Conscription and Critique

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ABSTRACT This article focuses on the discussion of general conscription in Walter Benjamin's 1921 essay "Toward the Critique of Violence." In the essay, Benjamin presents conscription or compulsory military service alongside his discussions of police violence and capital punishment, and as one manifestation of legal violence in which law-preserving and law-positing forms of violence coincide and mix. This article proposes that Benjamin's discussion of conscription should be read as a formal model for understanding how legal subjectification in the modern state works more generally, and how it circumscribes critique. This reading is offered through a series of snapshots of various veins and elements in Benjamin's essay, while also connecting this interpretation to the work of a number of contemporary scholars of colonialism, namely Talal Asad, David Scott, and Samera Esmeir, who all invoke conscription as a particularly powerful metaphor for modern law's tendency to colonize critique.

KEYWORDS critique of violence, Walter Benjamin, compulsory military service, modern law, legal subjectification

The Exhibit

Walter Benjamin's "Toward the Critique of Violence"[1] presents a rather dense compilation of curious examples that are wide in their reach and range, and move the text along at a rapid pace. After the opening paragraphs, we find ourselves skipping from punishment in education to the figure of the great criminal, to the right to strike, to military violence, to general conscription, to the death penalty, to the ghostly nature of the police, to parliamentarianism and beyond—all within the matter of a few pages. While these can be read as linking the text to socialist and anarchist debates on militarism and war, in which some of these topics appeared in various permutations in the preceding decades, Benjamin's treatment is rather unique. He presents each as if exposing a rare mineral formation to light: held at a peculiar angle, it shines briefly, revealing "something more and something different than may perhaps appear" (§1), before it is hastily put away for the sake of the next exhibit. For many who have attempted to grapple with this challenging

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and fascinating essay, these discussions have served as keys not only to its unique vocabulary but also to the distinctive movement and style of critique that it performs. The focus of this article is Benjamin's discussion of general conscription, briefly held out to us in the course of the "Critique."

Compared to the allure held by some of the other manifestations of violence that Benjamin discusses in the essay, such as the strike or the death penalty, the discussion of compulsory military service remains a relatively underexplored element of this much commented on text.[2] Scholars who have paid it attention have highlighted it as a sign of the author's preoccupation in this text with World War I in its immediate aftermath,[3] and have noted its autobiographical significance given Benjamin's own troubles with the wartime draft.[4] Benjamin is, however, rather emphatic about the significance of conscription in general, and also in particular about the task he sets himself in the essay. "A genuinely effective critique" of compulsory military service, we are told, "coincides with the critique of all legal violence—that is, with the critique of legal or executive power—and is not to be accomplished with a less ambitious program" (§9). Perhaps today the problem of conscription is deemed less urgent or significant than it was in Benjamin's time: military service is no longer compulsory in most jurisdictions, while conscientious objection is a legal right in approximately one quarter of the countries where conscription is enforced.[5] More important, contemporary forms of war and militarism have proven themselves to be no longer dependent on conscription, contrary to Benjamin's claim in the essay that militarism "could only arise through general conscription" (§9). But, as I attempt to lay out in this article, the discussion of conscription is significant and indeed still relevant in that it provides a formal model for understanding how legal subjectification in the modern state works more generally, and how it circumscribes critique. The following sections offer this reading through a series of snapshots of various veins and elements in the "Critique," while also connecting this reading to the work of a number of contemporary scholars of colonialism who invoke conscription as a particularly powerful metaphor for describing modern law's tendency to colonize critique.

Natural and Legal Ends

In the "Critique," the analysis of conscription builds on an important distinction that Benjamin makes between "natural ends" and "legal ends." Eventually, he suggests that general conscription is one way in which the state turns its natural ends into legal ends. But what does that mean exactly, and whence this distinction?

In the essay, the distinction stems from Benjamin's revision of how violence is justified in theories of natural law and positive law. In natural law theory, just ends are understood to justify the (violent) means, while in positive law theory,

just means are understood to justify the (violent) ends. Despite their seeming opposition, Benjamin points out that these two approaches converge insofar as both conceive of the question of justification of violence in terms of a means-ends relationship and proposes instead that "the circle is abandoned, and the criteria for just ends and justified means are established independently from one another" (§3). Benjamin then provisionally sides with the approach of positive law theory, which, in maintaining that means justify ends, evaluates the legality of the means independently of the ends it supposedly serves, and thereby allows for a "differentiation in the sphere of means itself, without regard for the ends they serve" (§1). Benjamin's temporary preference for positive law theory must be understood in relation to his wider project in this text, which is to provide "an outline for a politics of pure mediacy,"[6] or to attempt to conceive of justice in the sphere of human action and freedom without falling back on criteria that are driven by logics of instrumentality. Compared to natural law theory, which judges means in relation to whether they serve just ends and is therefore driven entirely by instrumentalism, positive law theory can be seen, at least provisionally, as shunning all criteria of instrumentality, as it focuses primarily on the question of whether the means themselves are justified, that is, legal. Benjamin then moves away from this provisional alliance with positive law theory by pointing out the ways in which this approach closes in on itself, "is completely grounded in itself" (§4) and is therefore merely self-referential. We may read Benjamin here as signaling positive law's failure to take account of the historicity of posited law, its inability to question how law became law in the first place, and its consequent inadequacy for a critique of the wider framework of instrumentality in which posited law serves as a means to the ends of the modern state.

The vocabulary of legal ends and natural ends that Benjamin proposes at the outset of the essay must be understood as a product of this provisional yet critical alliance. Positive law focuses on means primarily to determine whether an end is "sanctioned" (as opposed to "just" in a natural law framework) or "unsanctioned" (as opposed to "unjust"). Thus, "positive law demands from every form of violence evidence of its historical origin, which under certain conditions conserves its legality, its sanction" (§5). But in positive law, the question of historicity is bound in a self-referential framework. Benjamin's own terms, "legal ends" and "natural ends," can be understood to correspond to positive law's distinction between sanctioned and unsanctioned ends while inscribing the question of law's own historicity into that distinction. In Benjamin's account, sanctioned or "legal" ends are those that are historically recognized; unsanctioned or "natural" ends, by contrast, are those that are not historically recognized. Therefore, the question of law's own historicity, usually bracketed out of consideration in positive law theory, is brought into

play with this new vocabulary, in line with Benjamin's claim that "only a historical-philosophical reflection on law" will provide the stance from which a critique of violence may be articulated (§4).

The Prerogative

Now that we have a clearer sense of the distinction, we may better grasp the instances and effects of its obfuscation. In the passages preceding the analysis of general conscription, Benjamin proposes that modern law does not allow any agent apart from the state to pursue its natural ends legally: "It can be formulated as a universal maxim of contemporary European legislation that all natural ends of individual persons must collide with legal ends if they are pursued with a greater or lesser degree of violence" (§6). Benjamin identifies an exception to this maxim, fleetingly and in parentheses, in the right to self-defense, which allows an individual's ostensibly "natural" end of self-preservation to be inscribed in posited law. Another exception that eventually becomes quite central to the text, as well as to the critique it performs, is that of the right to strike, whereby organized labor is legally allowed to pursue its natural ends with a certain degree of violence. These two rights, the individual legal subject's right to self-defense and the right to strike granted to organized labor as a legal subject, are presented in the "Critique" as legally sanctioned exceptions to the state's monopoly over legal violence.

Importantly, we may notice that a reformulation has taken place in the course of Benjamin's discussion of these exceptions: the state's monopoly over legal violence has been recast as the *state's prerogative to render its natural ends legal*. A seemingly minor gesture that occurs between the lines, this reformulation is in fact highly significant because it deftly sidelines the traditional opposition between, to use one possible set of terms, *raison d'état* and the Rule of Law, signaling instead how *raison d'état* is always already inscribed into the Rule of Law. It may be that a similar reformulation is at work in Benjamin's proposal of the terminology of law-positing and law-preserving violence, which could be read as an attempt to supervene a more common vocabulary of "aggressive" or "offensive" versus "defensive" violence. While seemingly paralleling that duo, Benjamin's chosen vocabulary points to the ultimate instability of a strict distinction, let alone an opposition between aggressive and defensive forms of violence. It also allows him to formulate astute accounts of the ways in which violence and law are entangled in various different institutional formations.

If the state's monopoly over legal violence is its prerogative to render its natural ends legal, then conscription can be understood to offer a key paradigm for the workings of that prerogative: "For characteristic of militarism, which could only arise through general conscription, is a doubleness in the function of violence.

Militarism is the compulsion to the universal use of violence as a means to the ends of the state" (§9). In other words, militarism organizes social and political life so as to maximize the state's war-making capacity, which in turn allows the state to pursue its natural ends (or "national interests") aggressively and unrestrictedly. General conscription provides the legal infrastructure for the militaristic organization and administration of life, giving the state the legal capacity to force subjects to serve at its disposal. Hence the doubling of the function of violence in militarism, whereby natural ends are folded into legal ends through general conscription, and law-preserving violence (the legal compulsion to serve) is made to bolster law-positing violence (war).

Self-Defense

As one of the exceptions to the state's prerogative to render its natural ends legal, self-defense has an interesting trajectory in the "Critique." It merits a brief consideration here because of the resonance between "self-defense" (*Notwehr*) and "conscription" (*Wehrpflicht*—literally "defense duty"), and, indeed, the continuum in modern law between the right to preserve oneself and the duty to preserve the nation.[7] As we have seen, Benjamin cursorily presents self-defense as being "in conflict" with the general maxim that disallows the legal pursuit of natural ends to legal subjects other than the state: "The contradiction between this [the maxim] and the right to self-defense will find a clarification in the course of the following reflections" (§6). However, when Benjamin does return to the question of self-defense toward the end of the essay, he frames it in an entirely different register. Instead of fulfilling his earlier promise to clarify the contradictory inscription of self-defense into posited law, Benjamin evokes it to explain the law-dismantling (rather than law-positing or law-preserving) character of divine violence. Juxtaposing the commandment "Thou shalt not kill" with Judaism's refusal to condemn a killing done in self-defense, Benjamin suggests that rather than positing a rule or a standard of judgment, the commandment "exists as a guideline of action for the agent or community that has to confront it in solitude and, in terrible cases, take on the responsibility of disregarding it" (§18). The move is very interesting because self-defense becomes no longer strictly a "natural right" that is also condoned by posited law as a necessity and by extension a duty, but rather an ethical option, and one that need not be taken by "the agent or community" in question.[8] In other words, the question of self-defense is suddenly salvaged both from the apparatus of natural law philosophy that sees it as a natural right and from the riddle of legalized natural ends. It is instead restored to the realm of ethics, or in the language of the "Critique," to "the moral-historical sphere" (§9). This stripping of self-defense of its natural and legal trappings has a bearing on how we may understand what critique is, does, and

promises in Benjamin's text. Conversely, it sheds light on the problem of conscription and the challenge it poses to critique by foreclosing the space of ethical consideration.

The Conscript

General conscription is a way in which the state's natural ends are rendered as legal ends or inscribed into posited law, because it allows the state to legally lay claim over the lives of subjects solely for purposes of its own preservation, perpetuation, and expansion. Further, most attempts by the conscripted subject to flee the state's legalized claim of possession over oneself will be criminalized. Thus, general conscription becomes a formal opening within law, allowing the state's natural ends to install themselves in and as law. Importantly, the conscript, the subject who is compulsorily enlisted in the army, is the medium of this inscription of the state's natural ends (i.e., through being made to serve these ends) into legal ends (i.e., into posited law so that not only is the claim legalized, but also attempts to slip away from the grasp of the claim are criminalized). The conscript thus becomes the object, instrument, and agent of the state's natural ends, and this becoming object/instrument/agent takes place in and through posited law.

Although Benjamin does not explicitly tell us much more about the figure of the conscript itself, the subsequent passages of the same paragraph, which discuss the challenge that conscription poses to critique, reveal that the problem is very much a problem of the subject, with Benjamin's cursory focus on the meaning of action and freedom. I will return to these remarks in the next section; for now, consider that to be conscripted is to "be made to serve" (in the army), and that the conscript is the subject who is made to serve. The violent instrumentalization involved in conscription must be read as instantiating and modeling a more general mode of subjectification whereby subjects are made to serve as means to the ends of the state. Indeed, Benjamin's generalization of a critique of conscription into "the critique of all legal violence" indicates that the formal structure attributed to conscription is similarly generalizable as a model of all legal subjectification: it is on occasion and by virtue of mediating the state's natural ends into legal ends that the legal subject comes into being. In this sense, the legal subject is always already scripted into this mediating role, as object, instrument, and agent of the state's natural ends. We may read Benjamin's invocation of "fate" in this sense of pre-scription,[9] and note that the term makes its first appearance in the text precisely as part of the consideration of conscription and the challenge it poses to critique. This is also where Benjamin alludes to his "subsequent consideration of the sphere of fate" (§9) in reference to his later discussion of the story of Niobe, which too is most illuminatingly read as providing an account of legal subjectification.[10]

Critique

As Benjamin's discussions of conscription and the myth of Niobe suggest, the conscript, or the legal subject, hosts the coincidence of law-positing and law-preserving violence. The examples that immediately follow the discussion of conscription are those of capital punishment and the institution of the police. These are also instances in which law-positing and law-preserving violence coincide and mix, but the ways in which the mixing happens in each are quite distinct, with different implications for the question of critique, which Benjamin raises in relation to each example.

In capital punishment, as in general conscription, the state exercises power over life and death. Some readings emphasize this sovereign power, to highlight the continuity of the two manifestations of state violence. For instance, Ariela Azoulay reads both conscription and capital punishment through Giorgio Agamben's reworking of Benjamin's "mere life" (§17) into "bare life," and suggests that both manifestations of state violence demand the stripping of the subject from his or her "political life."[11] But perhaps the notion of bare life obscures more than it illuminates here: conscription should be considered much less a "stripping" than a cladding, insofar as it involves being arrayed in duty, namely, the duty of defending a political community, which is deemed an extension of an ostensibly natural right and necessity to defend oneself. In conscription, therefore, the subject is indeed clad with a "political life," which imposes particular ways of being and being in community. In contrast, capital punishment is described in the essay in terms that emphasize its quality as a singular spectacle: violence is said to "*appear on the stage* of the legal order"; and law's "origins" are said to be "*represented* as they *burst* into the status quo, *manifesting* themselves in a fearsome manner" (§9, emphasis added). The seemingly law-preserving implementation of capital punishment is in fact a reenactment and reiteration of law-positing violence. The law is renewed and reinforced through the reenactment of the violence at its origin on the body of the condemned. In one's legally imposed killing, one is no longer an agent of, but becomes merely a stage for law's violence. Therefore, while in the death penalty the state merely claims the death of the subject, in conscription it claims one's life. Apparently critique is rather straightforward in relation to capital punishment: Benjamin suggests that any criticism of the death penalty gets to the root of the problem, "the law itself in its origin" (§9), even if inadvertently.

The institution of the police, in turn, is described as effecting not so much a spectacular but rather a "spectral" mixture of the two types of legal violence. The distinction between law-positing and law-preserving violence is said to be annulled in police violence, creating a "formless" violence that is "nowhere-tangible, all-pervasive, ghostly" (§10). If capital punishment can be understood as a medium through which originary and sovereign violence manifests itself in spectacle, the "ignominy" of the institution of the police is better grasped as the spectral

medium of routine administrative violence, given Benjamin's emphasis on how the police impose on the citizen "a life regulated by ordinances" (§10). We may note with Michael Taussig the "unabashed disgust" in Benjamin's language as he ruminates on the institution of the police.[12] A key reason for his revulsion seems to be how slippery police violence proves in the face of critique: "In contrast to law, which recognizes in a 'decision' that is fixed in place and time a metaphysical category through which it raises a claim to critique, reflection on the institution of the police encounters nothing essential" (§10). What immunizes police violence from critique is its particular mixing of law-preserving and law-positing violence: it can be held to account neither as a form of law-positing violence so that it may "prove itself in victory" nor as a law-preserving violence so that it refrains from "set[ting] for itself new ends" (§10).[13]

If the death penalty proves obvious and police violence evasive for critique, the critique of conscription is said to be "far less easy than the declamations of pacifists and activists pretend" (§9). As we have seen, Benjamin adds: "Rather, such a critique coincides with the critique of all legal violence—that is, with the critique of legal or executive power—and is not to be accomplished with a less ambitious program" (§9). What follows is a list of approaches that are bound to fail or remain "inadequate" and "impotent," notably, no longer in the face of conscription specifically, but in the face of "all legal violence" into which the example of conscription swiftly dissolves. In other words, what starts out as a question of a critique of conscription turns into a key question of the essay, a critique of legal violence. What will be inadequate for such a task, we are told, are reformist agendas that focus on laws rather than "the legal order itself root and branch" (§9). Also inadequate is Kant's categorical imperative with its "minimal program."[14] More significantly for our theme, Benjamin dismisses what he calls "a childish anarchism" that refuses to acknowledge any constraints on the person and declares "what pleases is permitted." According to Benjamin, any challenge that does not take stock of the meaning of human action and of freedom, but is instead advanced "in the name of an amorphous 'freedom' without being able to designate" a "higher order of freedom" is bound to fail as a critique of legal violence. These passages can be read as pointing to the ways in which, as subjects of modern law, we are always already conscripted into legal violence, so that our notions of freedom are both enabled and circumscribed by law itself. The challenge that modern law poses to critique is in this sense bound up with the ways in which it colonizes the very conditions of critique through its processes of subjectification.

Tragedy and Terror

If I read too much into Benjamin's discussion of the challenge that conscription poses to critique, this may be because I partially read it in light of later texts that work with the notion of conscription in a more metaphorical register. Scholars of

colonialism Talal Asad, David Scott, and Samera Esmeir all draw on this notion to trace colonial processes of subjectification in relation to modern law. My juxtaposition of Benjamin's discussion of conscription with this literature might seem awkward at first because Benjamin, at the end of the opening paragraphs of his essay, clearly defines the territorial boundaries of his inquiry as those of Europe: "The diverse function of violence, depending on whether it serves natural or legal ends, can be developed with the most lucidity on the basis of some specific set of legal circumstances. For the sake of simplicity, the following discussions will refer to those of contemporary Europe" (§5). But as legal historians of colonialism teach us,[15] "the rest" is no exception: the colonies are not zones of exclusion from the universalism, ideals, and principles of modern law, but rather the very laboratories of legal-administrative techniques that come to inform legal violence in the metropoles.

Talal Asad borrows the title for his essay "Conscripts of Western Civilization" from Stanley Diamond, who wrote of conscription as a metaphor for the process by which colonial cultures erased authentic difference by enforcing the adoption of the standards of Western civilization. But in borrowing the term, Asad also shifts the focus of the analysis from Diamond's question of whether authentic difference disappears or resists to the question of how difference "increasingly responds to and is managed by, categories brought into play by modern forces."[16] A key force in what Asad calls the "imposed fate"[17] of Westernization is modern law: "The point is that, in a modern state, laws are enacted not simply to command obedience and to maintain justice, but to enable or disable its population."[18] This function of "enabling or disabling" a population is a process of subjectification: "the law becomes a means for creating conditions in which equal citizens can do certain things as 'free agents.' This change implies a deliberate transformation of subjects from one kind of person to another."[19] Asad does not explicitly think with Benjamin in this text, but we may note the resonance between the scare quotes Asad places around "free agents" and Benjamin's insistence that a critique of legal violence requires the formulation of a "higher order of freedom"—neither a notion of freedom as circumscribed by modern law, nor "an amorphous 'freedom'"—also in scare quotes—will suffice.

In *Conscripts of Modernity*, David Scott engages closely with Asad's metaphor of conscription as first and foremost a problem of critique. Offering a close reading of C. L. R. James's *Black Jacobins*, Scott considers how narrative forms inform political imaginaries by configuring the past, present, and the future in particular ways. Scott questions whether Romantic narratives of emancipation have much to offer for an effective critique in our postcolonial present and instead proposes tragedy as an appropriate and critical genre for our time. Rereading *Black Jacobins* as a "tragedy of colonial enlightenment," Scott reworks Asad's metaphor of conscription

as having everything to do with critique: "The question is not whether the colonized accommodated or resisted but how colonial power transformed the ground on which accommodation or resistance was possible in the first place, how colonial power reshaped or reorganised the conceptual and institutional conditions of possibility of social action and its understanding."[20] In Scott's account, which replaces Asad's emphasis on the coloniality of law with an emphasis on a Foucauldian understanding of "power," conscription is the name of a tragic formation that depicts how modern forms of power shape the "cognitive-political terrain"[21] of critique.

Conscription names the terror of modern law in Samera Esmeir's book on the colonial history of the relationship between law and the human. Also borrowing the notion from Asad, Esmeir uses it in the chapter of her book *Juridical Humanity* titled "Conscripts" to describe the processes by which modern law was introduced into Egypt under British colonial rule. In part, this is a historical account of the uptake of modern law by Egyptian lawyers, jurists, and intellectuals—the "conscription" of the elite, as it were. But it is also an account of how the category of the human is gradually exhausted in its juridical definition and legal negotiations so as to erase the distinction between the natural person and the legal person. Reading her archival material through Peter Goodrich's account of legal personhood in the humanist tradition, Esmeir describes conscription in terms of "the power of the law to call a subject into being where he or she can begin to speak. . . . Legal subjects had no place outside the law and could only speak from within it. . . . But the human, too, ceased to be outside the law. This is the terror of the law."[22]

Evasion and Objection

In providing accounts of colonialism as a process of conscription into modern law, Asad, Scott, and Esmeir signal the circumscription and colonization of critique that is inherent in conscription, when the latter is read as a powerful model for legal subjectification, as implied by Benjamin in the "Critique." Then again, in returning to Benjamin's text and the literal sense of conscription, we might recover a number of openings in what otherwise imposes itself as tragedy and terror or, indeed, as a seemingly "fateful order" (§9).

One such opening is afforded by the biographical reading of Benjamin's discussion of conscription, as, for example, offered by Azoulay, who discerns in the background of the text Benjamin's own encounter with the draft during World War I. It is a curious story: apparently, Benjamin tried to enlist voluntarily at the very start of the war. He mentions this in passing in "A Berlin Chronicle" and explains that he did so not out of nationalistic zeal but only because conscription seemed inevitable, and he and his friends volunteered to enlist together so as to be dispatched to the same front.[23] He was rejected in this instance, but as the war continued and required more bodies at the front, he was drafted twice, and twice he managed to

evade conscription with the help of hypnosis, first by faking palsy and then by faking sciatica.[24] When read in this biographical light, the later reference in the "Critique" to lying and fraud as "wholly nonviolent means" (§12) takes on a different hue. While these later remarks pertain to Benjamin's discussion of the nonviolent sphere of human communication, it may not be amiss to transpose that discussion here and entertain the idea that taking recourse to the "wholly nonviolent means" of lying and fraud may indeed be a meaningful way to slip away from the grasp of conscription and its violent modes of instrumentalization.

A second opening may be afforded by reading the contemporary status of conscientious objection as a "right" retrospectively into and through Benjamin's essay. At the time the "Critique" was written, a number of states did have provisions for exemption from general conscription on the basis of religion or conscience, but this was less a recognized right than a tolerated concession.[25] Today, conscientious objection is figured as a legal right that provides exemption from general conscription in numerous jurisdictions where military service is compulsory. This is a consequence of the entrenchment of human rights in the second half of the twentieth century, which involved the positive legal inscription of protection for numerous "freedoms," including the right to freedom of thought, conscience, and religion that provides a basis for refusing to be conscripted. What are the implications of this historical turn for the "Critique," and can this new regime of rights be read through the text? On the one hand, the fact that "freedom" of conscience has to be articulated as a claim of right within a given legal framework signals precisely the circumscriptions of modern law: it leaves no outside from which to speak, as Esmeir suggests. And indeed, a growing body of literature critical of the legal-ideological apparatus of human rights teaches us the ways in which human rights have become part and parcel of the "terror" of law. Yet there may be an opening here nevertheless, especially if we attempt to read the entrenchment of human rights through the formal scheme that Benjamin offers with regard to the distinction between natural ends and legal ends.

Consider that the folding of human rights into posited law resembles the ways in which self-defense and the right to strike are found in law. As exceptions to the state's prerogative to turn its own natural ends into legal ends, these instances allow the natural ends of other legal subjects (in self-defense, the individual person; in the right to strike, organized labor) to be inscribed into posited law. Consider also that neither self-defense nor the right to strike is uncritically championed as such in the "Critique." To the contrary, there is the sense that as legalized categories they can partake in legal violence in impure ways, as Benjamin's revulsion toward the doctors' strike suggests (§13), and as the ongoing uses of legal provisions for self-defense to protect racist killings indicate. Still, these two examples in the "Critique" provide openings of a sort: as we have seen, self-defense becomes an occasion

for Benjamin to point to a moral-historical sphere beyond enforceable law, while the right to strike, when radicalized in the form of the proletarian strike, would lead to the dismantling of law itself.

What is noteworthy here is that just like self-defense and the right to strike, legal provisions that protect human rights can also be understood to fold subjects' natural ends into legal ends. Therefore, thinking within the scheme presented to us by Benjamin in the "Critique," and thinking along with him on the potentials (as well as the pitfalls) of these exceptions to the state's prerogative, we may consider whether the right to conscience can be similarly seen to provide an opening beyond enforceable law. We may, for example, consider the possibilities presented by "total objection," namely, the refusal to carry out civil service that is offered to recognized conscientious objectors as the alternative to military service. In refusing to fulfill any substitute duty, total objectors thus radicalize the opening that conscientious objection legally provides. Can total objection then be characterized as potentially articulating and accommodating a "higher order of freedom" that might be the undoing of law?

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Notes

1. Benjamin, "Toward the Critique of Violence." Hereafter referred to as "Critique" and cited parenthetically.
2. Notable exceptions in recent English-language scholarship are Azoulay in "The Loss of Critique and the Critique of Violence"; and Andrew Benjamin in *Working with Walter Benjamin*.
3. Felman, *Juridical Unconscious*, 15–18.
4. See Azoulay, "Loss of Critique and the Critique of Violence," 1021–24 for an extended discussion.
5. For a mostly up-to-date survey of the legal map of conscription across 181 jurisdictions, see War Resisters' International, "World Survey." It must be noted, however, that in many jurisdictions where there is currently no compulsory military service, conscription remains "on the books," as it were. Rather than being abolished in toto, it is merely suspended or not enforced. This indicates that the legal duty to serve in the military may be easily reactivated during an emergency or war. But the question of whether conscription is actively a law or passively a possibility is incidental. More saliently, "general conscription" must be understood

as a hallmark of the form of subjectification that the modern state enforces and depends on, insofar as the state keeps at its disposal the identities of those whom it could force into service.

6. Hamacher, "Affortative, Strike," 1133.
7. See Dorlin, *Se défendre*, for a succinct account of this continuum from Grotius onwards. Dorlin identifies the development of this continuum through two main traditions: the Anglo-Saxon tradition that understands the defense of the nation as an extension of the natural right of self-defense, and the continental and specifically French tradition that substitutes the defense of the nation for self-defense.
8. See Butler, "Walter Benjamin and the Critique of Violence," for a reading of this move in terms of the figuration of the commandment "as a kind of law that is neither binding nor enforceable by legal violence" (74) in line with a particular strand of Jewish theology.
9. Admittedly, the notion of "fate" has a specific meaning in Benjamin's oeuvre based on his interpretation of the classical Greek conception of fate. See his "Fate and Character"; and Andrew Benjamin's *Working with Walter Benjamin* for a detailed reading of the status of fate in that short text.
10. This incisive reading is offered by Judith Butler in "Walter Benjamin and the Critique of Violence." According to the myth, Niobe, a mortal, boasted of having given birth to fourteen children, and claimed that she was better than Leto, the goddess of fertility who gave birth to only two. Offended and furious, Leto sent her children, Apollo and Artemis, to punish Niobe by killing her sons and daughters. Benjamin writes, "To be sure, it could appear as though the action of Apollo and Artemis were only a punishment. But their violence establishes a law far more than it punishes the transgression of an existing one" (§15). Artemis then turned Niobe into a rock from which her tears streamed eternally. In Butler's reading, Niobe's "punishment" is not a response to the infringement of already existing law but is rather the very institution of law, a law-positing violence that transfers the burden of that violence (the killing of fourteen children) onto the subject as a petrifying guilt: "To be a subject within these terms is to take responsibility for a violence that precedes the subject and whose operation is occluded by the subject who comes to attribute the violence she suffers to her own acts" ("Walter Benjamin and the Critique of Violence," 79). Also underlined in Andrew Benjamin's reading of "Fate and Character" as a key element of Benjamin's understanding of legal subjectification, "guilt" does not come into play explicitly in Benjamin's earlier discussion of conscription in the "Critique."
11. Azoulay, "Loss of Critique and the Critique of Violence," 1023.
12. Taussig, *Walter Benjamin's Grave*, 184.
13. The distinction that Benjamin makes in these passages between ordinances and decisions has enormous significance for thinking about the relationship between administrative violence and legal violence today, albeit less in terms of an opposition between the two as Benjamin seems to suggest, but rather in terms of the slippery package in which they come, that is, ways in which the two are entangled in numerous contemporary forms of governance, especially those pertaining to imprisonment, immigration, counterterrorism, and public order.
14. See Hamacher, "Affortative, Strike," 1150–53, for an extended discussion of Benjamin's critique of the categorical imperative through the latter's insistence on "pure means." Hamacher writes that Benjamin sees the categorical imperative as demanding too little "because it continues to cling to an end beyond means, and because it does not also

demand that one *never* make use either of oneself or another as a means to an end" (1151). In a reading congruous with this interpretation, Peter Fenves in *Messianic Reduction* links the categorical imperative to Benjamin's discussion of the proletarian general strike in a marvelous move: "certain consequences can be drawn from [Benjamin's] expression of doubt about the viability of the imperative, so formulated: every conceivable form of 'employment,' including self-employment, is morally suspect" (211), and then: "By no longer allowing themselves to be employed under any condition, even one in which they would also be respected as ends-in-themselves, the strikers express a maximal version of the categorical imperative" (214).

15. See, for example, Hussain's *Jurisprudence of Emergency* and "Beyond Norm and Exception," and Esmeir's *Juridical Humanity* and "On the Coloniality of Modern Law."
16. Asad, "Conscripts of Western Civilization," 333.
17. Asad, "Conscripts of Western Civilization," 345.
18. Asad, "Conscripts of Western Civilization," 335.
19. Asad, "Conscripts of Western Civilization," 336.
20. Asad, "Conscripts of Western Civilization," 119.
21. Scott, *Conscripts of Modernity*, 129.
22. Esmeir, *Juridical Humanity*, 105–6.
23. Benjamin, "Berlin Chronicle," 607.
24. Eiland and Jennings, *Walter Benjamin*, 69–70, 91–92.
25. For example, during World War I, Britain was one of the few states that provided legal exemption from general conscription for conscientious objectors, but an objector had to first register for military service, and then seek exemption through public tribunals that were by and large unsympathetic. If an objector was granted exemption, he had to serve in a noncombatant capacity in the general mobilization—that is, in medical roles, or through labor on roads and land. Notably, Germany did not provide any legal basis for exemptions during the war and those refusing to serve were either institutionalized as insane or imprisoned for desertion.

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