mbeki administration. It is to suggest that a quotient of the force enabling the scornful critique of the Mbeki administration in northern mass media derives from a condensation and displacement of denialism *writ large* onto Mbeki's figure. Readers of *Time* and *Newsweek* can sleep well at night knowing that irrational African leaders (and not the multinationals whose advertisements cram those same magazine's pages) are responsible for withholding HIV/AIDS treatments from the poor. Our nominalism requires us to understand this denialism of the first order. But that same principle obliges us to acknowledge that denial is more than a mere refusal of reality. In addition to naming a psychic symptom and an epistemological error, the term also indicates a very specific relation of power. When we critique the way a government denies a person his or her rights, we imply that it refuses a person what is already essentially constitutive of his or her very being: the right to have rights.⁸⁶ It is this doxa that is at issue when, in the first volume of *The History of Sexuality*, Foucault suggested that the exercise of contemporary sovereign power was no longer a power “to *take* life or *let* live” but a power “to *make* live or to *cast out* into death [*de rejeter dans la mort*].”⁸⁷ Hurley's translation of *rejeter* as “disallow” obscures the sense in which the sovereign power to let die manifests itself precisely as a kind of “repudiation.” Under political conditions that place the subject's “existence as a living being in question,”⁸⁸ sovereign power is what it was for Sade: a power to repudiate *zoë* itself.⁸⁹ Whatever is refused in denial is immanent to the life of the denied.

This relation to institutions of sovereign power suggests that denialism is not so much symptom or error as global *dispositif*.⁹⁰ Understood in this manner, denialism's component parts definitely include a way of not seeing or not speaking about the potentialities of HIV/AIDS treatment (which we may just as well call “disavowal”). But beyond that, it consists of the sovereign power to refuse to the living the forms-of-life without which a life cannot be alive, and also, above all, of the relations of economic and political force that enable disavowal to become a sovereign power capable of actualizing the potential superfluity of poor people living with HIV/AIDS. Denial-

ism will have been in effect wherever a disavowal of the possibilities of life with HIV/AIDS finds institutional support in the sovereign power to abandon naked life. Numerous embodiments of the U.S. executive branch,⁹¹ if not also the executives of numerous African states,⁹² the various institutions of the Washington Consensus, and the major pharmaceutical capitals exercise a denialism of this type. A denialist institution is one whose biopolitical claim on life requires it constantly to attempt to register the colossal reality of the HIV/AIDS pandemic (through ceaseless studies, shocking estimates, grave public statements, expert panels, sustained public relations campaigns, maudlin charity balls, half-hearted aid programs, strange donation schemes) yet whose implication within circuits of capital spur it to disavow that same reality (mainly by classifying it as an ethical problem, which, as Alain Badiou has argued, has the effect of ceding to the market a monopoly over the ontological attribute of necessity: such classification already invites the active and passive suppression of existing but uneconomical possibilities for slowing the virus replication⁹³). The most powerful effect of such institutions is that those living within their jurisdictions find themselves internally excluded by the surfeit of overlapping sovereign powers claiming to ensure their *salus*.⁹⁴ Denialism's crowning achievement is an absurd but not unfamiliar geopolitical condition in which the leading institutions of globalizing capital daily reiterate their commitment to the fight against HIV/AIDS—a geopolitical condition, then, where people with HIV/AIDS have never attracted more compassionate spokespeople, charitable organizations, concerned onlookers, professional mourners, pitying philanthropists, and rock-star advocates—and yet where, fifteen years after ARVs emerged as a distinct biomedical possibility, they are available to only 50,000 to 75,000 of the 4.1 million in sub-Saharan Africa who will die without immediate access to them.



A perplexing contiguity links the general economy of denialism to its specific manifestation in the Mbeki administration. Approached in this frame, Mbeki's denialism is still, in Mamphela Ramphele's words, "irresponsibility bordering on criminality."⁹⁵ Even before the South African government's and the TAC's resounding April 2001 court victory over the pharmaceutical cartel, the Ministry of Health indicated that it would not declare the situation a "national emergency" or "extreme urgency" that, under Article 31 of TRIPs would be the surest way to open an exception to patent enforce-

ment and enable the parallel imports the court victory had made possible.⁹⁶ Instead, Mbeki began posing, more insistently and publicly than ever, questions he had asked since at least 1999 regarding the relationship between HIV and AIDS, the validity of HIV/AIDS tests, the racist presuppositions of epidemiological studies of HIV, and the ostensibly intolerable toxicity of ARVs.⁹⁷ Why?

When the TAC calls the Mbeki administration's logic "denialism," or when Pieter-Dirk Uys parodies Mbeki by playing "MacBeki," they imply that Mbeki's position is informed by a certain madness.⁹⁸ "Disavowal" (*Verleugnung*) is certainly, for Freud, constituted by a simultaneous denial and recognition of a traumatic reality that is so consistent it eventually splits the ego into the two autonomous egos of the psychotic. But the textual operation at work when "Castro Hlongwane" rejects the relation between HIV and AIDS through a semantic analysis of the signifier AIDS itself,⁹⁹ to the point where it argues that to call the illnesses sweeping through South Africa "AIDS" would itself be genocide,¹⁰⁰ suggests that, if there were an operation of psychosis in "Castro Hlongwane," it would not be intelligible in Freudian terms. Because the text seems to encounter AIDS as an inassimilable signifier, and because its miracle cure for AIDS consists in nothing more than a refusal of its signified, the madness of the text would seem to consist less in disavowal than in what Lacan, drawing on a juridical term, calls "foreclosure."¹⁰¹ For Lacan, foreclosure takes place when the subject's refusal, rejection, or repudiation of *le nom du père* reaches a point where the paternal signifier is cast outside of the symbolic altogether. The paradox of foreclosure is that the signifier which confers order, identity, and law upon the symbolic is forced outside of the same symbolic order it grounds.¹⁰² It is for this reason that foreclosure manifests itself in a certain kind of "miraculous" symbolic creativity.¹⁰³ The hallucinations of the psychotic, Lacan suggests, are specifically neological in character, marked by autonyms, new compound words, purely homophonic equivalences, and a struggle against the omnipotent words of God.¹⁰⁴ On this read, if there were in "Castro Hlongwane" a certain operation of psychosis, it would manifest itself at the point where the text renames the acronym AIDS and introduces its mode of truth production as a "miracle" akin to a sovereign performative ("let there be light").¹⁰⁵ Like President Schreber's autobiography, the validity of the text's statements would derive from its attempt to occupy the gap in the symbolic left open by the foreclosed-upon *nom du père*. But, keeping in mind that for Achille Mbembe, as for Carl Schmitt, the category of the

miracle is linked to the paradox of the sovereign exception, where the sovereign is legally exempted from the same rule of law he grounds, perhaps we ought to consider a less psychobiographical approach to the interpretation of “Castro Hlongwane.”¹⁰⁶ From the angle of a certain concept of political sovereignty, the text’s theories, which by its own account do battle with the signifiers of an omnipotent apparatus, would be what Mbembe would call a “fantasm of power.” Issued from the organ of sovereign power, they would be written with the tip of God’s phallus.¹⁰⁷ In this event, it would be impossible to read “Castro Hlongwane” without situating its theories in the non-discursive supports that endow them with the capacity to remain in force while also signifying nothing.¹⁰⁸

Whatever its etiology, Mbeki’s maddening intransigence forced the TAC into action against the same post-apartheid government that many TAC activists had fought to bring into existence.¹⁰⁹ In August 2001, the TAC filed suit in the Transvaal High Court against the South African Ministry of Health and against each of the provincial Executive Councils of Health, demanding that Nevirapine be made available to HIV-positive pregnant women giving birth in public health institutions, and that the government implement an effective national program to prevent MTCT of HIV. The TAC won the case in December 2001, with the high court ruling that “the state ban on Nevirapine outside pilot sites was ‘unjustifiable,’”¹¹⁰ only to face an immediate appeal by the Ministry of Health. At issue in the Ministry’s appeal was a question concerning the balance of powers under the new Constitution: by requiring the government to prevent MTCT, was the Constitutional Court creating health policy (that is, overstepping its constitutional limits) or merely enforcing the Bill of Rights?¹¹¹ It is worth dwelling on this question for a moment. Given the ease with which the term *apartheid* lends itself to metonymy, it is no surprise that the social antagonisms around treatment access would quickly become narrated as a struggle against a new apartheid. Though recourse to the term is by no means inappropriate, the trouble with applying it straightforwardly to the ANC-led government is that the rhetorical plus of a dramatic dialectical reversal does not offset the logical minuses of occluding the term’s contested historiography, obscuring the care with which the TAC positions itself relative to the ANC and to South Africa’s 1996 Constitution, and obfuscating the concrete way in which the political legacy of apartheid is directly at stake in the political techniques by which the TAC struggled for access. A more nuanced version of the same argument would suggest that the TAC’s struggle against

the Mbeki administration is less reducible to a struggle against the ANC per se, than against the enduring powers of the executive branch in particular.¹¹² In 1991, Barney Pityana observed that, under apartheid, the principle of parliamentary sovereignty had resulted in “the erosion of the power and influence of the judiciary in favour of the executive.”¹¹³ The judiciary’s impotence under the Westminster system relegated it to the mere enforcement of racist laws it could not and, in any case, often would not contest. Given the extent to which minority white supremacist rule depended on unchecked executive power, it makes sense that Pityana would conclude his argument by suggesting that, among other things, “those who will work on a new constitution need to ensure that there is a genuine separation of powers” and “that the power of the executive is limited.”¹¹⁴

In post-apartheid South Africa, the struggle to maintain the independence of the judiciary has taken on a contradictory form, since, despite significant progress, the courts remain all but inaccessible to the poor, and continue to be composed of many of the same white judges who presided so fecklessly under apartheid.¹¹⁵ South Africa’s Constitutional Court, which came into being on February 15, 1995, was designed to respond to, if not also resolve, this contradiction. More than any other juridical-political institution created by the new Constitution, it was to serve as the foundation for the Bill of Rights and the separation of powers that were to have defined the post-apartheid *Rechtsstaat*.¹¹⁶ The Court’s powers were to ensure that the seat of sovereign power in post-apartheid South Africa would be concentrated more in the Constitution and in the judiciary than in the legislature or executive. The strong argument on behalf of this approach is that it would be able to provide a juridical-political framework capable of lawfully dismantling apartheid’s white supremacist legacy. Because the new Constitution’s Bill of Rights included justiciable socioeconomic rights, and because the executive branch remained responsible for the fiscal consequences of any given national social and economic policy, the new Constitution’s separation of powers positioned the Constitutional Court to become a site where the socioeconomic legacy of apartheid could be contested, as it were, at the expense of the executive.¹¹⁷ Yet, by that same token, the introduction of the new Constitution was less a hammer blow than a heart transplant: it did not shatter apartheid in a single stroke but introduced an organ that, if successful, would be capable eventually of circulating nonracialism in the capillaries of the body politic. But herein lies one of the signature limits to the constitutionalist approach to political transition. The trouble is not only that,

as Heinz Klug argues, “to date there have been very few constitutional challenges to the basic inequalities which are part of apartheid’s legacy,” but also that, when it comes to the basic inequalities that are the legacy of apartheid, “it is not clear what a constitution can do.”¹¹⁸

The TAC’s legal challenges against the executive branch are one of the first significant tests of the socioeconomic rights set forth in the Constitution, as well as one of the first significant tests of the balance of powers between the executive and the judiciary.¹¹⁹ As such, the TAC’s case is less a renewal, sequel, or analog of the struggle to constitute a post-apartheid South African state than a concrete and direct extension of that struggle. Approached from this angle, where the separation of powers becomes intelligible as a site for contestation over the political trace of apartheid, one of the more disturbing aspects of Mbeki’s denialism emerges. As it prolonged its denialism even after losing its Constitutional Court appeal in July 2002, the Mbeki administration turned one of the foundational institutions of the post-apartheid Constitution into a point where the same Constitution founders. After the MTCT case, it seemed that the Mbeki administration would begin to climb down from its denialism (not least because, that same month, the Mbeki administration announced that it would also make ARVs available to rape survivors). But it was precisely at that point that “Castro Hlongwane” was leaked. Even the TAC’s court victories, which suggested that justiciable socioeconomic rights are indeed practicable,¹²⁰ were not sufficient to bring into existence the MTCT programs legitimated in them. Denialism had been overruled in the Constitutional Court, but it was still in effect biopolitically. In December 2002, the executive’s delays forced the TAC to lodge a complaint with South Africa’s Human Rights Council.¹²¹ The complaint called for an investigation of contempt of court by the Mpumalanga MEC for Health, since the MTCT program supported by the highest level of the South African judiciary had still not been implemented. In January 2003, Tshabala-Msimang again argued that “garlic, lemon, olive, and African potatoes” could be used in place of ARVs to strengthen immune systems, while also blocking a Global Fund disbursement of \$72 million intended to purchase ARVs in KwaZulu-Natal. In March 2003, frustrated by the executive’s prolonged refusal, the TAC introduced another civil disobedience campaign. When, after four years of patient civil rights organizing, the TAC laid charges of murder and culpable homicide against members of the ANC government, or when it interrupted the minister of health’s speech

to call her a murderer, their tactics were hardly, as some have charged, “out of order” than perhaps long overdue.¹²²



Besides suggesting that the powers of *executoria potestas* have managed to persist in post-apartheid South Africa, Mbeki’s denialism has thus demonstrated the fragility of even an extremely strong *Rechtsstaat*. When the basic right at issue is the right for access to health care services, and when the service in question consists of access to a chemical compound capable of blocking HIV’s replication, the essence of a right is not, as commonsensical discourses of right presuppose, predicated of space (where the decisive questions concern inclusion or exclusion, being inside or outside right’s domain, staying within or straying beyond its limits). Where the exercise of rights is defined by an expiration date, it is time that is of the essence. The Mbeki administration’s exercise of executive power following, and arguably even prior to, the MTCT case opened a biotemporal exception to rights within the space of rights itself.¹²³ Denialism is an exercise of political power in which the executive branch exercised a power to let die without also, at the same time, revoking or suspending the constitutional provisions that guarantee a right to life.

Ulrike Kistner thus has a persuasive case when she applies to Mbeki’s denialism Agamben’s analysis of the sovereign power and naked life.¹²⁴ But, by that same token, Kistner’s straightforward application of Agamben also obscures the way that denialism throws the dominant reading of Agamben into question. The Mbeki administration’s life-denying exercise of sovereign power consisted not in a declaration of a state of emergency, but, on the contrary, in a stalwart refusal to issue such a declaration.¹²⁵ By not declaring the health emergency that only the executive branch, through the Ministry of Health, could declare, Mbeki delayed triggering the TRIPs clause that would have activated key provisions of Article 31 of the TRIPs agreement and enabled the compulsory licensing of inexpensive versions of HIV/AIDS therapies.¹²⁶ Abandoned within the interval of these delays, those claiming their right to life in an exemplary way—in a way that scrupulously and explicitly affirmed the basic rights set forth in the new Constitution—were nevertheless unable to bring those rights to life. Before being able to see the fruits of their labor in the TAC’s August 2003 victory, TAC activists Queenie Qiza, Edward Mabunda, Christopher Moraka, and Charlene Wil-

son, to name just a few, succumbed to AIDS and died. Their deaths were foreseeable, and could have been prevented had they had access to the therapies they were fully within their rights to receive. But their right to life was denied by the Mbeki administration's sovereign refusal to exercise its own sovereign power.

It does not follow from this that those who died protesting their right to life were victims of false consciousness, or that the TAC was duped by the Constitution into limiting itself to merely legal tactics (the very opposite is true), or that rights are not worth fighting for, or that the state's denial of the basic right to life in this instance somehow cancels out the merits of rights per se. The troubling implication of denialism is rather that necropolitical abandonment can take place even in a robust *Rechtsstaat*. Denialism's corollary, in this respect, is the urgency of posing biopolitical questions not merely in constitutionalist terms, where the possession of a right is itself taken as a form of political power, but, more fundamentally, in terms of the immanent modes of existence of people provided with rights. Where the possession of right is neither coextensive with nor even determinant of political power relations, the latter's relation to life will become felicitous or salutary less through the recitation of various basic rights than through reference to the twist or torsion that is both prior to and incommensurable with the foundation of the constitution itself.¹²⁷

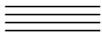
In these terms, the specifically political philosophical question posed by denialism is not why Mbeki says what he says, whether he personally believes in his own utterances or not, whether he really is mad or not, and so on. It is how the post-apartheid state acquired the power to deny life and to preserve rights in one and the same gesture. Here it is worth recalling that the obscure and often bizarre writings of David Rasnick, Peter Duesberg, Robert Root-Bernstein, and others did not become *life-denying* until their iterations entered into relation with the nondiscursive force specific to the institution of *potestas executoria*.¹²⁸ Mbeki's "irresponsibility bordering on criminality" is inseparable from the criminality of sovereignty itself.¹²⁹ Yet if there is therefore no denialism without the sovereign power to let die, so too is there no sovereign power to let die without its own scandalous genealogy.¹³⁰ What the contemporary critique of the Mbeki administration too often misses is that a certain denialism defined the apartheid state's relation to HIV/AIDS from the very beginning. In the early 1990s, a number of medical workers began arguing that the rapid spread of the epidemic through various black populations was related to a datable and demon-

strable pattern of inaction on the part of the apartheid government since 1983.¹³¹ This inaction was especially egregious given the government's foreknowledge of the possibility of epidemic.¹³² In as early as 1985, the Department of National Health and Population Development established an AIDS Advisory Group.¹³³ For reasons of racism and homophobia,¹³⁴ the few educational initiatives it did organize were limited to almost exclusively white populations.¹³⁵ Only in 1992, after conferring with the Health Secretariat of the newly unbanned ANC,¹³⁶ did the Department of Health establish a national AIDS program.¹³⁷ Writing in that year, Alan Fleming sharply corrected the lament that South Africa had already lost the battle to prevent AIDS. "I disagree: battle was never joined."¹³⁸ A year later, Wilson Carswell issued a damning critique outlining the deliberate nature of this inaction.

South Africa has the infrastructure and health funding needed to check AIDS, but failed to take action. The central health ministry did not respond to the epidemic until 1990 with the establishment of an AIDS unit, secondary school AIDS prevention programs and packages in 8 languages, a neutral national information campaign, workshops to increase awareness, and funding to organizations targeting hard-to-reach groups. The AIDS unit was soon merged into a health promotion section and the unit's head fired, with all the prevention initiatives terminated except the continued availability of pamphlets in only English and Afrikaans. An official complaint has been made to no avail against the health department official who closed the AIDS campaign. Meanwhile, the government contends that it holds no responsibility for educating its population in the prevention of AIDS. These recent actions suggest that the government is committing genocide by allowing excess mortality from AIDS to decimate Black heterosexuals during the impending period of interim rule and political transition.¹³⁹

Carswell's argument is hardly a conspiracy theory. Writing in 1988, Susan Sontag cited then foreign minister Roelof "Pik" Botha's ominous warning that "the terrorists are now coming to us with a weapon more terrible than Marxism: AIDS."¹⁴⁰ That the apartheid government reacted to HIV/AIDS primarily as a tactic of warfare is clear from other sources as well. In 1999, two former apartheid agents applied to the Truth and Reconciliation Commission for amnesty for employing HIV-positive ex-PAC and ANC members in 1990 to spread HIV/AIDS in black brothels.¹⁴¹ Yet even as unthinkable as this act is, it is not an aberration from the crime that is apartheid

itself. Apartheid pursued genocide not only through the police's weaponization of people with HIV/AIDS, but also through the sham sovereignty of the tribal homelands. Pieter-Dirk Uys misses the mark when he suggests that "in the past the South African government killed people; now we just let them die!"¹⁴² One need only review the last half century's black infant mortality rates to see that Biko was not exaggerating when he argued that "the tribal cocoons called 'homelands' are nothing else but sophisticated concentration camps where black people are allowed to 'suffer peacefully.'"¹⁴³ The sovereign power to let die was always integral to the necropolitics of the apartheid state. That this power was not sufficiently dissolved with the transfer of power in 1994 is clear from the implementation of the AIDS Plan the ANC developed in concert with the Department of Health after its unbanning. Though the plan was progressive in many respects, final political authority for its coordination rested with the executive branch, where, despite considerable bureaucratic confusion in the intervening years, is where it remains today.¹⁴⁴ If, as Helen Schneider, Joanne Stein, and Mandisa Mbali can argue, "the real problem underlying AIDS implementation failure in South Africa" is the "authoritarian" style of the political leaders coordinating that implementation, it is because of an incomplete transformation of the sovereign powers that defined the worst of apartheid.¹⁴⁵ Denialism is less a question of Mbeki's utterances or Mokaba's psyche than matter of the nondiscursive forces specific to institutions of *executoria potestas*. In the last analysis, it is against the remanence of these forces that the TAC struggles. The fundamental political philosophical question posed by denialism is how a sovereign power to abandon naked life to unceremonial death was able to survive South Africa's transition to democracy.



Posing the problem in this manner simultaneously opens a way to think about the forms of resistance to denialism. In 2003, the leading institutions of global mass media focused considerable attention on TAC chairperson Zackie Achmat's pledge not to take ARVs before they became available in the South African public health care system.¹⁴⁶ Precisely because of the hagiographic quality of this attention, which obscures the character of the TAC as a broad grass-roots movement, it is has become necessary to rethink Achmat's interventions on the basis of his own writing. By the latter, I mean to the texts Achmat has published on sex, politics, and rep-

resentation around the same time he founded the National Coalition for Gay and Lesbian Equality. Even as the very best of the recent hagiographies take pains to include mentions of Achmat's six months as a male prostitute, they for some reason treat as unspeakable his time as a critical theorist.¹⁴⁷ The implication of this foreclosure is that one cannot both *be* a martyr (as the hagiographies assume Achmat is) and *offer a critical theory* of martyrdom (as Achmat has done in his writing), as if the aura and authenticity of political sacrifice would be somehow conjured away by explicit account of the mechanisms by which such effects are produced.

In an odd way, this implication is entirely consistent with the arguments of the refused texts themselves. In his 1994 "Off the Control Track: Power, Resistance, and Representation in South African Documentaries," Achmat offers "a theorization and critique of ideas which invoke suffering, sacrifice, and death as necessary for liberation."¹⁴⁸ He focuses, in particular, on the matrices of power and knowledge that, prior to any pure source of popular memory, make possible the documentary filmic narration of the anti-apartheid struggle as an "unarmed people prepared to confront the mightiest military force on the African continent with the power of *their own death*."¹⁴⁹ His critique of this matrix is that, by configuring death as sacrifice, it recuperates from death a surplus value, in the form of the signifier of the martyr, that documentary film essentially enjoys and exploits. The immanent power of these signifiers, Achmat suggests, is their capacity to haunt—to "possess" the subject that witnesses them.¹⁵⁰

At the close of Achmat's essay—which, like his 1995 "My Childhood as an Adult Molester," ends with an explicit emphasis on beginning¹⁵¹—his text takes a metacritical turn. As if the essay had been directed, all along, against the Greco-Roman-Christian metaphysic that translates martyrdom into witnessing, substitutes testimony for witnessing, and derives protest from testimony, Achmat's critique of the content of anti-apartheid documentaries enters into a retheorization of the way that martyrdom is inscribed in the testamentary form of protest documentary itself. Acknowledging that the "mimetic approximation to truth" that defines the documentary form is "derived from the experience of suffering, repression, and death," Achmat suggests that this mimeticism is *itself generative* of the sacrificial cycle of violence it claims merely to represent. The documentary emphasis on martyrdom, he argues, "may in fact be the constant reinvention of the originary trauma of colonial wars and conquest, racial domination, gender and class inequalities, projected onto martyred bodies."¹⁵² Quite unlike René

Girard, from whose analytic of mimeticism Achmat maintains a studied distance, Achmat argues that insofar as documentary film derives its power of truth from what he calls “the power of one’s own death,” the correlation of attestation and conscience that defines its mode of truth production will necessarily *require* death, in the form of the reproduction of the martyrs on whose behalf it then claims to bear witness. Achmat suggests that this derivation of truth and politics from death becomes especially intolerable, under conditions where imperialist fantasies of African nihilism find their rhyme in the African state’s exercise of a certain denialism.

Living in Africa on a continent which signifies death and destruction in the imperialist imaginary, it is imperative to uncouple sacrifice from resistance. Faced with the denial of state responsibility for the basic conditions of life in villages, towns, and cities across the continent we cannot indulge the genocidal fantasies of sacrifice. Hence, it is disturbing to read filmmakers who insist upon valorising sacrifice and torture as a necessity for the pastoral reinvention of Africa.¹⁵³

To oppose the pleasure principle inscribed in documentary attestation, Achmat turns to Foucault’s argument, in the final chapter of the first volume of *The History of Sexuality*, that “death is power’s limit.” His reading of Foucault is precise and subtle, and I would like to read over Achmat’s shoulder in order to draw out what I feel are its implications. In the chapter to which Achmat turns, Foucault begins by discussing “*patria potestas*.”¹⁵⁴ Without going any further, it is already worth noting that, in the political philosophies of Kant and Hegel, the notion of “testament” receives its intelligibility from the same Roman laws of patriarchal inheritance that give rise to the modern concept of state sovereignty.¹⁵⁵ The codes of *patria potestas* that give the father the right to decide on the life or death of the son also stipulate the conditions under which the will of the father can survive his death. Testaments are designed to guarantee primogeniture (the institution so opposed by the early Marx): the *testis* in *testament* presupposes the *testes* of the *patria potestas*.

The stakes of Achmat’s critique of documentary attestation become clearer once read alongside Foucault’s inquiry into the limits of *patria potestas*. His critique becomes intelligible as a challenge to documentary film to think beyond its capitulation to the nihilism inscribed in the patriarchal concept of testament. To frame images of death as signifiers of martyrdom is not only to locate the truth, test, or touchstone of political struggle in

death. It is also to come into possession of the images of the dead as if they were nothing more than properties invested with a certain political value—as if the dead have merely left behind their images in a last will and testament the validity of which it then falls to documentary film to execute as a kind of “estate.” But by placing this kind of value on death, Achmat seems to argue, documentary film also unwittingly turns death itself into a value. It exorcises the power immanent to the images of the dead (the power to possess the living) even as it teaches the unhaunted living to value life as nothing more than a potential political death. Documentary film would thus remain under the sway of *patria potestas* to the extent that its ethics of attestation derives its understanding of death from a property-based notion of inheritance. Resistance to *patria potestas* would, in turn, require a departure from documentary film’s capitulation to and recapitulation of the testamentary poetics grounded in this understanding.

Why else might Achmat be reading *The History of Sexuality* in 1994—a moment of political transition that also marked a juncture where confession and testimony were becoming the dominant regimes of intelligibility for the narration of apartheid. Whether in the managed spectacles of the Truth and Reconciliation Commission or in the spate of biographies and autobiographies that emerged in the 1990s, discourses on the transition from apartheid became governed by the regime of truth Foucault has called *exomologesis*. Though *exomologesis* can be roughly translated as “recognition of fact,” Foucault treats it as a “technology of the self” designed to purify the soul from sin through a self-revelation (*publicatio sui*) that is simultaneously a self-renunciation (the extreme form of which is martyrdom). Like any technology of the self, *exomologesis* is a distinctly collective act; whether in its medical or juridical form, it unfolds as a dramatic ritual of penitence that reconcites the penitent with the community and the community to itself. Foucault’s inquiry into *exomologesis*, which advances his discussion of confession in the first volume of *The History of Sexuality*, approaches it as a specifically pastoral power, a mode of subjectivation that binds the subject to itself through various practices of self-knowledge: publicly disclosing one’s wounds in order to be cured; bearing witness against and refusing oneself in order to make a break with one’s past; and reaffirming the fact of one’s fidelity to the principle of salvation through truth.¹⁵⁶

Returning to Foucault’s comments on *exomologesis* helps us reread the opening of Achmat’s 1995 “My Childhood as an Adult Molester,” which renders testimony decidedly indistinct from the most uncensored fantasy.¹⁵⁷

This preference not to deliver straight testimony marks a departure from the disciplines of self-revelation that otherwise dominated the production of discourse about apartheid in the mid-1990s. Achmat instead locates the truth of politics, and the politics of truth, in a joyful militancy that affirms even death itself—though in a very cautious way. Reading Foucault's remarks on the nature of contemporary sovereign power, Achmat suggests that while "death is the limit of power, sacrifice brings a different power relation to bear on the symbolism of death. The private moments of death become timeless public images of sacrifice." Against *exomologesis's* relentless imperative to confess and testify publicly, Achmat concludes his essay by calling for forms of documentary film that "ensure that death once again becomes the limit point of power and an eternal moment of privacy." This may seem like an odd point with which to conclude an ending that is supposed to double as a beginning. But read alongside Foucault's argument in *The History of Sexuality*, the affirmative kernel encrypted in it becomes clearer. If we keep in mind that, for Foucault, death is the limit not to power per se, but the limit to political sovereignty vested with a power "to *make* live or to *cast out* into death," we can follow the way in which Achmat's affirmation of a private death is a line of flight from the sovereign power to decide life and death.

This becomes vitally important when we consider the 1999 utterance that, in its various iterations over the last four years, has become globally known as Achmat's "pledge." "I will not take expensive treatment until all ordinary South Africans can get it on the public-health system. That probably means that I will die a horrible death, even though medical science has made it unnecessary."¹⁵⁸ As we know, the force of Achmat's performative culminated felicitously in his ingestion of ARVs in early August 2003, days after the Mbeki administration caved to the TAC and announced that the government would soon roll out a universal AIDS plan. But in making and keeping his pledge even though—especially while—his life hung in the balance, didn't Achmat contradict everything he wrote in 1994? As his own life and possible death became the object of numerous documentaries, didn't he surrender to the very metaphysic of martyrdom, protest, and testimony against which he earlier wrote so passionately? Didn't Achmat's refusal to take ARVs require him to subject himself to the very sovereign power against which he protested, namely, the power to let die?

The hagiographies imply exactly this. But to read Achmat's 1994 and 1995 texts is to gain a new angle from which to understand his pledge. The latter,

like the former, consists of a departure from the entire catalog of transcendental and essentially nihilistic powers collected under the rubric of *patria potestas*. Up to and including martyrdom. Though Achmat made a pledge referring to the possibility of his own death, it would be a mistake to presume this pledge expresses a desire to protest or bear witness through or to the “power of one’s own death.” Recalling that Achmat is a dedicated reader of Bataille, and a writer for whom life, sex, and politics are inextricable, let me conclude by dwelling on the singular politics of his pledge. To do so is to wonder whether, prior to its utterance, perhaps even as its condition of possibility and as the source of its power, it was subtended by a secret, cautious pact with the virus itself. A pact of what kind? In 1993, Alexander García Düttmann argued that the anxiety of living with HIV/AIDS is, in part, that the virus undermines the ontological distinction between life and death. “One no longer lives and has not yet died, because one has died already and nevertheless lives on, because life and death merge beyond recognition.”¹⁵⁹ Under political conditions where death marks power’s limit, wouldn’t this indistinction amount to *an edge*? Wouldn’t it yield a power to protest sovereign power from just beyond, or just before, the limit that defines its jurisdiction? Supposing it were even possible for a virus to sign a pact, that is to say, to keep its promise, wouldn’t one of the effects of that pact be a chance to take part in a combat against sovereign power without also having anything to do with the limits it inscribes in life? Signing a secret pact with the virus would not here be a matter of using the “power of one’s own death” as an instrument of political leverage. It would be a matter of cautiously opening a relation to death that nevertheless did not derive its political power from death. Part of the power of such a pact would derive from giving oneself over to the virus, surrendering to its replication, but on one critical condition: that one gain from that replication a new power. This power would be neither a power of one’s own death nor a power to represent death. It would instead be a paradoxical power that derives its specific modality from the ontological indeterminacy of the virus itself: from a virus that is neither dead nor alive, the power to live without dying on the terms of sovereign power.

Pledging to remain without ARVs until the poorest have access to them would then be a way of introducing a promise, and therefore the political itself, into the relations between people living with HIV but without ARVs. Letting his body embody a wrong that itself calls for justice would be a way of affirming the same HIV-positive political community his pledge posits.

Putting his life on the line would be neither stoicism nor *satyagraha*,¹⁶⁰ but a way of drawing on the virus to redefine the line between life and death itself: to re-create the diagnosis “positive” in and as a name for the affirmation of life with HIV. The pledge would not, then, be a pact of the sort that binds one to oneself in solipsistic moral consistency (promise-keeping).¹⁶¹ It would be a process of individuation defined by a protest of the condition of the dead and the living dead.¹⁶² To iterate the virus’s own potency in and as the power of that pledge would be to transcribe the very power of the virus into a power of truth the most powerful effect of which—treatment—would amount to the virus’s recession. It would be to enter into a cautious ensemble with the virus that was at the same time a combat against it. It would be to turn the virus back on itself, to make it work on itself, to turn the virus’s own power into a potential for the virus to be maintained in privation—to live, with it.

Who knows whether this pact, in fact, exists. Perhaps I have just imagined it. But what is clear enough is that, grasped hagiographically, the truth-force of Achmat’s pledge cannot but be misrecognized as the martyrdom from which Achmat, in 1994, urged flight. On these terms, it would remain intelligible merely as a particularly bold and forcefully instrumentalist form of dissent, objection, or complaint. But other visions of protest are possible. From Zackie Achmat one can learn that *protest* also signifies *promise* and *affirmation*, and that to protest and to live are undeniably the same.

Notes

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- 1 See Phillipe Rivi re, “In Denial about a Deadly Future: South Africa’s AIDS Apartheid,” trans. Malcolm Greenwood, *Le Monde Diplomatique* (August 2002), <http://mondediplo.com/2002/08/04aids> (accessed April 4, 2004). This essay will instead take up the line of inquiry opened by Mandisa Mbali, who suggests that denialism is “a new ‘-ism’ in South Africa,” and Ulrike Kistner, who argues that it is “a new way of exercising political power in matters of life and death.” See Mandisa Mbali, “HIV/AIDS Policy-Making in Post-Apartheid South Africa,” in *State of the Nation: South Africa 2003–2004*, ed. J. Daniel, A. Habib, and R. Southall (Cape Town: Human Sciences Research Council Press, 2003), 327n 1; Ulrike Kistner, “The Constitutional Right to Live, and the Political Power to Let Die,” *Debate* 8 (September 2002): 16.
- 2 See also Thabo Mbeki, “Letter from Thabo Mbeki to Bill Clinton,” *Washington Post*, April 18, 2000; Barton Gellman, “South African President Escalates AIDS Feud,” *Washington Post*, April 19, 2000; Thabo Mbeki, “Speech of the President of South Africa at the

- Opening Session of the Conference" (speech given at the Thirteenth International AIDS Conference, Durban, South Africa, July 9, 2000); Jon Jeter, "Political Resistance in South Africa Blocks Wide Use of HIV Drugs; Leaders Ambivalent about Distribution of Antiretrovirals," *Washington Post*, October 1, 2001; Jaspreet Kindra and Drew Forrest, "ANC Closes Ranks; Government Officials Refuse to Defy President Thabo Mbeki on the Issue of AIDS Treatment," *Mail and Guardian*, February 22, 2002; Ferial Haffajee, "Questions and Answers with Peter Mokaba; 'No Antiretrovirals, Please,'" *Financial Mail*, March 1, 2002; Rachel Swarns, "An AIDS Skeptic in South Africa Feeds Simmering Doubts (Interview with Peter Mokaba)," *New York Times*, March 31, 2002; Thabo Mbeki, "Health, Human Dignity, and Partners for Poverty Reduction," *ANC Today*, April 5, 2002.
- 3 Richard Pithouse argues that "Mbeki's failure to seize the opportunity provided by the defeat of the pharmaceutical companies cannot be explained by a desire to put the market before people's health. Even market fundamentalists agree that it is cost effective to provide the medicines that can prevent new infections and treat existing infections rather than endure the cost of mass ill health and early death. Mbeki's inaction can only be explained by the fact that he genuinely takes the denialist view, supported by a tiny group of right-wing Americans, that the HI virus doesn't cause AIDS and that AIDS medicines are toxic" ("AIDS Activists Take ANC Government to Court," *Green Left Weekly*, December 12, 2001; compare Richard Pithouse, "Mbeki's AIDS Stance Slammed," *Green Left Weekly*, July 26, 2000, 15).
 - 4 See Mandisa Mbali, "Mbeki's Bizarre AIDS Theories," *Mail and Guardian*, March 21, 2002.
 - 5 Mahmood Mamdani, *Citizen and Subject* (Princeton: Princeton University Press, 1996), 27.
 - 6 See Rod Nordland, "Africa in the Plague Years," *Newsweek*, November 24, 1986, 44; Michael Serrill, "In the Grip of the Scourge," *Time*, February 16, 1987, 58; Marilyn Chase, "AIDS Has Spread 'Almost Everywhere' in Africa, Zaire Doctor Tells Parley," *Wall Street Journal*, June 24, 1986; Marilyn Chase, "Growing AIDS Peril in Africa Is Seen; Huge Medical, Educational Push Asked," *Wall Street Journal*, November 14, 1986; Renee Sabatier, Martin Foreman, Jon Tinker, and Marty Radlett, *AIDS and the Third World* (London: Panos Institute, 1989).
 - 7 Susan Sontag, *AIDS and Its Metaphors* (New York: Farrar, Straus, and Giroux, 1988), 91.
 - 8 See Achille Mbembe, *On the Postcolony* (Berkeley: University of California Press, 2001), 1-4; Simon Watney, "Missionary Positions: AIDS, 'Africa,' and Race," in *Practices of Freedom: Selected Writings on HIV/AIDS* (Durham: Duke University Press, 1994), 103-20; but compare Ato Quayson, "Obverse Denominations: Africa?" *Public Culture* 14.3 (Fall 2002): 587.
 - 9 See E. B. Gouws and B. G. Williams, "Science and HIV/AIDS in South Africa: A Review of the Literature," *South African Journal of Science* 96 (June 2000): 274; Louis Grundlingh, "HIV/AIDS in South Africa: A Case of Failed Responses Because of Stigmatization, Discrimination, and Morality, 1983-1994," *New Contree* 46 (November 1999): 55-81; Louis Grundlingh, "Government Responses to HIV/AIDS in South Africa as Reported in the Media, 1983-1994," *South African Historical Journal* 45 (November 2001): 125-53; R. Sher, "Acquired Immune Deficiency Syndrome (AIDS) in the RSA (Supplement)," *South African Medical Journal* (October 1986): 23-26; W. Becker, "HTLV-III Infection in

- the RSA (Supplement)," *South African Medical Journal* (October 1986): 26–27; compare R. Sher, "HIV Infection in South Africa, 1982–1988—A Review," *South African Medical Journal* 76.7 (October 1989): 314–18.
- 10 See J. A. van der Merwe, "AIDS" (unpublished paper, Sud Afrikaanse Nasionale Trust en Assuransie Maatskappij Beperk [SANLAM], 1988); G. M. Oppenheimer and R. A. Padgug, "AIDS: The Risks to Insurers, the Threat to Equity," *Hastings Center Report* 16.5 (October 1986): 18–22; W. A. van Niekerk, "Information on HIV/AIDS" (report released by the Republic of South Africa, Department of National Health and Population Development, November 1988); B. D. Schoub et al., "Epidemiological Considerations of the Present Status and Future Growth of the Acquired Immunodeficiency Syndrome Epidemic in South Africa," *South African Medical Journal* 70.4 (August 20, 1988): 153–57; P. G. du Plessis, "The Potential Influence of AIDS on the South African Investment Milieu" (partial fulfillment of MBA, Department of Business Management, University of Stellenbosch, 1991); R. Schall, "Statistical Analysis of HIV Prevalence," *South African Medical Journal* 77.1 (January 1990): 52; E. Osborn, "Forward Projection of HIV Prevalence," *South African Medical Journal* 78.6 (September 1990): 373; C. J. van Gelderen, "Insurance and Compensation in the Event of HIV Infection," *South African Medical Journal* 81.6 (March 1992): 33.
- 11 See G. N. Padayachee and R. Schall, "Short-term Predictions of the Prevalence of Human Immunodeficiency Virus Infection among the Black Population in South Africa," *South African Medical Journal* 77.7 (April 1990): 329–33; R. Schall, "On the Maximum Size of the AIDS Epidemic among the Heterosexual Black Population in South Africa," *South African Medical Journal* 78.9 (November 1990): 507–11.
- 12 See Grundlingh, "Government Responses to HIV/AIDS," 134.
- 13 In 1989, Minister of Health and Population Development Dr. Willie van Niekerk stated that AIDS possessed "destructive potential stretching beyond human concept. It has the potential to lead to chaos in Africa and South Africa, not only destroying the social and political structures but to lead [*sic*] to economic chaos" (cited in Grundlingh, "Government Responses to HIV/AIDS," 127).
- 14 See Gouws and Williams, "Science and HIV/AIDS," 274–75.
- 15 See Grundlingh, "Government Responses to HIV/AIDS," 133.
- 16 See Roger Ricklefs, "Living with AIDS: Thanks to New Drugs, Patients Are Surviving and Working Longer—They Are a Greater Presence in the Workplace Today; Employers Are Adapting—The Costs of Chronic Illness," *Wall Street Journal*, September 2, 1988.
- 17 See E. M. Connor et al., "Reduction of Maternal-Infant Transmission of Human Immunodeficiency Virus Type 1 with Zidovudine Treatment," *New England Journal of Medicine* 331.18 (1994): 1173–80; compare Emory Thomas Jr., "AZT Is Found to Slash the Transmission of HIV from Mothers to Their Infants," *Wall Street Journal*, February 22, 1994.
- 18 See Gilles Deleuze, *Foucault*, trans. Seán Hand (Minneapolis: University of Minnesota Press, 1988), 34–44.
- 19 See Gilbert Elbaz, "Beyond Anger: The Activist Construction of the AIDS Crisis," *Social Justice* 22.4 (December 1995): 43; Paula Treichler, *How to Have Theory in an Epidemic: Cultural Chronicles of AIDS* (Durham: Duke University Press, 1999), 278–314.
- 20 See Marilyn Chase, "Pricing Battle: Burroughs Wellcome Reaps Profits, Outrage from

- Its AIDS Drug," *Wall Street Journal*, September 15, 1989; Marilyn Chase, "Burroughs-Wellcome Cuts Price of AZT under Pressure from AIDS Activists," *Wall Street Journal*, September 19, 1989; Naomi Freundlich, "Now That AIDS Is Treatable, Who'll Pay the Crushing Cost?" *Business Week*, September 11, 1989, 115; Steve Taravella, "AIDS Drug Brings Providers Challenge of Distribution," *Modern Healthcare* 19 (September 1989): 39; "The Costs of Cures" (editorial), *Wall Street Journal*, October 4, 1989; Jacob Smith Yang, "750 Protest Bush," *Gay Community News*, October 12, 1991, 12; "Burroughs-Wellcome Hit over High AIDS Drug Profits," *Chemical Marketing Reporter* 243.26 (June 1993): 7.
- 21 Barton Gellman, "An Unequal Calculus of Life and Death; As Millions Perished in Pandemic, Firms Debated Access to Drugs," *Washington Post*, December 27, 2000.
- 22 See Monitoring the AIDS Pandemic (MAP), "The Status and Trends of the HIV/AIDS Epidemics in the World," Preliminary Report (June 26, 1998), 19. The first study to conclude on the unaffordability of ARVs in sub-Saharan Africa was Mansergh et al., "Cost-Effectiveness of Short-Course Zidovudine to Prevent Perinatal HIV Type 1 Infection in Sub-Saharan African Developing Country Setting," *Journal of the American Medical Association* 276.2 (July 1996): 139-45. Later studies codified this conclusion without also questioning the political economic conditions of possibility for the drug prices they took as their point of departure. See Katherine Floyd and Charles Gilks, "Cost and Financing of Providing Anti-Retroviral Therapy: A Background Paper," World Health Organization (April 1997), www.worldbank.org/aids-econ/arv/floyd/whoarv.pdf (accessed April 4, 2004), which concludes that "ARV therapy does not appear to be either cost-saving or cost-effective in a developing country context, and this is true for prophylaxis to pregnant women as well as more general provision to HIV-infected individuals" (13).
- 23 See UNAIDS Fact Sheet, "Access to HIV Treatment and Care," September 2003, www.unaids.org/en/media/fact+sheets.asp (accessed April 4, 2004).
- 24 See Achille Mbembe, "Necropolitics," trans. Libby Meintjes, *Public Culture* 15.1 (2003): 17.
- 25 See Bryan Rostron, "The New Apartheid?" *Mail and Guardian*, February 25, 2002, 15; Mark Gevisser, "AIDS: The New Apartheid," *The Nation*, May 14, 2001, 5-6; Salih Booker and William Minter, "Global Apartheid," *The Nation*, July 9, 2001, 11-17; Martine Bulard, "Apartheid of Pharmacology," *Le Monde Diplomatique*, trans. Malcolm Greenwood (January 2000), <http://mondediplo.com/2000/01/12bulard?> [accessed April 4, 2004]. See, more generally, Titus Alexander, *Unraveling Global Apartheid: An Overview of World Politics* (Cambridge, UK: Polity Press, 1996); Patrick Bond, *Against Global Apartheid: South Africa Meets the World Bank, IMF, and International Finance* (Cape Town: University of Cape Town Press, 2001).
- 26 In 1995, the WHO estimated that during 1994 over 19.5 million people had been infected with HIV, and estimated that 40 million could be infected by 2000 ("The Current Global Situation of the HIV/AIDS Pandemic," *WHO Report* [January 3, 1995]). These were the same numbers the WHO provided to Big Pharma on May 23, 1991, and that the CIA made available to President George H. W. Bush that same year in Inter-agency Intelligence Memorandum 91-10005. See Gellman, "Unequal Calculus"; David Fidler, "Racism or *Realpolitik*? U.S. Foreign Policy and the HIV/AIDS Catastrophe in Sub-Saharan Africa," *The Journal of Gender, Race, and Justice* 7 (2003): 109.

- 27 See Fidler, "Racism or *Realpolitik*?" 110.
- 28 See Emmanuel Todd, *After the Empire: The Breakdown of the American Order*, trans. C. Jon Delogu (New York: Columbia University Press, 2003), 75–76.
- 29 See "Intellectual Property . . . Is Theft," *The Economist*, January 22, 1994, 72.
- 30 See Robert Weissman, "A Long Strange TRIPS: The Pharmaceutical Industry Drive to Harmonize Global Intellectual Property Rules, and the Remaining WTO Legal Alternatives Available to Third World Countries," *University of Pennsylvania Journal of Economic Law* 17 (1996): 1069–1125, esp. 1075–93.
- 31 Which, as Sanjay Basu has emphasized, include but are not limited to HIV/AIDS therapies. See "The Dangerous Deradicalization of AIDS Discourse," *ZNet Commentary* (October 25, 2003), www.zmag.org/content/showarticle.cfm?SectionID=14&ItemID=4398 (accessed April 4, 2004).
- 32 By its own estimates, the failure rate of World Bank projects in the poorest regions of the world is 65 to 70 percent. See Bond, *Against Global Apartheid*, 210. Even the World Bank's own attempts to redress the debt crises caused by its policies have, by its own admission, failed. See Fantu Cheru, "Debt Relief and Social Investment: Linking the HIPC Initiative to the HIV/AIDS Epidemic in Africa: The Case of Zambia," *Review of African Political Economy* 86 (2000): 520–22.
- 33 See Alison Marshall with Tom Pravda, "The Vicious Circle: AIDS and Third World Debt," report by the World Development Movement for the UN Special Session on HIV/AIDS, June 25, 2001, www.wdm.org.uk/cambriefs/debt/vicircle.pdf (accessed March 19, 2004); L. Squire, "Confronting AIDS," *Finance and Development* (March 1998): 15–17; Nana Poku, "Africa's AIDS Crisis in Context: How the Poor Are Dying," *Third World Quarterly* 22.2 (2001): 200–1; Carolyn Baylies, "International Partnership in the Fight against AIDS: Addressing Need and Redressing Injustice?" *Review of African Political Economy* 81 (1999): 393; Carol Barker and Meredith Turshen, "AIDS in Africa," *Review of African Political Economy* 13.36 (Summer 1986): 54; Meredith Turshen, "US Aid to AIDS in Africa," *Review of African Political Economy* 13.35 (Summer 1986): 98–99.
- 34 This is not to suggest, however, that an advanced health infrastructure is necessary before ARVs can begin to be administered successfully. On the contrary, recent studies have shown that the poor in Cape Town adhere more strictly to prescribed ARV regimens than do people in the United Kingdom, thus putting the lie to the argument that "poor Africans, many of whom lack watches and literacy, would break the strict regime of taking certain pills at certain times, risking the emergence of a drug-resistant strain of HIV" (Rory Carroll, "Aids Orphans' Survival Offers Africa Hope; Ground-Breaking Treatment Debunks Drug Firm Myths in Cape Town," *The Observer*, May 25, 2003, 19; see C. Orrell, D. R. Bangsberg, M. Badri, R. Wood "Adherence Is Not a Barrier to Successful Antiretroviral Therapy in South Africa" *AIDS* 17.9 [June 2003]: 1369–75).
- 35 See Floyd and Gilks, "Cost and Financing Aspects of Providing Anti-Retroviral Therapy." Nicholas Prescott argues, meanwhile, for the feasibility of AZT perinatal treatment, but without inquiring into the conditions of possibility for the "realistic" budget constraints he cites. See "Setting Priorities for Government Involvement with Antiretrovirals," in *The Implications of Antiretroviral Treatments: Informal Consultation*, ed. Eric van Praag, Susan Fernyak, and Alison Martin Katz (Geneva: WHO in collaboration with UNAIDS, 1997), 57–62.

- 36 Fidler, "Racism or *Realpolitik*?" 98–99, 145–46.
- 37 Karl Marx, "Economic and Philosophic Manuscripts," in *Early Writings*, trans. R. Livingstone and Gregor Benton (New York: Vintage Books, 1975), 286; compare Karl Marx, *Grundrisse: Foundations of the Critique of Political Economy (Rough Draft)*, trans. M. Nicolaus (New York: Penguin Books, in association with *New Left Review*, 1973), 706. On the point of "surplus populations," the predominantly anthropological and phenomenological terms of Mbembe's analysis of violence lead his discussion of generalized sovereignty astray. In the case of HIV/AIDS, generalized sovereignty's "destruction of human bodies and populations" is not, as Mbembe suggests, linked to "the generalized instrumentalization of human existence" ("Necropolitics," 13). On the contrary, the people abandoned by capital's replication of surplus value are not instrumentalized at all, which is why capital abandons them. The violence of this abandonment is neither phenomenological nor anthropological but immanent to the circuits of capital itself.
- 38 This estimate is based on a study that is, in turn, the "result of a hypothetical model of the costs of a package of care likely to be received by those people with HIV or AIDS who gain access to health care services. This excludes the very significant proportion of people who, we believe, will not gain access to health services at all" (65). See "AIDS in South Africa: The Demographic and Economic Implications" (a paper prepared by the Centre for Health Policy, Department of Community Health Medical School, University of Witwatersrand, Johannesburg, no. 23, September 1991, 69).
- 39 Jonathan Broomborg, Malcolm Steinberg, Patrick Masobe, and Grame Behr, "The Economic Impact of the AIDS Epidemic in South Africa," in *Facing Up to AIDS: The Socio-Economic Impact in Southern Africa*, ed. Sholto Cross and Alan Whiteside (New York: St. Martin's Press, 1993), 161.
- 40 Sholto Cross, "A Socio-Economic Analysis of the Long-Run Effects of AIDS in South Africa," in Cross and Whiteside, *Facing Up to AIDS*, 139. Cross goes on to argue that "in the South African case, there is very strong evidence for the neo-Malthusian position: obscured as the situation has been by the social engineering policies of apartheid, nevertheless the intrinsically low levels of employment and the high reproduction rates—in association with a primary-resource based economy with no obvious possibilities for rural involution—mean that there is a strong correlation between high population growth rates and the entrapment in poverty of the majority. To the extent that AIDS will bring about an overall reduction in population growth rates, there is thus a *prima facie* case that the effect on economic growth—and of course on *per capita* income, although this in itself is no very satisfactory indicator—will from one point of view be positive" (140–41).
- 41 From the 1992 World Bank Population and Human Resources report, cited in Barton Gellman, "The Belated Global Response to AIDS in Africa: World Shunned Signs of the Coming Plague," *Washington Post*, July 5, 2000.
- 42 Gellman, "Unequal Calculus."
- 43 Anonymous banker, quoted in Jean-Loup Motchane, "WHO's Responsible?" *Le Monde Diplomatique* trans. Luke Sanford (July 2002), <http://mondediplo.com/2002/07/17/who?> (accessed April 4, 2004).
- 44 George Soros, quoted in Patrick Bond, "Sacrificing AIDS Victims for Corporate Profits," *Green Left Weekly*, July 3, 2002, 18.

- 45 See Karl Marx, *Capital: A Critique of Political Economy, Volume 1*, trans. Ben Fowkes (New York: Vintage Books, 1977), 247–57.
- 46 See Bulard, “Apartheid of Pharmacology.”
- 47 Though it certainly is that. See Andy Gray and Jenni Smit, “Improving Access to HIV-Related Drugs in South Africa: A Case of Colliding Interests,” *Review of African Political Economy* 27.86 (December 2000): 586.
- 48 See Thomas Lemke, “‘The Birth of Bio-politics,’ Michel Foucault’s Lecture at the Collège de France on Neo-Liberal Governmentality,” *Economy and Society* 30.2 (May 2001): 197.
- 49 Marx, “Economic and Philosophical Manuscripts,” 328.
- 50 See Giorgio Agamben, *Means without Ends: Essays on Politics*, trans. C. Casarino and V. Binetti (Minneapolis: University of Minnesota Press, 2002), 11, 116. I am grateful to Amy Kapczynski for formulating this problem.
- 51 Germán Velásquez, “Unhealthy Profits,” trans. J. Stoker, *Le Monde Diplomatique* (July 2003), <http://mondediplo.com/2003/07/10velasquez?> (accessed April 4, 2004). See also Phillipe Quéau, “Who Owns Knowledge?” trans. Malcolm Greenwood, *Le Monde Diplomatique* (January 2000), <http://mondediplo.com/2000/01/13queau?> (accessed April 4, 2004); Inge Kaul, “Biens publics globaux: un concept révolutionnaire,” *Le Monde Diplomatique* (June 2000): 22–23; Mark Heywood, “Life-Sustaining Medicines Are a Basic Need,” *Mail and Guardian*, March 25, 2003.
- 52 The concept of the commons has become one of the key grounds for *altermondialiste* struggle, up to and including the struggle for treatment access. Thus, of the various groups engaged in such struggles, Naomi Klein could argue, “the spirit they share is a radical reclaiming of the commons” (“Reclaiming the Commons,” *New Left Review* 9 [May–June 2001]: 82; compare *Alternatives to Economic Globalization: A Better World Is Possible; A Report of the International Forum on Globalization* [San Francisco: Berrett-Koehler, 2002], 79–104, esp. 86). But as compelling and correct as this characterization may be, the commons is often narrated in the genre of a kind of pastoral heterotopia, implying that models for late modern global anticapitalism can be derived from antecapitalist Europe. The problem with this is not only its nostalgia, but also the relation of its rhetoric of crisis to the Malthusian *problématique* that has governed some of the more prominent late modern returns to the notion of the commons. That the latter is also a response to the “problem of overpopulation” is evident from Garrett Hardin’s “The Tragedy of the Commons,” which concludes by arguing that “it is the role of education to reveal to all the necessity of abandoning the freedom to breed. Only so, can we put an end to this [populational] aspect of the tragedy of the commons” (*Science* 162 [1968]: 1248). It remains an open question whether Negri’s theorization of the “immeasurable opening” of the common, which tacitly cites Rancière’s rereading of Plato, departs from this *problématique* (*Time for Revolution*, trans. Mateo Mandarini [New York: Continuum Books, 2003], 181–93).
- 53 See Bond, “Sacrificing AIDS Victims,” 18.
- 54 Doyal quoted in Gray and Smit, “Improving Access,” 588.
- 55 Jonathan Mann, “AIDS: Why It Isn’t Being Defeated,” *Green Left Weekly*, April 28, 1993.
- 56 See Immanuel Wallerstein, *The Decline of American Power* (New York: New Press, 2003), 250.
- 57 See Sanjay Basu, “AIDS, Empire, and Public Health Behaviourism,” *Znet Commem-*

- tary (August 2, 2003), www.zmag.org/content/showarticle.cfm?SectionID=2&ItemID=3988 (accessed April 4, 2004).
- 58 See Zackie Achmat, "Living Nonracialism," *Mail and Guardian*, May 2, 2003. See also Nicoli Natrass, "We Need to Fight AIDS and Poverty," *Mail and Guardian*, March 25, 2003.
- 59 Which is an immanentist reformulation of the argument that (as Paul Farmer puts it in his 2001 defense of Mbeki) "inequality is the major co-factor in this epidemic" ("AIDS Heretic," *New Internationalist* 331 [January–February 2001]: 16) or that "AIDS and economics are completely entwined" ("Misunderstanding Mbeki," statement prepared by the Institute for Health and Social Justice at the Department of Social Medicine, Harvard Medical School, www.zmag.org/misunderstanding_mbeki.htm [accessed April 4, 2004]).
- 60 See Karl Marx, *Capital*, 1:342.
- 61 See Mary Catherine Bateson and Richard Goldsby, *Thinking AIDS* (New York: Addison-Wesley, 1988), 51–58.
- 62 See Mbembe, "Necropolitics," 16.
- 63 Velásquez, "Unhealthy Profits."
- 64 See Gardiner Harris and Michael Waldholz, "AIDS Drug Plan Spurs Call to Cut Prices Elsewhere," *Wall Street Journal*, May 12, 2000.
- 65 See Baylies, "Overview: HIV/AIDS in Africa," *Review of African Political Economy* 86 (2000): 491. Zackie Achmat explains that "in Botswana, for every dollar Merck gives, the Gates Foundation gives a dollar, which comes back to the company when they buy Merck drugs at wholesale price, which can be added to Merck's tax deduction on the donation" (Robert Weissman and Zackie Achmat, "Defying the Drug Cartel: The South African Campaign for Access to Essential Medicines," *Multinational Monitor* [January–February 2001]: 32). Similarly, a one-billion-dollar loan announced by Clinton in 2000 carried "the condition that the drugs must be bought from American pharmaceutical firms" (Cheru, "Debt Relief and Social Investment," 527; Gellman "Unequal Calculus"; Gellman, "World Shunned Signs"). None of this, of course, prevented capital from patting itself on the back for a job well done. See Michael Waldholz, "AZT Price Cut for Third World Mothers-to-Be," *Wall Street Journal*, March 5, 1998; Michael Waldholz, "AIDS Medicine Will Cost Less in Poor Nations," *Wall Street Journal*, June 23, 1998.
- 66 Quoted in James Still, "Slashed Drug Costs 'Will Not Touch Kenya's Aids Crisis,'" *The Guardian*, November 7, 2000. For his part, Achmat endorses local production of medicines in both the private and public sectors. See Weissman and Achmat, "Defying the Drug Cartel," 31.
- 67 See Robert Weissman, "The AIDS Fund Fight," *The Nation*, July 9, 2001, 14; Allyn Taylor, "Public-Private Partnerships for Health: The United Nations Global Fund on AIDS and Health," *The John Marshall Law Review* 35 (2002): 404–5; Fidler, "Racism or Realpolitik?" 136–46.
- 68 See Naomi Klein, "Bush's Aids 'Gift' Has Been Seized by Industry Giants," *The Guardian*, October 13, 2003, www.guardian.co.uk/wto/article/0,2763,1061786,00.html (accessed April 4, 2004).
- 69 In his critique of PEPFAR, James Love observes that "Bush, like President Bill Clinton before him, has noisily combated generic drugs in international forums, even though,

- to quote Bush, their lower cost ‘places an immense possibility within our grasp’ (“Prescription for Pain,” *Le Monde Diplomatique* [March 2003], <http://mondediplo.com/2003/03/12generics/> [accessed April 4, 2004]).
- 70 See Nancy Dunne, “U.S. Warns Brazil on Protection for Drug Patents,” *Financial Times*, July 23, 1988, 3.
- 71 See Stephen Buckley, “Brazil Becomes Model in Fight against AIDS,” *Washington Post*, September 17, 2000; Tina Rosenberg, “Look at Brazil,” *New York Times*, January 28, 2001. John Culhane has noted, however, that in Brazil as in the United States, the success of ARV therapy has been limited along lines of race and gender. In Brazil, significantly more women than men are infected, and in the United States, African-American women account for two-thirds of all new infections. See “Recurring Nightmare: Barriers to Effective Treatment of HIV in the United States and Internationally,” *John Marshall Law Review* 35 (2002): 382.
- 72 See L. J. Sellers, “Success Story,” *Pharmaceutical Executive* 21.3 (March 2001): 30.
- 73 See “Policy Position of Brazil at the TRIPs Council on Access to Medicines” (June 20, 2001), www.cptech.org/ip/wto/tc/brazil.html (accessed April 4, 2004).
- 74 Sara Ford, “Compulsory Licensing Provisions under the TRIPs Agreement: Balancing Pills and Patents,” *American University International Law Review* 15 (2000): 954; Robert Weissman, “‘Free Trade’ and Medicines in the Americas,” *Foreign Policy in Focus* 6.13 (April 2001): 1.
- 75 The United States’ aggressive assertion of patent rights, even in cases where its own national security interests seem to dictate otherwise (witness the debates around Cipro in October 2001), has ultimately undermined even the hegemony of its own institutions of neoliberal economics. The attempts by the United States in December 2002 and August 2003 to dilute paragraph 6 of the WTO’s November 2001 Doha Ministerial Declaration heralded, if not also concretely prepared the way for, the collapse of the WTO trade talks in Cancun in September 2003. See “The Right Fix?” *The Economist*, August 28, 2003, 1. The United States’ assertion of such rights is not, of course, a new development. See Sana Siwolop, “Reagan Turns Up the Heat on Patent-Pilfering Countries,” *Business Week*, April 21, 1986, 47.
- 76 Kevin Watkins, “A Harsh Campaign to Prevent Affordable AIDS Treatment,” *International Herald Tribune*, February 12, 2001.
- 77 Ford, “Compulsory Licensing Provisions,” 952.
- 78 See Patrick Bond, “Globalization, Pharmaceutical Pricing, and South African Health Policy: Managing Confrontation with U.S. Firms and Politicians,” *International Journal of Health Services* 29.4 (1999): 768.
- 79 Jonathan King, “Commentary: Life Patents and AIDS Drug Access,” *GeneWatch* 14.5 (September 2001): 11.
- 80 See Bond, “Globalization, Pharmaceutical Pricing, and South African Health Policy,” 775.
- 81 See Robert Weissman, “AIDS Drugs for Africa,” *Multinational Monitor* (September 1999): 10–11; Michelle Nerozzi, “The Battle over Life-Saving Pharmaceuticals: Are Developing Countries Being ‘TRIPped’ by Developed Countries?” *Villanova Law Review* 47 (2002): 607; Cheru, “Debt Relief and Social Investment,” 527–28.

- 82 See Weissman, "AIDS Drugs for Africa," 9; Richard Kim, "ACT UP Goes Global," *The Nation*, July 9, 2001, 17.
- 83 Weissman, "AIDS Drugs for Africa," 13. Klein suggests that *altermondialiste* struggles begin with the Zapatista uprising of January 1, 1994 ("Reclaiming the Commons," 81).
- 84 At the time, a generic version of Fluconazole cost US\$0.30 in Thailand; under patent in South Africa and Kenya, the same medicine cost US\$15.00 and US\$18.00, respectively (Poku, "Africa's AIDS Crisis," 202; Médecins Sans Frontières, "Untangling the Web of Price Reductions: A Pricing Guide for the Purchase of ARVs for Developing Countries" [July 1, 2002], www.accessmed-msf.org/documents/purple2.pdf [accessed April 4, 2004]). In March 2000, the TAC challenged Pfizer to reduce the price of Fluconazole to US\$0.50 per 200 milligram. In the same month, Cipla offered Nevirapine for 135 rupees per tab, more than half Boehringer Ingelheim's price of 344 rupees for the "brand-name" version of the same. In October 2000, the TAC announced the Christopher Moraka Defiance Campaign against patent abuse, and began illegally importing Fluconazole from Thailand. In January 2001, the first illegal shipment of Fluconazole arrived.
- 85 It was not until 1999 that the World Bank could bring itself to publicly articulate this consensus: "Nowhere is the effort big enough, or well-resourced enough to turn the epidemic back" (World Bank, *Intensifying Action against HIV/AIDS in Africa, Responding to a Development Crisis*, (Washington, DC: The International Bank for Reconstruction and Development, Africa Region, 1999). The latest efforts remain governed by the same consensus. Even though 6 million people with AIDS will be in immediate clinical need of ARVs by 2005, and 11.5 million by 2008, the WHO's goal is to treat only 3 million by 2005, and PEPFAR's only 2 million by 2008. The massively underfunded GFATM, meanwhile, is at this point capable of providing ARVs to only 491,000 people with HIV/AIDS by 2008 (HealthGAP, "Treat the People—Commit to Treat Those in Immediate Clinical Need," [May 13, 2003], on file with author).
- 86 See Claude Lefort, *Democracy and Political Theory*, trans. D. Macey (Minneapolis: University of Minnesota Press, 1988), 37, 40. See also Wole Soyinka, *The Burden of Memory, the Muse of Forgiveness* (New York: Oxford University Press, 1999), 70–72.
- 87 See Michel Foucault, *The History of Sexuality*, vol. 1: *An Introduction*, trans. R. Hurley (New York: Vintage Books, 1990), 138, emphasis in original; compare "Society Must Be Defended": *Lectures at the Collège de France, 1975–76*, trans. D. Macey (New York: Picador, 2003), 241, 247.
- 88 See Foucault, *The History of Sexuality*, 1:143.
- 89 Writing in 1961, seven years after Lacan used *refus* as one of two terms to translate Freud's *Verwerfung* (the other being *rejet*), Foucault used the term *refus* to refer to the madness of Sadean sovereignty. See Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason*, trans. R. Howard (New York: Vintage Books, 1965), 283.
- 90 See Gilles Deleuze, "What Is a Dispositif?" in *Michel Foucault, Philosopher*, trans. Timothy Armstrong (New York: Routledge, 1992), 159–66.
- 91 See Culhane, "Recurring Nightmare," 386. The ACT UP slogan "SILENCE = DEATH" was aimed, in large part, at Reagan, who did not even utter the word AIDS until May 31, 1987—six years after the emergence of HIV in the United States. The murderous homo-

- phobia of this silence must not be forgotten. The assumption of early epidemiologists was that AIDS would be limited to gay communities and drug users, and that after “saturating” these populations, it would soon “run out of victims” or “run its course.” The same epidemiologists wondered aloud whether Africans did not already somehow possess a natural immunity to the virus. See F. P. Siegal and M. Siegal, *AIDS: The Medical Mystery* (New York: Grove Press, 1983), 121–24.
- 92 Nana Poku argues that “with the exception of Uganda and Senegal, African leaders are engaged in denial, typically asserting that the moral values of their societies would not permit transmission of an agent such as HIV that is associated with risky sexual behaviour, homosexuality, and injecting drug use” (“Africa’s AIDS Crisis in Context,” 199). Amson Sibanda has likewise noted “ignorance and denial” as factors for the spread of HIV/AIDS in Zimbabwe (“A Nation in Pain: Why the HIV/AIDS Epidemic Is Out of Control in Zimbabwe,” *International Journal of Health Services* 30.4 [2000]: 730, 735). Carolyn Baylies concurs, noting that instead of intervening in the pandemic, African governments have responded with a “stance of denial, or, alternately, official acknowledgement of the need for an AIDS policy coupled with a persistent failure to accept the depth of the crisis of the urgency of the situation, much less to follow through on the construction of a comprehensive policy” (Baylies, “Overview: HIV/AIDS in Africa,” 488, 491; but compare Cheru, “Debt Relief and Social Investment,” 526).
- 93 See Alain Badiou, *Ethics: An Essay on the Understanding of Evil*, trans. Peter Hallward (New York: Verso, 2002), 30–39; especially 35.
- 94 I take it as axiomatic that, since the days of the Dutch East Indies Company, if not earlier, corporations have arrogated to themselves the prerogatives of sovereignty (territorial control, monopoly over legitimate violence, right to decide life and death, police power in the broadest sense, etc.) and that the Kantian distinction between a land’s “supreme owner” (*Obereigentümer*) and its “supreme commander” (*Oberbefehlshaber*) is no longer helpful, if it ever was, for grasping manifestations of sovereign power. Instead, as Agamben argues, sovereignty can no longer be understood as an “exclusively political concept, an exclusively juridical category, a power external to law, or the supreme rule of the juridical order” (Giorgio Agamben, *Homo Sacer I: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen [Stanford: Stanford University Press, 1998], 28). See Immanuel Kant, *The Metaphysics of Morals*, trans. M. Gregor (Cambridge: Cambridge University Press, 1996), 99–100; Ernest Mandel, *Marxist Economic Theory*, vol. 2, trans. Brian Pearce (New York: Monthly Review Press, 1968), 469–72; Michael Hardt and Antonio Negri, *Empire* (Cambridge: Harvard University Press, 2000), 305, 331, 336; Mbembe, *On the Postcolony* 29–30, 78–79; Giorgio Agamben, *The Coming Community*, trans. Michael Hardt (Minneapolis: University of Minnesota Press, 1993), 79. For the opposing view, see Carl Schmitt’s critique of Weber and Kelsen in *The Crisis of Parliamentary Democracy*, trans. Ellen Kennedy (Cambridge: MIT Press, 1988), 24–25.
- 95 Quoted in Mark Schoofs, “Flirting with Pseudoscience,” *Village Voice*, March 21, 2000, 56.
- 96 It is important to note that whereas Article 31 of TRIPs by no means *requires* a declaration of health emergency to invoke compulsory licensing, it permits certain limitations on compulsory licensing to be waived in the case of such a declaration, and so

- places considerable powers at the disposal of governments, at the same time it raises the stakes on the exercise of those powers. In effect, the sovereign exception is the only form of political power TRIPs permits states to exercise over licensing questions. See Ford, "Compulsory Licensing Provisions," 959.
- 97 In October 1999, Mbeki made his denialism public in a speech before the National Council of Provinces. In May 2000, he convened an HIV/AIDS "advisory panel" composed of denialists. In July 2000, Mbeki delivered the opening address to the Thirteenth International AIDS Conference, in which he declared that he doubted whether everything could be blamed on a single virus. In September 2000, Mbeki offered denialist remarks in *Time* magazine, and Minister of Health Tshabalala-Msimang offered similar remarks on South African radio. See Mbali, "HIV/AIDS Policy-Making," 319–20.
- 98 Of "Castro Hlongwane," Achmat said, "On the record, you had, for the first time, an indication of the madness, the irrationality, the blindness, the willfulness, the vindictiveness of Mbeki on this question" (quoted in Samantha Powers, "The AIDS Rebel," *The New Yorker*, May 19, 2003, 65). Compare also Pieter-Dirk Uys "'AIDS Comes from Venus; HIV Comes from Mars!'" *Index on Censorship* 4 (2001): 21–22; Newaal Deane, "The Madness of Queen Manto," *Mail and Guardian*, April 11, 2003.
- 99 "This monograph accepts that our people, and others elsewhere in Africa and the rest of the world, face a serious problem of AIDS. It accepts the determination that AIDS stands for Acquired Immunodeficiency Syndrome. It accepts that a Syndrome is a collection of diseases. It proceeds from the assumption that the collection of diseases generally described as belonging to the AIDS syndrome have known causes. It rejects as illogical the proposition that AIDS is a single disease caused by a singular virus, HIV. In other words, it accepts that AIDS is either a syndrome or a disease. It cannot be both. Its acronym correctly describes it as a syndrome. For this reason, it is not described as AIDD. It accepts that an essential part of AIDS is immune deficiency. This constitutes the ID in AIDS. It accepts that this immune deficiency may be acquired, accounting for the A in AIDS. It asserts that there are many conditions that cause acquired immune deficiency, including malnutrition and disease. . . . It accepts that HIV may be one of the causes of this immune deficiency, but cannot be the only cause" (4).
- 100 "Bernstein makes the important observation that '[AIDS is] the first disease that no one can survive by definition. Not only is this description of AIDS logically bankrupt, it sends the demoralising and inaccurate message to people with HIV or AIDS that they have a disease that is not worth fighting. A more legitimate, and more hopeful, definition must be devised.' Because of all this, it has become imperative for us to know as precisely as possible what our people are dying from, specifically. To say that our people are dying of AIDS will not help us in our struggle to improve the health of our people. As Bernstein says, to say this would be to say our people have a disease that is not worth fighting. This would certainly condemn them to premature death. *It is this that would constitute genocide*" (58; emphasis in original). In a similar vein, Mokaba argued that "we cannot allow our people to take something [i.e., ARV therapy] so dangerous that it will actually exterminate them. However well meaning, the hazards of misplaced compassion could lead to genocide" (quoted in Peter Kwan, "Biography of a Nightmare: HIV/AIDS in South Africa," *The John Marshall Law Review* 35 [2002]: 394).

- 101 See Jacques Lacan, *Écrits: A Selection*, trans. A. Sheridan (New York: Norton, 1981), 200.
- 102 See Jacques Lacan, *The Ethics of Psychoanalysis, 1959–1960*, in *The Seminar of Jacques Lacan*, book 7, ed. J-A. Miller, trans. D. Porter (New York: Norton, 1992), 66.
- 103 Lacan, *Écrits*, 190, 202–4, 206.
- 104 *Ibid.*, 184, 202, 204.
- 105 “The Book of Genesis in the Holy Bible says: ‘And God said, “Let there be light,” and there was light. God saw that the light was good, and he separated the light from the darkness.’ Taking example from this, though disadvantaged by the fact that we do not have the power of the Creator, we trust that we present in this brief discourse will help all of us to separate the light from the darkness with regard to the issue of AIDS. This may be difficult. It is, nevertheless, critically important. Given that our minds on this matter have become thoroughly clogged by the information communicated by the omnipotent apparatus, a miracle will have to be achieved to get all our people to use their brains, rather than perish on emotional responses based on greatly heightened levels of fear” (11).
- 106 See Mbembe, *On the Postcolony*, 189; Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. G. Schwab (Cambridge: MIT Press, 1988), 36; Carl Schmitt, *Die Diktatur* (Berlin: Duncker and Humblot, 1994), 139.
- 107 See Mbembe, *On the Postcolony*, 212.
- 108 See Gilles Deleuze and Félix Guattari, *Anti-Oedipus: Capitalism and Schizophrenia*, trans. R. Hurley, M. Seem, and H. R. Lane (Minneapolis: University of Minnesota Press, 1983), 214; Giorgio Agamben, *Homo Sacer*, 1:51.
- 109 See Powers, “The AIDS Rebel,” 60, 63.
- 110 Drew Forrest, “Social Movements: ‘Ultra-Left’ or ‘Global Citizens,’” *Mail and Guardian*, January 31, 2003.
- 111 See Richard Calland, “A Case of Power and Who Controls It,” *Mail and Guardian*, January 18, 2002; Klug, “Five Years On: How Relevant Is the South African Constitution?” *Vermont Law Review* 26.4 (Summer 2002): 810–14.
- 112 See Forrest, “Social Movements,” 8; Powers, “The AIDS Rebel,” 56, 60–61, 64–65; Mbali, “HIV/AIDS Policy-Making,” 315, 321–22.
- 113 Nyameko Barney Pityana, “Revolution within the Law?” in *Bounds of Possibility: The Legacy of Steve Biko and Black Consciousness*, ed. N. B. Pityana, M. Ramphela, M. Mpumlwana, L. Wilson (Cape Town: David Philip, 1991), 202–4.
- 114 *Ibid.*, 212.
- 115 See Hoyt Webb, “The Constitutional Court of South Africa: Rights Interpretation and Comparative Constitutional Law,” *Journal of Constitutional Law* 1.2 (Fall 1998): 281; J. Tholakele H. Madala, “Rule under Apartheid and the Fledgling Democracy in South Africa: The Role of the Judiciary,” *North Carolina Journal of International Law and Commercial Regulation* 26 (2001): 748, 750–56, 759.
- 116 See Patric Mzolisi Mtshaulana, “The History and Role of the Constitutional Court of South Africa,” in *The Post-Apartheid Constitutions: Perspectives on South Africa’s Basic Law*, ed. P. Andrews and S. Ellmann (Johannesburg: Witwatersrand University Press, 2001), 547.
- 117 See Pierre de Vos, “Pious Wishes or Directly Enforceable Human Rights? Social and Economic Rights in South Africa’s 1996 Constitution,” *South African Journal of Human Rights* 13.1 (1997): 67–101. It should be noted, however, that because of South Africa’s

- quasi-federal system, the executive does not directly control AIDS spending. See Helen Schneider and Joanne Stein, "Implementing AIDS Policy in Post-Apartheid South Africa," *Social Science and Medicine* 52 (2001): 724.
- 118 Klug, "Five Years On," 819; compare Heinz Klug, "Introducing the Devil: An Institutional Analysis of the Constitutional Power of Review," *South African Journal of Human Rights* 13 (1997): 185–207.
- 119 See Calland, "A Case of Power and Who Controls It"; "Accountable to the Constitution," *Mail and Guardian*, January 18, 2002; "South Africa's Independent Judiciary Is Safe—For Now," *Mail and Guardian*, August 27, 2002; "A Failure of Legal Imagination in Pro-Poor Law," *Mail and Guardian*, May 13, 2003.
- 120 See Klug, "How Relevant Is the South African Constitution," 819.
- 121 Which, under Pityana's leadership, had earlier capitulated to pressure from the executive to withdraw its support for the TAC's lawsuit. See Thuli Nhlapo and Nawaal Deane, "How Pityana Buckled," *Mail and Guardian*, November 30, 2001.
- 122 Zackie Achmat, "The Long Walk to Civil Disobedience," *Mail and Guardian*, April 4, 2003. In fact, no systematic ARV roll-out has taken place even after Mbeki's cabinet directed the Department of Health in August 2003 to develop an operational plan within one month to provide ARVs in the public sector, after Mbeki's announcement in November 2003 that his administration would triple its AIDS budget to \$1.7 billion, or after the TAC's pressure in South Africa's Competition Commission forced GlaxoSmithKline and Boehringer Ingelheim, in a controversial December 2003 settlement, to issue licenses on AZT and Lamivudine to four generic producers. See Sharon LaFraniere, "South Africa Is Criticized for Delay in AIDS Treatment," *New York Times*, February 20, 2004.
- 123 On the primarily temporal mode of the sovereign exception, see Agamben, *Means without Ends*, 39, 43.
- 124 Kistner, "The Constitutional Right to Live, and the Political Power to Let Die," 16; see also Achille Mbembe, "Biopolitics and Sovereignty," *Newsletter of the Wits Institute for Social and Economic Research* 2.1 (June 2003): 13, 19.
- 125 See Pat Sidley, "Churches, Unions Lay Down Line on AIDS," *Business Day*, September 21, 2001, 3.
- 126 It is hard to know what constitutional provisions could be deployed against this non-application of sovereign power: even though Section 37(3) of the 1996 Constitution gives the judiciary the power to *limit* executive declarations of states of emergency, no clauses provide powers that would enable the judiciary to require the executive to *declare* a health emergency. The TAC's MTCT case was, in a way, designed to force Mbeki's hand on this question. MTCT is more readily conceptualized as a "health emergency" than "mere" seropositivity, which in a certain strict sense is classified "only" as a "chronic condition." See Stephen Ellman, "A Constitutional Confluence," in *The Post-Apartheid Constitutions: Perspectives on South Africa's Basic Law*, ed. P. Andrews and S. Ellmann (Johannesburg: Witwatersrand University Press, 2001), 460. There is also a sense in which the TAC's implicitly pronatal legal strategy played into the biopolitical reduction of women to and as reproductive organs, while at the same time embracing the tropes of innocence that become available once one advocates on behalf of infants. As Heinz Klug's reading of the case suggests, the limit of this strategy was apparent in the discourse of the ruling itself ("How Relevant Is the South African Constitution?" 817).

- 127 See Jacques Rancière, *Disagreement: Politics and Philosophy*, trans. Julie Rose (Minneapolis: University of Minnesota Press, 1999), 13–19.
- 128 See Mbali, “HIV/AIDS Policy-Making,” 318.
- 129 See Agamben, *Means without Ends*, 106–7; compare G. W. F. Hegel, *Phenomenology of Spirit*, trans. A. Miller (Oxford: Oxford University Press, 1977), para. 591.
- 130 See Mbali, “HIV/AIDS Policy-Making,” 313–15.
- 131 See “Why AIDs Campaigns Are Not Working,” *Nursing RSA* 6.6 (June 1991): 6. The necessity and possibility for these campaigns had been outlined in a series of 1988 articles by C. B. Ijsselmuiden, et al. See “AIDS and South Africa—Towards a Comprehensive Strategy; Part I: The World-Wide Experience,” “Part II: Screening and Control,” and “Part III: The Role of Education,” *South African Medical Journal* 73.8 (April 1988): 455–60, 461–64, 465–67.
- 132 Writing in 1992, Alan Fleming argues that one of the unique features of the HIV/AIDS pandemic in South Africa is precisely this foreknowledge: “East and central African countries had no warning, as the epidemic was mature and seroprevalence already high when serological tests were first introduced in 1985, whereas South Africa had the warning seven years ago when seroprevalence was still extremely low but the spread southward of HIV-1 was inevitable” (“South Africa and AIDS—Seven Years Wasted,” *Current AIDS Literature* 5.11 [November 1992]: 425; Fleming’s article was also published in *Nursing RSA* 8.7 [July 1993]: 18–19).
- 133 *Ibid.*, 426.
- 134 See Grundlingh, “HIV/AIDS in South Africa,” 57, 80–81; Grundlingh, “Government Responses to HIV/AIDS,” 126, 152–53.
- 135 Discussing HIV/AIDS educational programs, Fleming argues that “to date nothing is in place in the government schools, which are attended by the majority in all ethnic groups,” while “the 11 established AIDS Training and Information Centres (ATICs) are in locations where they serve almost exclusively the white population, and only now [1992] has an ATIC in Soweto been ‘approved’” (“Seven Years Wasted,” 427).
- 136 See Schneider and Stein, “Implementing AIDS Policy,” 725.
- 137 See Kwan, “Biography of a Nightmare,” 389.
- 138 Fleming, “Seven Years Wasted,” 428.
- 139 Wilson Carswell, “HIV in South Africa,” *Lancet* 342 (July 1993): 132.
- 140 Sontag, *AIDS and Its Metaphors*, 62.
- 141 See Bronwen Roberts, “Apartheid Forces Spread AIDS,” *Mail and Guardian*, November 12, 1999. Compare Jacques Pauw, *Into the Heart of Darkness: Confessions of Apartheid’s Assassins* (Johannesburg: Jonathan Ball Publishers, 1997), 70–71.
- 142 Uys, “‘AIDS Comes from Venus,’” 29.
- 143 Steven Biko, *I Write What I Like*, ed. A. Stubbs (New York: Harper and Row, 1986), 86.
- 144 See Schneider and Stein, “Implementing AIDS Policy,” 725.
- 145 *Ibid.*, 728; Mbali, “HIV/AIDS Policy-Making,” 326.
- 146 See John Donnelly, “A Vigilant Voice for AIDS Victims,” *The Boston Globe*, May 31, 2003; Margarette Driscoll, “I Won’t Buy Life While Others Die,” *Sunday Times* (London), May 25, 2003; Nicol Innocenti, “Aids Activist in Gandhi Mould,” *Financial Times*, March 24, 2003; Tina Rosenberg, “In South Africa, a Hero Measured by the Advance of a Deadly Disease,” *New York Times*, January 13, 2003; Rory Carroll, “A Good Man in

- Africa," *The Guardian*, December 10, 2002; Matt Steinglass, "Killing Him Softly," *Boston Globe*, December 8, 2002.
- 147 See Powers, "The AIDS Rebel," 54.
- 148 Zackie Achmat, "Off the Control Track: Power, Resistance, and Representation in South African Documentaries," *The Journal of the International Institute* 1.2 (Summer 1994), www.umich.edu/~iinet/journal/vol1no2/achmet.html (accessed April 4, 2004).
- 149 Achmat, "Off the Control Track," part 1; emphasis in original.
- 150 "In the case of sacrifice and martyrdom, this image we possess of those martyred, and to which nothing is opposed other than the sacrificing of lives in the battle against apartheid, is also one that possesses us" (Achmat, "Off the Control Track," part 5).
- 151 In "Off the Control Track," Achmat clarifies that his concluding section "is really only a beginning" (part 5), while he concludes "My Childhood as an Adult Molester" with the sentence, "It was the beginning of a life of sex and politics" (in *Defiant Desire*, ed. Mark Geisser and Edwin Cameron [New York: Routledge, 1995], 341).
- 152 Achmat, "Off the Control Track," part 5.
- 153 Ibid.
- 154 Foucault, *History of Sexuality*, 1:135.
- 155 See Kant, *Metaphysics of Morals*, paragraph 34; G. W. F. Hegel, *Philosophy of Right*, trans. A. M. Knox (Oxford: Oxford University Press, 1967), paras. 177–80.
- 156 See Michel Foucault, *Ethics, Subjectivity, and Truth: The Essential Works of Michel Foucault, 1954–1984*, vol. 1, ed. P. Rabinow, trans. R. Hurley et al. (New York: New Press, 1997), 81–85, 242–45.
- 157 Achmat, "My Childhood as an Adult Molester," 325.
- 158 Quoted in Powers, "The AIDS Rebel," 56.
- 159 Alexander García Düttmann, *At Odds with AIDS: Thinking and Talking about a Virus*, trans. P. Gilgen and C. Scott-Curtis (Stanford: Stanford University Press, 1996), 2.
- 160 The authority of which, as Partha Chatterjee points out, is "derived entirely from a moral claim—of personal courage and sacrifice and a patent [*sic*] adherence to truth. So much so that the supreme test of political leadership was death itself" (*Nationalist Thought and the Colonial World: A Derivative Discourse* [Minneapolis: University of Minnesota Press, 1993], 109).
- 161 "I am not the only one," Achmat said of being without ARVs to Tavis Smiley in a November 14, 2003, interview, www.npr.org/features/feature.php?wflid=150614 (accessed April 4, 2004).
- 162 It is striking to find Achmat responding to a question about "the Defiance Campaign" by clarifying that it is "the Christopher Moraka Defiance Campaign" and by repeating the testimony Moraka gave, two months before his death from AIDS, against Pfizer. Here testimony and protest, mourning and mobilizing, merge to the point of indistinction. See Weissman and Achmat, "Defying the Drug Cartel," 29.