

A STRIKE OF RHETORIC

Benjamin's Paradox of Justice

Nothing is understood about this man until it has been perceived that of necessity and without exception, everything—language and fact—falls for him within the sphere of justice.... For him, too, justice and language remain founded in each other.

—Walter Benjamin, “Karl Kraus”

Before beginning, a few prefatory remarks appear necessary to maintain at least the hope for what Benjamin would have condemned: communication. Call it an act of violence, an act of communicative violence, if you will. But is not all language, that is, “impure” language, all language after the Fall, as Benjamin would say, violent? And does he himself not battle and ultimately fail in the face of language: fail either by instrumentalizing it as a tool for communication, or fail in failing to communicate, fail as a communicator, so to speak?

Given this aporetic situation that guarantees failure no matter what, we shall—violently—assure ourselves of some fundamental assumptions recurring in what is to come. In his 1921 essay “Toward a Critique of Violence” Benjamin is concerned with law, law’s denial of its inherent violence (*Gewalt*). He is concerned, more concretely, with the nature of juridical force (*Gewalt*) and what he calls its law-positing and law-preserving character. All law is characteristic in that it violently establishes boundaries, divides, discriminates between “legal” and “illegal,” so as to

then coercively—if not violently—maintain these divisive moments of lawmaking. That is to say, law assumes its authority very much as a result of an ever-present latent threat, the threat of physical violence, directed against the people, the citizens. Why is this so remarkable? Because law is supposed to attain justice. Yet given law's coercive or latently violent nature, justice and law appear to be irreconcilable—exactly contrary to the way in which democracy, democratic jurisprudence, usually understands itself.

At first, it seems as if there will probably never be an alternative to the particular nature of legal violence. But then, in the last third of his essay, Benjamin actually offers an alternative, an *other*, form of violence: divine violence. While he links positive law with mythic violence, which posits and preserves itself, posits and insists on this initial moment of instituting, institutionalization, divine violence is different in that it also posits itself but then immediately withdraws; it posits and does not insist, does not adhere to any ends, does not institutionalize itself; it posits and withdraws. This divine or—if enacted in the human sphere—"pure" violence is a nonviolent violence, a violence that posits itself without insisting on its moment of foundation.

My interest in Benjamin's essay begins precisely at the point where questions arise that he does not posit explicitly, questions, however, that his essay indeed raises, questions like, If law is characteristic in positing and preserving itself violently, and if one were to translate Benjamin's narrative act into the language of speech-act theory, is not any text, including his critique of violence, similarly characterized by constant moments of constative language, moments positing and preserving narrative violence? And if this is so, if a speech act is characteristic for its continuous violent moments of narrative positing and preserving, is there perhaps an alternative to this, an alternative like that of divine violence to mythic violence, an alternative violence that does not posit and preserve but one somehow in line with pure means, pure in that its means adhere to no ends but rather posit and immediately withdraw? Is not this, after all, where the peculiar narrative form of Benjamin's essay, the series of flagrant contradictions, comes into play? The essay is remarkable in that Benjamin constantly sets up binaries such as those between positing and preserving violence, natural and positive law, means and ends, mythic and divine violence, Niobe and Korah, and so forth. Benjamin posits these and other dichotomies, yet soon after their setting up they get drawn into contradictions, paradoxes, and tensions and ultimately collapse. He posits but then does not appear to insist on this once-instituted moment of narrative violence, performs no institutionalization; what is insisted on is narrative means without narrative ends, a speech act that does not adhere to its ends, a speech act of pure means, very much in line with what in the long 1916 essay on language Benjamin calls pure language, which in the critique of violence he also discusses as a form of pure means. Finally, if the divine or pure violence Benjamin talks about constitutes a form of justice, a contention invoked throughout the essay, does the narrative spectacle

staged in “Toward a Critique of Violence” bring about or stage something we are inclined to call narrative justice?

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Given these prolegomena, two questions will motivate the remaining discussion: What does Benjamin do? And what does he say?

The task of a critique of violence can be circumscribed as that of expounding its relation to law and justice. For a cause, however effective, becomes violent, in the precise sense of the word, only when it enters into moral relations [sittliche Verhältnisse]. The sphere of these relations is defined by the concepts of law and justice. (“Toward a Critique of Violence,” 179)¹

It is from these sentences that “Toward a Critique of Violence” departs. Generally, they address the relationship between violence, on the one hand, and law and justice, on the other. Yet since, “in the precise sense of the word,” a cause “becomes violent” only when it enters into moral relations (that is, the sphere defined by the concepts of law and justice), the juxtaposition of violence, on the one hand, and law and justice, on the other, is not really what is at issue here. Violence, rather, is something to be sought and scrutinized *within* the sphere of moral relations, “defined by the concepts of law and justice.” What matters, hence, is the relation between law and justice. Finally, “the task of the critique of violence” also entails the “presentation” (*Darstellung*, 179) of this relation, raising the question of the critique’s presentability or unpresentability.²

Immediately following his initial elliptical sentences, Benjamin introduces a couple of categories, which are difficult to grasp in their entirety here (cf. 179).³ Notably, Benjamin, as if commenting on his observations, adds a sentence that could almost be read as a warning: “These observations provide a critique of violence with premises that are *more complex and more intricate than they may perhaps appear*” (179). If we want to apprehend what is “more complex and more intricate,” we may need to pay attention to Benjamin’s utterances, to what is *happening* in his narrative act. The questions, again and again, will be the following: What is the story Benjamin tells? Is it the entire story? Or is there perhaps another component, another story of narrative action rather than simple truths—one that, though

1. In general, in this chapter and the next, quotations from Benjamin refer to Walter Benjamin, *Gesammelte Schriften*, ed. Rolf Tiedemann and Hermann Schweppenhäuser, vol. 2.1 (Frankfurt a.M.: Suhrkamp, 1977). As a rule, all translations are my own. Whenever possible, I have consulted the translations in Walter Benjamin, *Selected Writings*, ed. Michael W. Jennings, 4 vols. (Cambridge, MA: Harvard University Press, Belknap Press, 1996–2003). Unless otherwise noted, all italics are mine.

2. “Die Aufgabe einer Kritik der Gewalt läßt sich als die *Darstellung* ihres Verhältnisses zu Recht und Gerechtigkeit umschreiben.”

3. 1. “With regard to [law], it is clear that the most elementary relationship within any legal system is that of ends to means.”

2. “Violence can first be sought only in the realm of means, not in the realm of ends.” (179)

inseparably linked, may question and at times even belie Benjamin's explicit statements? What are the rhetorical dynamics within which "Toward a Critique of Violence" operates? What is the economy of Benjamin's performative speech act?

The relation between law and justice lies at the center of "Critique." As discussed earlier, law is the means to the end of "justice," and because of its discriminating character, it is always violent. The decisive question, then, is this: Can we think of justice only as a result of violence, or are there perhaps means different from the violent means of law, means that are "pure," and as such much more related to the idea of justice? "To decide this question [zu ihrer Entscheidung] a more exact criterion is needed, which would discriminate [Unterscheidung] within the sphere of means themselves, without regard for the ends they serve" (179). This strategic mode of discrimination (*Unterscheidung*) and decision (*Entscheidung*) seems predetermined by the method of "Critique," in German "Kritik," from the Greek κρίνειν (*krinein*), meaning "to separate, decide." Toward the end of the essay, Benjamin, in fact, speaks of his "critical, discriminating, and decisive" (*kritische, scheidende und entscheidende*) approach (202). As we shall see, there is a curious tension between Benjamin's assertion that law is violent in respect to its discriminating character, and his own rhetorical moves in "Critique"—moves of discrimination, separation, differentiation, moves to establish frontiers, divide, in short, a dynamic of exclusion and inclusion, as the ubiquitous use of the word *Ausschaltung* ("exclusion"; e.g., 180, 181, 196) suggests. An understanding of Benjamin's notoriously difficult essay requires an understanding of these rhetorical moves. Thus, in line with Benjamin's "critical" (i.e., discriminating and decisive) approach, we shall ask: What is it that shifts (*schaltet*)? What is the out-side, what the in-side, of the excluded? What is the relation between the inside and the outside? And perhaps most interestingly, *Quo iudice*? That is, who is to decide, and who is to judge?

Part One: A Dogma of Violence (within the Circle)

Antigone

The fundamental question, in Benjamin's words, is "whether violence, as a principle, could be a moral means . . . to just ends" (179). Can one call the judicial *enforcement* of human rights, for instance, moral? This is one of the most precarious issues the essay raises, for both the early twentieth century and today. It is a question to which Benjamin's answer would without a doubt be no. But are human rights not just? What is a just law? Is it an aporia? Is it what in colloquial language one would call "a myth"? "Is there anyone," Jacques Lacan asks, "who doesn't evoke *Antigone* whenever there is a question of a law that causes conflict in us even though it is acknowledged by the community to be a just law?"⁴ What can *Antigone*, in anticipation of Benjamin, tell us about the paradoxical notion of just laws?

4. Jacques Lacan, *The Ethics of Psychoanalysis*, trans. Dennis Porter (New York: Norton, 1992), 243.

Antigone defies the decree of her uncle, King Creon, by burying the corpse of her brother Polyneices.⁵

ANTIGONE: Will you take up that corpse along with me?

ISMENE: To bury him you mean, when it's forbidden?

ANTIGONE: My brother, and yours...

I never shall be found to be his traitor. (Sophocles, *Antigone* 44–46; 98–99)⁶

Antigone invokes the rights of blood lineage (*genos*) and, citing the gods of Hades, acts in allegiance to her brother Polyneices by enacting his burial rites. This insistence on family kinship stands in contrast to Creon's laws (*nomoi*), which, on the one hand, guarantee the city's greatness, yet, on the other, require civic obedience and alliance. Creon (who by name is a "ruler") presents his edict as essential to the manifestation of security in the state. In his view Polyneices is a traitor who attacked the city of Thebes and thus forfeited the honors of a ceremonial burial.

Remember this:

Our country is our safety.

Only while she voyages true on course

Can we establish friendships, truer than blood itself. Such are my laws [*nomoi*].

They make our city great. (184–91)

Creon and Antigone follow antagonistic notions of law, an antagonism that initially seems to present a conflict between natural and positive law.⁷ The natural law Antigone cites with reference to the nether gods is frequently associated with justice (*dikē*) and stated in contradistinction to the positive law of the state (*nomos*) enforced by Creon. As we will see, the paradox of just laws is one ultimately rooted in

5. Antigone's name etymologically denotes the offspring who opposes her ancestors. Judith Butler points out a certain ambiguity in the etymology of Antigone's name, which is "construed as 'anti-generation' (*gonē* [generation])." Butler herself refers to Stathis Gourgouris's perceptive comments on "the rich polyvalence of Antigone's name. . . . The preposition *anti* means both 'in opposition to' and 'in compensation of'; *gonē* belongs in a line of derivatives of *genos* (kin, lineage, descent) and means simultaneously offspring, generation, womb, seed, birth. On the basis of this etymological polyphony (the battle for meaning at the nucleus of the name itself), we can argue that Antigone embodies both an opposition to kinship to the polis (in compensation for its defeat by the *demos* reforms), as well as an opposition to kinship, expressed by her attachment to a sibling by means of a disruptive desire, *philia* beyond kinship" (Butler, *Antigone's Claim: Kinship between Life and Death* [New York: Columbia University Press, 2000], 22 n. 24).

6. Passages of *Antigone* in the text are from Elizabeth Wyckoff's translation in *Sophocles I: Oedipus the King, Oedipus at Colonus, Antigone*, in *The Complete Greek Tragedies*, ed. David Grene and Richmond Lattimore, vol. 3 (New York: Modern Library, 1960). The line numbers in the text refer to the edition by R. C. Jebb (Cambridge: Cambridge University Press, 1966).

7. *Natural law*, the *OED* reads, encompasses "the principles of morality, held to be discernible by reason as belonging to human nature or implicit in the nature of rational thought and action; such principles are the basis for man-made laws." *Positive law*, by contrast, connotes "a body of laws artificially instituted or imposed by an authority, often as contrasted with natural law rooted in the requirements of justice."

the *irreconcilability* of law (*nomos*) and justice (*dikē*), rather than in the conflict between natural law and positive law on which the paradox is only inflicted. We shall return to the relation between law and justice and, for the sake of cross-elucidation, occasionally probe into the correspondences between Benjamin's and Sophocles' texts. What will emerge in both texts, beyond the juridical antithesis of natural laws and positive laws, is a subterranean discourse revolving around the *epistemic* status of justice.

The Dogma: Violence as a Means to "Just Ends"

The diametrical relationship between positive law and natural law plays a crucial role in Benjamin's critique: "If natural law can judge all existing law only in criticizing its ends, so positive law can judge all evolving law only in criticizing its means. If justice is the criterion of ends, legality is that of means" ("Critique," 180). This antithetical relation notwithstanding, both natural and positive law meet in what Benjamin calls their common "basic dogma":

Just ends can be attained by justified means, justified means used for just ends. Natural law attempts, by the justness of the ends, to "justify" the means, positive law to "guarantee" the justness of the ends through the justification of the means. (180)

If we were to translate this dogma into a language of temporality, one could perhaps say, with justice as the common point of reference, that natural law operates *retrospectively* ("justify") and positive law *anticipatorily* ("guarantee"). Benjamin considers this antinomy

insoluble if the common dogmatic assumption were false, if justified means on the one hand and just ends on the other were in irreconcilable conflict. No insight into this problem [and it is the pursuit of such insight, after all, that motivates "Toward a Critique of Violence"] could be gained, however, *until the circular argument had been broken* [*bevor der Zirkel verlassen*], and mutually independent criteria both of just ends and of justified means were established. (181)

This circle of the two juridical-philosophical schools (as we shall become aware of with an increasing sense of urgency) is the circle from within which Benjamin operates and shifts (*schaltet*): "The realm of ends, and therefore also the question of a criterion of justness, are *excluded* [*schaltet...aus*] for the time being from this study" (181). What is the efficacy of this and the many subsequent instances of "exclusion"? If we consider only for a moment the larger topography of Benjamin's essay, the numerous exclusions in his narrative suggest themselves as the very incidences of law-positing violence (*setzende Gewalt*) he talks *about*

critically. Benjamin's critique of violence, as in a double movement, tells the story of his own speech act: it is not only a critical account *about* violence, but also a tale about itself—a tale *of* narrative violence indeed.

The "Hypothetical Basis"

Benjamin institutes a series of preliminary strategic distinctions. First, the realm of ends is excluded from the study in favor of the realm of means that constitute violence. Next, principles of natural law are excluded, for natural law is blind to the contingency of means and would lead to "bottomless casuistry" (181). As a result of these two distinctions, a first cornerstone is set (*gesetzt*): the positive theory of law is considered acceptable as a "hypothetical basis" at the outset of the study, since it fundamentally distinguishes between kinds of violence "independently of cases of their application" (181). This discriminating rhetorical dynamic continues when Benjamin distinguishes such "kinds of violence," namely sanctioned and unsanctioned violence. "Although the following considerations proceed from this distinction [between sanctioned and unsanctioned violence]," Benjamin writes:

It cannot, of course, mean that given forms of violence are classified in terms of whether they are sanctioned or not. For in a critique of violence, a criterion for [violence] in positive law can concern not its *uses* [*Anwendung*] but only its *evaluation* [*Beurteilung*]. The question that concerns us is, What light is thrown on the nature of violence by the fact that such a criterion or distinction can be applied to it at all? In other words, what is the meaning of this distinction? (181)

While the explicitly raised "question that concerns us" (as readers of Benjamin's statements) may appear rather straightforward, the question that concerns us (as readers of Benjamin's speech act) is, I suggest, much more tenuous, for how could Benjamin himself render a critical judgment (*Beurteilung*) without wielding narrative power—that is, without using (*Anwendung*) narrative violence? If, as Benjamin goes on, a standpoint *outside* positive legal philosophy and *outside* natural law must be found (since only from this external standpoint will light be shed on this sphere in which distinctions can be made; see 181f.), then this may well be read as an imperative for his own speech act—the imperative, namely, to find a narrative standpoint *outside* all narrative positings and *outside* all narrative violence. "For this critique," Benjamin writes, "a standpoint outside [den Standpunkt außerhalb] positive legal philosophy but also outside natural law must be found. The extent to which it can be furnished only by a philosophico-historical view of law will emerge [wird sich herausstellen]" (181f.). What will emerge (*sich herausstellen*) is a sphere of pure means, an inaugurated "beyond"—beyond sanctioned and unsanctioned, legitimate and illegitimate, legal and illegal means.

“The Only Secure Foundation”: Law-Positing Violence

Benjamin calls “the only secure foundation” of his critique the dynamic of “law-positing violence” (*rechtsetzende Gewalt*), which can found and modify legal conditions (185). He names martial law as an example for this law-positing violence and points out the contradiction according to which “legal subjects sanction violence whose ends remain for the sanctioners natural ends” (185). This contradiction, double standard, or hypocrisy legally sanctioning one’s predatory violence, one’s taking possession of another person’s goods, property, or life, makes a peace ceremony absolutely necessary. According to Benjamin, the word “‘peace,’ in the sense in which it is the correlative to the word ‘war,’” denotes an a priori, necessary sanctioning; “this sanction consists precisely in recognizing the new conditions as the new ‘law,’ quite regardless of whether they need de facto any guarantee of their continuation” (186). Benjamin’s terminological characterization of the word “peace” here as “correlative to the word ‘war’” is particularly interesting, for, as he notes only parenthetically, “there is also an entirely different [ganz andere] meaning . . . , the one used by Kant in talking of ‘Eternal Peace’” (185). Benjamin characterizes this different meaning of peace as “unmetaphorical,” as it is not signifier in a chain of “peace” and “war,” and thus not part of a series of substitutions of one political order by another. Kant’s “Eternal Peace,” as Benjamin interprets it, *stands outside the circle of all positing violence*—an “entirely different” sphere still to be explored.

The Police, or a Ghost in the “Critique of Violence”

In addition to this first dynamic of law-positing violence, Benjamin observes a second dynamic—the more “conservative” “law-preserving violence” (*erhaltende Gewalt*)⁸—thereby instituting a duality whose parts will prove indistinguishable.⁹ The indistinguishability of law-positing and law-preserving violence is embodied

8. Jacques Derrida, “Force of Law: ‘The Mystical Foundation of Authority,’” *Cardozo Law Review* 11 (1990): 919–1045, here 1001. Derrida delivered his reading of Benjamin’s “Toward a Critique of Violence” as a keynote address at “Deconstruction and the Possibility of Justice,” a symposium held at the Benjamin N. Cardozo School of Law in October 1989. The proceedings of that conference were published in volume 11 of the *Cardozo Law Review*. Benjamin’s “Critique” was the subject of a subsequent symposium in October 1990; the proceedings of that second conference were published in volume 13 of the *Cardozo Law Review*. Two anthologies (and a number of challenging analyses of Benjamin’s “Critique”) grew out of these conferences: Drucilla Cornell et al., eds., *Deconstruction and the Possibility of Justice* (New York: Routledge, 1992); Anselm Haverkamp, ed., *Gewalt und Gerechtigkeit: Derrida–Benjamin* (Frankfurt a.M.: Suhrkamp, 1994). For a careful critique of Derrida’s “Force of Law: ‘The Mystical Foundation of Authority,’” cf. Burkhardt Lindner, “Derrida, Benjamin, Holocaust: Zur politischen Problematik der ‘Kritik der Gewalt,’” *Zeitschrift für kritische Theorie* 5 (1997): 65–100.

9. Benjamin refers to a certain auto-destructive nature of the law toward the end of his essay when he says that “all law-preserving violence, in its duration, indirectly weakens the law-positing violence it represents, by suppressing hostile counterviolence” (202).

most idiosyncratically by the police. And as we shall see, the specificity of the police as a threshold phenomenon is not only asserted, but also rhetorically enacted.

According to Benjamin, the police's "right of disposition" (*Verfügungsrecht*) and "right of decree" (*Verordnungsrecht*) allude to a mixture of legislative and executive power, which he describes as a blurring of law-positing and law-preserving violence:

If [law-positing violence] is required to prove its worth in victory, [law-preserving violence] is subject to the restriction that it may not set itself new ends. Police violence is *emancipated* from both conditions. It is law-positing, because its characteristic function is not the promulgation of laws but the assertion of legal claims for any decree, and law-preserving, because it is at the disposal of these ends. (189)

The police both assert decrees and promulgate the law, being liberated from the confines of both law-positing and law-preserving violence. The police are neither one nor the other, but they are both singularly in a movement of passing, and are, as such, the epitome of an emancipatory momentum Benjamin also calls "ignominious" (189).¹⁰ While the law is put in place a priori by lawmakers as a "metaphysical category" (189), which then, however, is determined by temporal and spatial moments in which a subject either complies with the law or transgresses the law, the police are "in no way essential" (*nichts Wesenhaftes*). The police present themselves without any specifiable juridical existence; their juridical presence is that of an absence, their body is a no-body.¹¹

Benjamin's emphatic discussion of the police, in turn, is remarkable itself in that the police's hybrid nature is reenacted within his narrative. A discourse of ghosts and specters pervades the essay: Benjamin characterizes the police as "spectral mixture," speaks of their "formless" (*gestaltlos*) and "emancipated" power, their "nowhere-tangible, all-pervasive, ghostly presence," their *Geist* ("spirit"/"ghost"), and so forth (189f.). He, in short, mobilizes a linguistic arsenal of ominous attributes contaminating the juridicality that characterizes "Critique" at the outset. The conflation of law-positing and law-preserving violence characterizing the police

10. Contrary to common intuition, Benjamin suggests, it is not the case that the ends of police violence are related to those of general law, a law decided on by representatives of the people, in which case the police would act as an executive power on behalf of the people's political consensus. Rather, the law is enforced by the police at the point at which the state "can no longer guarantee through the legal system the empirical ends that it desires at any price to attain" (189). The police really mark the point of a gray zone, within which they enjoy full discretion, protected by the state, even when their actions go beyond or against the interests of the citizenry.

11. And "it cannot finally be denied," Benjamin writes, "that in absolute monarchy, where they represent the power of a ruler in which legislative and executive supremacy are united, their spirit is less devastating than in democracies" (189f.). The "spirit"/"ghost" (*Geist*) of the police is uncanny in democratic systems where a separation of powers provides precisely the anonymous space in which the police cannot be held responsible either as an executive or a legislative power, a situation that induces "the greatest conceivable degeneration of violence" (190).

finds, in the context of Benjamin's description, a ghostly mirror-image in the incessant intersection of two registers: namely that of mere analytical description and that of ambiguously charged (dis)qualifications.¹² Benjamin emancipates the treatise from the constraints of propositional language; he elides systematic conceptualizations, thus depriving his narrative of accountability. We will see how a rhetoric of Jewish versus Greek, divine versus mythic, pure versus impure violence, just life versus mere life, and so on initially appears to structure but eventually haunts Benjamin's text in a way that one may find rather disturbing. This is so particularly if one thinks of his later admiration for Carl Schmitt (which I cannot pursue in detail here),¹³ that famous jurist who soon would enjoy a reputation as the "crown jurist" of the Third Reich. At the same time though, the charged language in the essay, as troubling as it may appear, can (as I hope to show) be evaluated solely with regard to the specific economy of Benjamin's text. And as such it appears entirely incommensurable with the decisionism of a Carl Schmitt.¹⁴ While Schmitt's systematic politics, including those of the state of exception (*Ausnahmezustand*),¹⁵ remain within the circle of traditional violence, Benjamin seeks to transgress this sphere, including its oppositional extremes.

12. Correspondingly, Benjamin characterizes the legal order (*Recht*) as "ambiguous" (*zwei-deutig*) (190) and "demonically-ambiguous" (198). On Benjamin's concept of the demonic, cf. Giorgio Agamben's essay "Walter Benjamin and the Demonic: Happiness and Historical Redemption," in Giorgio Agamben, *Potentialities: Collected Essays in Philosophy*, trans. Daniel Heller-Roazen (Stanford, CA: Stanford University Press, 1999), 138–59. For a discussion of Benjamin's conception of *Recht* (legal order), see Axel Honneth, "Zur Kritik der Gewalt," in *Benjamin-Handbuch: Leben-Werk-Wirkung*, ed. Burkhardt Lindner (Stuttgart: Metzler, 2006), 193–210, here 197–99.

13. See Benjamin's letter to Carl Schmitt from December 1930 (Benjamin, *Gesammelte Schriften*, 1.3:887).

14. On the relation between Benjamin's and Schmitt's thinking, cf. also Giorgio Agamben, *State of Exception*, trans. Kevin Attell (Chicago: University of Chicago Press, 2005), 52–59; Christian J. Emden, *Walter Benjamins Archäologie der Moderne: Kulturwissenschaft um 1930* (Munich: Fink, 2006), 35f.; Horst Bredekamp, "From Walter Benjamin to Carl Schmitt via Thomas Hobbes," *Critical Inquiry* 25 (Winter 1999): 247–66; Jan-Werner Müller, "Myth, Law, and Order: Schmitt and Benjamin Read *Reflections on Violence*," *History of European Ideas* 29 (2003): 459–73; Samuel Weber, "Taking Exception to Decision: Walter Benjamin and Carl Schmitt," *Diacritics* 22.3 (1992): 5–18; Susanne Heil, *Gefährliche Beziehungen: Walter Benjamin und Carl Schmitt* (Stuttgart: Metzler, 1996); Günter Figal, "Vom Sinn der Geschichte: Zur Erörterung der politischen Theologie bei Carl Schmitt und Walter Benjamin," in *Dialektischer Negativismus*, ed. Emil Angehrn et al. (Frankfurt a.M.: Suhrkamp, 1992), 252–69; Robert Sinnerbrink, "Violence, Deconstruction, and Sovereignty: Derrida and Agamben on Benjamin's 'Critique of Violence,'" in *Walter Benjamin and the Architecture of Modernity*, ed. Andrew Benjamin and Charles Rice (Melbourne: re.press, 2009), 77–92.

15. See Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Chicago: University of Chicago Press, 2006), esp. chap. 1. For a discussion on the often-unrecognized discrepancy between Schmitt's notion of the "state of exception" (*Ausnahmezustand*) and Benjamin's distinctly altered implementation of the same term in the 1928 *Trauerspielbuch* and the 1940 "Theses on the Philosophy of History," see Sigrid Weigel, *Walter Benjamin: Die Kreatur, die Heilige, die Bilder* (Frankfurt a.M.: S. Fischer, 2008), esp. 89–92 and 108f.; Herbert Marcuse, afterword to *Zur Kritik der Gewalt und andere Aufsätze*, by Walter Benjamin (Frankfurt a.M.: Suhrkamp, 1965), here 99–101; Werner Hamacher, "Afformative, Strike," trans. Dana Hollander, *Cardozo Law Review* 13.4 (1991): 1149f. n. 34.

Part Two: A Politics of Pure Means (beyond the Circle)

Mise-en-Scène

In a famous letter to Benjamin dated September 20, 1934, Gershom Scholem describes the role of the Scripture (the Law in Kafka) as a severed correlation of “being in force” without “significance” (*Geltung ohne Bedeutung*).¹⁶ But what if what Scholem calls “the Scripture” has lost not only its signification but also its validity? “All violence as a means is either law-positing or law-preserving. If it lays claim to neither of these predicates, *it forfeits all validity [so verzichtet sie damit selbst auf jede Geltung]*,” Benjamin writes in “Toward a Critique of Violence” (190). In his letter to Benjamin, Scholem describes the “stage in which revelation does not signify [bedeutet], yet still affirms itself by the fact that it is in force [Geltung],” as a “zero point”; after the emptying out of all significance, the Law is still in force, for “there the Nothing appears.”¹⁷ But what is beyond the zero point, beyond the potentiality for a re-signification? What is the beyond-the-Nothing? Beyond the Nothing is the Other. For Benjamin the Other is synonymous with *purity*, and it is here that the abyss of Benjamin’s politics of “pure means” opens up in its entirety.

If violence does function as a *means*, if it does function as a *means* of enforcement, it is implicated in what Benjamin considers the “problematic nature of law itself” (190). “And if the importance of these problems cannot be assessed with certainty at this stage of the investigation [Wenn auch deren (der Problematik des Rechts) Bedeutung an dieser Stelle der Untersuchung noch nicht mit Gewißheit *abzusehen* ist],” Benjamin notes in a not-so-conspicuous gesture of ambiguity,

the legal order [das Recht] nevertheless *appears*, from what has been said, in so ambiguous a moral *light* that the question *posits itself* whether there are no other than violent means for regulating conflicting human interests. (190)

so *erscheint* doch nach dem *Ausgeführten* das Recht in so zweideutiger sittlicher *Beleuchtung*, daß die Frage *sich von selbst aufdrängt*, ob es zur Regelung widerstreitender menschlicher Interessen keine anderen Mittel als gewaltsame gebe.

What appears morally ambiguous is not only the tradition of positive law, but also a certain duplicity on Benjamin’s part as a writer. For what the reader/spectator of his performance is about to see (*abzusehen*) appears (*erscheint*) from what has been said (*dem Ausgeführten*) and also staged (*dem Aufgeführten*) in not merely an “ambiguous,”¹⁸ but specifically a *zwei-deutig*,¹⁹ moral light (*Beleuchtung*). If the

16. Hermann Schweppenhäuser, ed., *Benjamin über Kafka: Texte, Briefzeugnisse, Aufzeichnungen* (Frankfurt a.M.: Suhrkamp, 1981), 82, my translation.

17. Ibid.

18. From Latin *ambiguus*, meaning “shifting, changeable, doubtful.”

19. Literally, “of dual interpretability.”

question “whether there are no other than violent means” for regulating conflicting human interests “posits itself” (*sich von selbst aufdrängt*) rather unpretentiously at this point, it soon will undergo a metamorphosis and arise as a ubiquitous *Aufgabe* (task, surrender, etc.) regarding “the question of a pure immediate violence,” a non-violent violence (199). At the same time, the question of the violent or nonviolent nature of Benjamin’s performance will become increasingly urgent and ultimately suggest itself as a criterion on which the credibility of Benjamin’s critique of violence hinges.

Contamination

Pursuing the question, then, “whether there are no other than violent means for regulating conflicting human interests” (190), Benjamin first juxtaposes the violent “compromise” between contractual partners with the pure, nonviolent “agreement” as found in the “relationships among private persons” (191). While relations between contractual partners are peacefully intended, but, because of their legal nature, inherently violent, “relationships among private persons” are considered nonviolent: “Nonviolent agreement is possible wherever the culture of the heart allows the use of pure means of agreement [den Menschen reine Mittel der Übereinkunft an die Hand gegeben hat]” (191). Agreement (*Übereinkunft*, *Einigung*) relies on “courtesy, sympathy, peaceableness, [and] trust” as its subjective preconditions. While compromise “is motivated not internally but from outside, by the opposing effort,” and while it is always imbued with a “compulsive character” (191), agreement, in contrast, consists solely of itself.²⁰

20. Benjamin’s discussion of nonviolent means is in miniature already foreshadowed by his word choice of nonviolent “agreement” (*Übereinkunft*) as opposed to violent “compromise” (*Kompromiss*). *Grimms Deutsches Wörterbuch* traces *Übereinkunft* to the Middle High German word *kunft* as the general noun for *komen* (to come): “Künftig ist, dessen kunft man weisz, was oder wer kommt.” (About to come is the one of whose coming one knows.) *Über-ein-kunft* is thus the coming (*komen*) of two persons toward each other to the degree of *Einigkeit* (agreement), *Einheit* (unity), total fusion—and as such evocative of what Benjamin has in mind when speaking of “pure means” or “immediacy” (*Unmittelbarkeit*). Benjamin’s semantic coding comes full circle in *Einigung* (agreement), a word he transposes from its conventional juridical context into a sphere of pure mediacy.

Über-ein-kunft and *Einigung* stand in contrast to the violent *Kompromiss*, which derives from the Latin *compromittere*, roughly translatable as “to make a mutual promise” or “to abide by an arbiter’s decision,” in which case the arbiter is a judging authority exterior to the contractual partnership. The word *promittere* means “to send (something) forth” or to “fore-tell.” The compromise is a representational agreement, an agreement regarding future times. It can be understood only in regard to what it stands for; it not merely *is*, does not just stand for *itself*, but it stands for something *beyond itself*; its identity is split; it connotes precisely not unity, as does *Über-ein-kunft*. There is a fissure between the *pro*- and the *mittere*, and it is in this fissure that violence originates. The ground sense of *promittere* is that of a declaration made about some future condition or event, some act to be done or not done (see the *Oxford Latin Dictionary*). And it, of course, is the *not*, the danger of the other *not* complying with the contractual agreement, the potential danger of a new law-positing violence, seething under the surface of every compromise. It is also in this context that Benjamin writes about compromise: “It confers on each party the right to resort to violence in some form against the other, should he break the agreement” (190).

The project of investigating pure means is fraught with difficulty due to their insusceptibility to conceptualization. Their “objective appearance” is in fact “determined by the law,” according to which

pure means are never those of immediate [unmittelbarer] solutions but always those of indirect [mittelbarer] solutions. They therefore never apply immediately to the resolution of conflict between human being and human being, but apply only to matters concerning objects. The sphere of pure means opens up in the realm of human conflicts relating to goods. For this reason, technique [Technik] in the broadest sense of the word is their most particular area. Its profoundest example is perhaps conversation, considered as a technique of civil agreement. (191)

To say that pure means are conceivable only as indirect (*mittelbar*) solutions implies a confession on Benjamin’s part that his critique of violence will never allow us to apprehend these pure means head-on. The indirectness (*Mittelbarkeit*) of his communicative act is, at least in its objective appearance, characterized by an inevitable referentiality to external objects, in which the relationship between human being and human being, writer and reader, between Benjamin and us and you and me, is undermined.

And yet Benjamin tells us that conversation is the most profound domain of pure means; he wants to substantiate this claim on the basis of the historical condition that “there is no penalty for lying” (192). Historically there is no penalty for lying, because the sphere of language is “nonviolent to the extent that it is *wholly inaccessible to violence*.” But how can it be, we may ask, that “only late and in a peculiar process of decay *has it been penetrated* by legal violence in the penalty placed on fraud”? (192) If the penetration of legal violence into the domain of nonviolent language precipitated the decay of language as a pure means, how did the fissure that allowed for the distinction between violent and nonviolent, nonpure and pure, occur in the first place? Benjamin names the problem only to leave it suspended—“as cannot be shown in detail here” (see 199f.). How can pure language, something that by definition should be immune to any kind of otherness, friction, contamination, ultimately be “penetrated” by something alien? Benjamin’s 1916 essay, “On Language as Such and on the Language of Man,” presents itself as a possible avenue for exploration here. In line with the rhetoric generated in this early essay on language, we could ask, How, in a mediality of pure language, can the human word *suddenly* “communicate something (other than itself)?” It goes without saying that Benjamin’s 1916 essay provides an answer consistent with its own argumentation: “The Fall marks the birth of the *human word*, in which name no longer lives intact and which has stepped out of name-language . . . from what we may call its own immanent magic” (153, 71). The question, though, is how satisfying an answer this reference to the Fall is with regard to the political chaos of the Weimar parliaments and the rise of Nazism. How are we *politically* to understand the legal violence of

compromise, if language exists only in its very own “sphere of ‘understanding’” (*Sphäre der “Verständigung”*) and is as such “wholly inaccessible to violence”? (192).

Only late and in a peculiar process of decay has [language] been penetrated by legal violence in the penalty placed on fraud. For whereas the legal system at its origin, trusting to its victorious power, is content to defeat lawbreaking wherever it happens to appear, and deception, having itself no trace of power about it, was, on the principle *ius civile vigilantibus scriptum est*, exempt from punishment in Roman and ancient Germanic law, the law of a later period, lacking confidence in its own violence, no longer felt itself a match for that of all others.... It turns to fraud, therefore, not out of moral consideration but for fear of the violence that it might unleash in the defrauded party. Since such fear conflicts with the violent nature of law derived from its origins, such ends are inappropriate to the justified means of law. They reflect not only the decay of its own sphere but also a *diminution of pure means*. *For in prohibiting fraud, law restricts the use of wholly nonviolent means because they could produce re-active violence.* (192)

How can fraud—supposedly nonviolent in nature—unleash violence in the defrauded party, and consequently conjure up the state’s fear? If we were simply to declare this scenario inadequate (and we cannot if we grant Benjamin authority as a *political* thinker), and if we wanted to hold on to the idea of a nonviolent sphere of human agreement (and thus Benjamin’s voice regarding language as such and the language of man) as his example of pure means in the private sphere, then the pressing question would still remain: Where exactly does the threshold between pure, nonviolent language and impure, representative language lie? The urgency of the matter lies in the “*diminution of pure means*” (*Minderung der reinen Mittel*, 192), an ontological impossibility, it might seem. In prohibiting fraud, Benjamin writes, “law restricts the use [Gebrauch] of nonviolent,” pure means. If pure means can be *restricted*, and if they, astonishingly, can be *used*, how then is pure language different from instrumental language, and how are nonviolent means different from violent means? With regard to this collapse of distinctions that so far have rendered Benjamin’s critique of violence viable, how (if at all) are we still to think of a sphere outside-the-law and beyond violence, that is to say, of justice?

The Politics of Pure Means, or a Strike of Rhetoric

Benjamin’s discussion of pure means as the medium of peaceful relations between private persons is complemented by a discussion of pure means in the political sphere. With Georges Sorel, Benjamin distinguishes two essentially different kinds of strikes: the political general strike and the proletarian general strike. The contrast, of course, concerns their antithetical relation to violence. Of the partisans of the political general strike, Benjamin, in the words of Sorel, says:

"The strengthening of state power is the basis of their conceptions; in their present organizations the politicians (namely, the moderate socialists) are already preparing the ground for a strong centralized and disciplined power that will be impervious to criticism from the opposition, and capable of imposing silence and issuing its mendacious decrees." "The political general strike demonstrates how the state will lose none of its strength, how power is transferred from the privileged to the privileged, how the mass of producers will change their masters." (193)

In contrast to the political general strike,

the proletarian general strike sets itself the sole task of destroying state power. . . . "This general strike clearly announces its indifference toward material gain through conquest by declaring its intention to abolish the state." (194)

The perplexing conclusion that Benjamin draws from his comparison is presented in a curiously simple formula: "Whereas the first form of interruption of work is violent, since it causes only an external modification of labor conditions, the second, as a pure means, is nonviolent" (194). If one refuses to simply buy into Benjamin's rhetoric of persuasion, his proposition can only strike one as counterintuitive: a strike that seeks "external modification" is "violent"; a strike, however, that "sets itself the sole task of destruction" (*die eine einzige Aufgabe der Vernichtung*) is considered "nonviolent" (194). An understanding of the paradox of nonviolent destruction requires us to delve into the series of dichotomies Benjamin delineates, beginning with the one of the political general strike versus the proletarian general strike:

Whereas the [political general strike] is violent, since it causes only an external modification of labour conditions, the second, as a pure means, is nonviolent. For it takes place not in readiness to resume working conditions, but in the determination to resume only a wholly transformed work, no longer enforced by the state, an overthrow that this kind of strike not so much occasions as carries out [vollzieht]. (194)

The proletarian general strike *carries out* an overthrow; its signification does not lie beyond this carrying out. It serves *no-thing* other than itself. There are no means serving ends; there are, conventionally speaking, no means at all, only pure means, which, as we shall see, according to Benjamin, do not serve but rather allow for the coming into being of justice.

A remark, seemingly intended to facilitate things, soon proves intricate because of an entirely new set of ramifications: "The [political general strike] is law-positing but the [proletarian general strike] *anarchistic*" (194). It would not get us very far to explain Benjamin's idiosyncratic notion of "pure means," deliberately veiled in ambiguity, with the word "anarchistic." We may well ask, however, why Benjamin chooses the word "anarchistic" (cf. also "childish anarchism," 187), a concept that

connotes a teaching, a school, a normative, perhaps ethical, framework, instead of the more commonly used “anarchic” or “anarchy” (194).²¹ “Anarchism” is not synonymous with “anarchy”—anarchism is the dogma of anarchy.

I would suggest that the very tension between “anarchism” and “anarchy” is highly pertinent for Benjamin’s own presentation (*Darstellung*) of the politics of pure means.²² On the surface, to be sure, Benjamin’s interest in the semantics of “anarchism” is less one of opposition or rebellion (that is, a directed movement, an antimovement) than it is one of dis-order or law-lessness (dis-organization, that is, a deferral of systemization). Correspondingly, the proletarian general strike is not directed against *the* law or against *the* order; it is also not against *any* order or *any* law. Rather it is precisely against the “against.” That is to say, it is not directed at all, but it is *Vollzug* (carrying-out/execution).

The proletarian general strike’s *Vollzug*, however—and this is where the de-liberateness of Benjamin’s rhetorical staging comes to the fore—is aligned with a rhetoric that (purportedly elucidating the notion of pure means) unremittingly unsettles the semantics of his textual edifice. On the one hand, Benjamin degrades the political strike because it means “to *resume* [aufzunehmen] work after a *modification* to working conditions,” yet, on the other hand, the workers of the proletarian general strike are also ready “to resume a . . . transformed work [eine . . . veränderte Arbeit . . . wieder aufnehmen]” (194). Both strikes rely on some kind of modification or transformation of working conditions. In both strikes, the workers “*resume*” a transformed or modified work, and the antipodes that seemed to motivate Benjamin’s narrative begin to falter. On the one hand, Benjamin speaks of the law-positing impetus that pervades every political general strike. At the same time, the *Vollzug* of the proletarian general strike—allegedly beyond the dialectics of law-positing and law-preserving violence—itself relies on a “*determination*”

21. *Anarchie* is the *absence* of any form of political authority. The word was borrowed in the sixteenth century from the Greek *an-archia*, from *an-archos*, “without a ruler.” In contrast, the German *Anarchismus* gained political currency in the late eighteenth and early nineteenth centuries and signifies an active resistance against all forms of coercive control and authority. While *Anarchie* connotes an *absence*, *Anarchismus* implies a *directed* movement (Duden’s *Herkunftswörterbuch* [Mannheim: Dudenverlag, 2001], 34).

Benjamin’s choice of “anarchistic” in contrast to “anarchic” is particularly striking in light of its deviation from Sorel. Sorel uses the word *anarchique*, which translates to the German *anarchisch* (or the English *anarchic* or *anarchical*). Sorel does not speak of *anarchiste*, the adjective corresponding to the German *anarchistisch* (or the English *anarchistic*) (Georges Sorel, *Réflexions sur la violence* [Paris: Librairie Marcel Rivière, 1946], 238, 253, etc.). For a nuanced contextualization of Benjamin’s essay, see Uwe Steiner, “The True Politician: Walter Benjamin’s Concept of the Political,” *New German Critique* 83 (2001): 43–88, here esp. 69–71; and Steiner, *Walter Benjamin: An Introduction to His Work and Thought*, trans. Michael Winkler (Chicago: University of Chicago Press, 2010), esp. 75–79. Cf. also Chryssoula Kambas, “Walter Benjamin liest Georges Sorel: ‘Réflexions sur la violence,’” in *Aber ein Sturm weht vom Paradiese her: Texte zu Walter Benjamin*, ed. Michael Opitz and Erdmut Wizisla (Leipzig: Reclam, 1992), 250–69.

22. On Benjamin’s politics of pure means, cf. also Hamacher, “Affirmative, Strike,” 1133–57; Beatrice Hanssen, *Critique of Violence: Between Poststructuralism and Critical Theory* (New York: Routledge, 2000), 16–29; Peter Fenves, “‘Out of the Order of Number’: Benjamin and Irigaray toward the Politics of Pure Means,” *Diacritics* 28 (1998): 43–58; Günter Figal, “Die Ethik Walter Benjamins als Philosophie der reinen Mittel,” in *Zur Theorie der Gewalt und Gewaltlosigkeit bei Walter Benjamin* (Heidelberg: FEST, 1979), 1–24.

or “decision” (*Entschluß*) to resume work. It seems that the radicality of a pure carrying-out (*reiner Vollzug*) is undermined by this “determination” or “decision” “to resume a . . . transformed work.”²³ The idea of “pure means” is forfeited for the perspective of a future order—a future time beyond the revolutionary ones of the proletarian general strike. Indeed, whether enforced through the state or not, any “determination” or “decision” to “resume . . . work” (*Arbeit . . . wieder aufzunehmen*), even if a “wholly transformed” (*gänzlich veränderte*) work, will by definition entail a moment of positing (*Setzung*). Thus, the purportedly nonviolent proletarian general strike and the inherently violent political strike are left less distinct than they appeared at the outset.²⁴

23. This decision “to resume a . . . transformed work” in Benjamin’s characterization of the proletarian general strike closely resembles his description of the political strike, which is inherently violent precisely because “it takes place in the context of a conscious readiness to resume the suspended action” (183).

24. Benjamin asserts that no objection can stand that seeks “to brand such a [proletarian] general strike as violent” (194). No objection can stand that seeks to brand “the sole task of the destruction of state power” (*die eine einzige Aufgabe der Vernichtung der Staatsgewalt*) as violence because, Benjamin insists, “the violence of an action can be assessed . . . only from the law of its means” (195). Perhaps we can develop a better understanding of “the sole task [Aufgabe] of the destruction of state power” by turning to another “task” (*Aufgabe*), the “task of diplomats” (195). “More clearly than in recent class struggles, the means of nonviolent agreement have developed in thousands of years of the history of states. Only occasionally does the task of diplomats in their transactions consist of modifying legal systems” (195). One may find it striking that the tasks of diplomats, even if only occasionally, consist of “*modifying* legal systems,” for it was the “*modification* to working conditions” in the case of the extortionary political strike that exemplified impure, violent means.

If this wording allows for merely a proximity between the alleged antipodes of diplomats on the one side and political general strikers on the other, Benjamin’s narrative spectacle, built on a series of binary oppositions, is about to precipitate the implosion of the text. “Fundamentally [Im wesentlichen] they [the diplomats] must, entirely on the *analogy* of agreement between private persons, resolve conflicts case by case, in the name of their states, peacefully and without contracts. A delicate task that is more robustly performed by referees, but a method of solution that in principle is above that of the referee because it is *beyond all legal systems and therefore beyond violence*” (195). Benjamin reminds us that we are dealing with an *analogy* here when he discusses “pure means in politics as *analogous* to those which govern peaceful intercourse between private persons” (193). Yet this analogy immediately begins to vacillate: for if diplomats essentially seek to “resolve conflicts . . . *in the name* of their states,” this representative relationship distinguishes itself drastically from the “pure” “agreement” between private persons (191). It lies precisely at the core (*im wesentlichen*) of the “relationships among private persons” that “the culture of the heart allows the use of pure means of agreement [die Kultur des Herzens den Menschen reine Mittel der Übereinkunft an die Hand gegeben hat]”—thus in the context of Benjamin’s elaboration on language embodying an antithesis to representative, that is to say, impure, language (191).

To complicate matters, this compromised “analogy” now is extended to a chiasm that again moves on the brink of collapse, for the analogy between “the intercourse of private persons” and the “intercourse . . . of diplomats” (195) is drawn not only in regard to their common *core* (*Wesen*), but also in regard to their external *appearance* (*äußere Erscheinung*). Benjamin writes: “Accordingly, like the intercourse of private persons, that of diplomats has engendered its own forms and virtues [Formen und Tugenden], which were not always a question of appearance, even though they have become so [die, weil sie äußerlich geworden, es darum nicht immer gewesen sind]” (195). While the intercourse of diplomats has engendered its own immediate (*unmittelbare*) forms and virtues, their appearance is precisely not “*like* the intercourse of private persons,” whose “objective appearance [objektive Erscheinung] . . . is determined by the law (whose enormous scope cannot be discussed here) that says pure means are never those of direct [unmittelbarer] solutions but always those of indirect [mittelbarer] solutions” (191). In summary, the analogy between the intercourse of diplomats and private persons (that is, between “pure means in politics” and pure means of agreement “among private persons”) appears unstable; in essence,

Hannah Arendt wrote about Karl Marx that “such fundamental and flagrant contradictions . . . rarely occur in second-rate writers; in the work of the great authors, they lead into the very center of their work.”²⁵ Likewise, what presents itself as contradictory here in Benjamin’s discussion of pure means will, I suggest, lead us into the very center of his thought. From Arendt’s perspective, the contradictions she discovered in Marx actually showed not Marx’s failure to think clearly, but instead his “integrity in describing phenomena as they presented themselves in his view.” Similarly Benjamin’s description of the general strike, “this . . . genuinely revolutionary conception” (194), will testify to his integrity in describing phenomena as they present themselves in his view. That the series of contradictions that we did and are about to discover were more true to the world than any consistent system could ever have been is, as I hope to show, the very center of his performance.

Toward a Performatory Justice

If, for the moment, we strictly follow the reading instructions that “Critique” offers, the task (*Aufgabe*) of the general proletarian strike appears to be (similarly to the task [*Aufgabe*] of diplomats) “a method of solution . . . *beyond* all legal systems and therefore *beyond* violence [eine Methode der Lösung . . . jenseits aller Rechtsordnung und also Gewalt]” (195). Of course, this method (means) of a solution (ends) *beyond* all legal systems metonymizes pure means, which Benjamin paradoxically seeks to invoke from his operating position on the “inside” of the circle of all historical violence; and, of course, we have reason to assume that he will never escape this circle. But are we justified in assuming that Benjamin himself believes that he will leave the circle? Does he not quite explicitly concede that such an aspiration would actually lead too far?

To induce men to reconcile their interests peacefully without involving the legal system, there is, in the end, apart from all virtues, one effective motive that often enough puts into the most reluctant hands pure instead of violent means: it is the fear of mutual disadvantages that threaten to arise from violent confrontation, whatever the outcome might be. Such motives are clearly visible in countless cases of conflict of interests, since the *higher orders* that threaten to overwhelm equally victor and vanquished are hidden from the feelings of most, and from the intelligence of almost all. Here the seeking out of *such higher orders* and the common interests corresponding to them, which constitute the most enduring motive for a politics of pure means, *would lead too far*. (193)

diplomats and private persons, at the core (*im wesentlichen*) and in appearance (*objektive Erscheinung*), lose their rhetorical specificity and distinguishing force. Perhaps it is, quite literally, the “enormous scope” (*gewaltige Tragweite*) of the peculiar law that rules (*zum walten kommt*) here and throughout Walter Benjamin’s text. In any case, the implosion of the chiasm, an implosion not discussed but performed, seems to contribute to what one does not dare to call the “quintessence” of “Toward a Critique of Violence.”

25. Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1998), 104f.

What “would lead too far” is the possibility of a critique of violence (and thus the critique of a critique of violence); according to Benjamin, a proper critique lies out of reach. What appears uncanny about Benjamin’s critique is that he seems to know all this from the beginning. He is, after all, *on his path* “Toward a Critique of Violence,” on the threshold, perhaps, but without the slightest chance of ever arriving, for that “would lead too far.” The “where” that “Toward a Critique of Violence” aspires to lies “*beyond* all legal systems and . . . *beyond* violence.”²⁶ Benjamin is moving “toward” it, but the belief in the actualization of a critique, the belief in the success of “the seeking out of such higher orders” he appears long to have given up. In the word “Toward” (*Zur*, which is lost in the English translation) all hope of the critique lies buried. The essay’s first sentence, which testifies to the impossibility (cf. *Aufgabe*) of the critique,²⁷ seems merely to confirm what the title already implies. The initially pronounced *presentation* (*Darstellung*) of the critique of violence cannot attain the “higher order of freedom” as long as Benjamin is caught *within* the topography of all legal violence while justice is waiting in the “beyond” (187). And yet Benjamin launches a critique of violence, perhaps (and we will return to this) because he still has hope for “incomparable effects” (203).

For the time being and in accordance with the proletarian general strike, which is not “anarchic” but “*anarchistic*” because of its inherent ethics,²⁸ its “deep, moral” nature (194), I would suggest for the performative act of Benjamin’s critique of

26. The “Toward” in the title of Benjamin’s “Critique” by no means should be misunderstood as a movement directed “toward” a telos. As the “Theologico-Political Fragment,” written in the same year as “Critique,” evinces: “Only the messiah himself puts an end to history, in the sense that it frees, completely fulfills the relationship of history to the messianic. Therefore, nothing that is truly historical can want to relate by its own volition to the messianic. Therefore the kingdom of God is not the telos of the dynamics of history, it cannot be posited as its aim; seen historically it is *not its aim but its end*” (Benjamin, *Gesammelte Schriften*, 2.1:203; here translated after Paul de Man, “‘Conclusion’: Walter Benjamin’s ‘The Task of the Translator,’” in *The Resistance to Theory* [Minneapolis: University of Minnesota Press, 1986], 93). The unmaintainability of a teleological understanding of history, especially with regard to Benjamin’s discussion of the parliamentary crisis in “Critique,” is unequivocally disavowed in the “Theses on the Philosophy of History”: “Social Democratic theory, and even more its practice, have been formed by a conception of progress which . . . made dogmatic claims. The concept of the historical progress of mankind cannot be sundered from the concept of its progression through a homogeneous, empty time. A critique of the concept of such a progression must be the basis of any criticism of the concept of progress itself” (*Gesammelte Schriften*, 2.1:701; here translated after Walter Benjamin, *Illuminations*, ed. Hannah Arendt, trans. Harry Zohn [New York: Schocken Books, 1968], 260f.).

27. “*Die Aufgabe einer Kritik der Gewalt* lässt sich als die Darstellung ihres Verhältnisses zu Recht und Gerechtigkeit umschreiben” (179).

28. Cf. also Benjamin’s remarks on an “ethical anarchism” in volume 4 of *Gesammelte Schriften*: “An exposition of this standpoint is one of the tasks [Aufgaben] of my moral philosophy, and in that connection the term ‘anarchism’ may very well be used to describe a theory that denies a moral right not to force as such but to every human institution, community, or individuality that either claims a monopoly over it or in any way claims that right for itself from any point of view, even if only as a general principle, instead of respecting it in specific cases as a gift bestowed by a divine power, as *absolute power*.” “On the other hand (invalid as ‘ethical anarchism’ may be as a political program), a form of action along the lines it recommends can . . . elevate the morality of the individual or the community to the greatest heights in situations where they are suffering because God does not appear to have commanded them to offer violent resistance” (*Gesammelte Schriften*, 6:107; *Selected Writings*, 1913–1926, 1:233).

violence—an act conveying a distinct (though not definable) ethical impetus—the terminology of a *performatory* rather than merely a *performative* speech act. In a footnote from his first lecture in *How to Do Things with Words*, John Austin says that while he used the word “performatory” in previous writings, he now employs “performative,” which “is to be preferred as shorter, less ugly, more tractable, and more traditional in formation.”²⁹ Austin equates the two, and, to be sure, the *OED* also treats “performatory” and “performative” alike without making further delineations. While both “performative” and “performatory” have an adjectival surface structure (*-ive/-y*), “performatory” carries a deeper layer: the *-or* following the morpheme *performat-* denotes a nominative noun agent, an act-*or*; a speech act-*or*, whose speech act, like every human act, is inevitably inherently normative. In the case of “performative” and “performatory,” the suffixes make all the difference. It is the agential suffix that materializes the matrix of an ethical imperative; the *-or*, the action, generates a moral efficacy that lies at the center of Benjamin’s performance.³⁰ In light of the efficacy of Benjamin’s rhetoric analyzed so far, I would thus suggest a definite value of such terminological differentiation—a differentiation that will eventually undermine the feasibility of his task as a translator between, on the one hand, the sphere of violent means and, on the other hand, “just ends” (196).

“Performatory” is what a critique of violence cannot state; it is what, as a promise, can be generated only by “interests” that ultimately define a politics of pure means (193). “Performatory” is a gesture generating a potentiality (though never an actuality) of justice, an ethical imperative allowing for “moral relations” (179). “Performatory,” finally, is the imperative of a “*responsibility*” (a word Benjamin relates to *justice* in a posthumous fragment)³¹—a responsibility that insists on and, paradoxically, puts forth in spite of all tacit constraints the critique of violence.

29. John Austin, *How to Do Things with Words* (Cambridge, MA: Harvard University Press, 1962), 6 n. 3.

30. In much the same vein, though more conventional, the words “authoritative” and “authoritarian” differ due to the latter’s more coercive thrust. The agential suffix *-ar* (the vowel shifting is not relevant in this context) again denotes an act or action and thus conveys a normativity that “authoritative” lacks. Accordingly, the *OED*’s definitions of “authoritative” read: “1. Of authority, of the nature of authority, exercising or assuming power; imperative, dictatorial, commanding. 2. Possessing due or acknowledged authority; entitled to obedience or acceptance. 3. Proceeding from a competent authority.” In contrast, the more coercive “authoritarian” is defined as either “Favourable to the principle of authority as *opposed* to that of individual freedom” or “One who supports the principle of authority.”

Finally, the suggested contention according to which “performatory” carries more of a normative connotation than “performative” can be solidified by the occurrence of linguistic contaminations: in contrast to “performative,” “performatory” resonates with words such as “oratory” and especially “hortatory”—both of which carry a normative connotation into “performatory” that distinguishes it from “performative.”

31. Walter Benjamin, “Notizen zu einer Arbeit über die Kategorie der Gerechtigkeit,” *Frankfurter Adorno Blätter* 4 (1995): 41–51, here 42. For a more elaborate discussion of the question of responsibility in Benjamin’s “Critique,” see Judith Butler, “Critique, Coercion, and Sacred Life in Benjamin’s ‘Critique of Violence,’” in *Political Theologies: Public Religions in a Post-Secular World*, ed. Hent de Vries and Lawrence E. Sullivan (New York: Fordham University Press, 2006), 201–19.