

# “ . . . and will do none”

## *Gewalt* in the Measure of a Parenthesis

ANNE-LISE FRANÇOIS

**ABSTRACT** This article offers a partial commentary on the figures of parenthetical or bracketed power in paragraphs 12 and 13 of Walter Benjamin's "Toward the Critique of Violence." Performing its own bracketing of the central question of the general strike, it focuses instead on Benjamin's interest in these paragraphs in the technique of open-ended discussion on a case-by-case basis. Technique, so understood, assumes, without necessarily exercising, the power to lie and be lied to.

**KEYWORDS** discretionary powers, deception, trust, discussion, nonretention

They that have power to hurt and will do none,  
That do not do the thing they most do show,  
Who, moving others, are themselves as stone,  
Unmoved, cold, and to temptation slow,  
.....  
The summer's flower is to the summer sweet,  
Though to itself it only live and die . . .  
—from William Shakespeare, Sonnet 94

Participants in the four-day seminar “The Critique of Violence Now,” invited by Judith Butler and Petar Bojanić in Rijeka, Croatia, in June 2018, were asked to comment on Walter Benjamin's essay paragraph by paragraph. In the course of early morning swims in the Adriatic, I often had the occasion to ponder the analogy between treading water and the kind of close reading of Benjamin's text that we had been invited to perform together. Such reading shares with the intransitive cutting [*Entscheiden*] of the waters, a nondecisive, reiterative cutting, a threading or parsing not productive of final judgment. Perhaps on account of my habit of joking my way

out of difficult situations, Judith entrusted me with two paragraphs that abound in jokes for those who know how to make them. It is here (in paragraph 12) that if one follows the English mistranslation of *Unterredung*—interlocution, conversation, speaking among—one finds the rather self-serving claim for the “conference” as the profoundest example of the sphere of nonviolent means. Well, here we were at a conference: what if it were to end with all of us going home with black eyes and bloody noses?

When Benjamin answers his own question about whether a nonviolent resolution of conflict is possible, all the terms he uses for the relations between private individuals—*Herzeshöflichkeit* (courtesy), *Neigung* (sympathy but also inclination, tendency, nodding), *Vertrauen* (trust)—have a slant relation to the law and are supplementary to it. Trust, according to Annette Baier, is a willed and accepted exposure to potential harm—the granting of a power to harm that one expects—or trusts—will not be used.<sup>1</sup> *Neigung* corresponds to the bendability or pliancy of goodwill: one thinks of Barthes’s figure of *bienveillance* in his seminar on the *Neutre*; courtesy, too, like discretion, is often a matter of cutting someone some slack, leaving a margin of error, turning a blind eye to x or letting something go.<sup>2</sup> The somewhat astonishing claim that Benjamin makes in a later paragraph that justice is nongeneralizable would seem to apply more readily to these improvisational practices of discretionary enforcement, of making up the rules as one goes along, of deciding now and here but not for all time what kind of power to exercise.

“They that have power to hurt and will do none”: if we refer to Massimo Palma’s account in this issue of Benjamin’s Spinoza as one for whom power and desire are of the same measure, we can mark the contrast between this imaginary figure of a sovereign, whose right extends to all that is in his power, and these figures of partial concession and deliberate nonexercise or retreat. In Benjamin’s fleeting evocations of the figure of the lying diplomat who is also the consummate hypocrite, masking his own desires behind whatever agenda he is supposedly there to promote, we can hear echoes of Shakespeare’s Sonnet 94: “They that have power to hurt and will do none, / That do not do the thing they most do show, / Who, moving others, are themselves as stone, / Unmoved, cold, and to temptation slow.” The comparison is useful lest one be tempted to think Benjamin’s grievance with the law is with its artifice or externality, as if private persons had unmediated access to inwardly guaranteed truths.<sup>3</sup>

A related mistake would be to hear Benjamin as championing civilization as the path toward nonviolence, as one might have been tempted to do by Jephcott’s translation of the sentence “Gewaltlose Einigung findet sich überall, wo die Kultur des Herzens den Menschen reine Mittel der Übereinkunft an die Hand gegeben hat” as “Nonviolent agreement is possible wherever a civilized outlook allows the use of unalloyed means of agreement.”<sup>4</sup> Peter Fenves and Julia Ng’s new translation res-

cues Benjamin's wording; the availability of such means for coming to an agreement is the effect of a historical process, but not of civilization: "Non-violent agreement [*Einigung*] can be found wherever the culture of the heart has placed pure means of accord [*Übereinkunft*] in human hands" (§12).<sup>5</sup> By transposing Benjamin's past to the present tense, Jephcott's "allows the use of" also further obscures the historicity of this process whereby a cultivation of the heart has made available or put at hand or put at one's disposal (but for how long? — not for all time) pure means of agreement.

If such are the subjective preconditions for the availability of pure means of agreement, then

their objective appearance, however, is determined by the law (whose tremendous [*gewaltige*] scope cannot be discussed here) that pure means are never means for immediate solutions but always only for mediated ones. (§12)

ihre objektive Erscheinung aber bestimmt das Gesetz (dessen gewaltige Tragweite hier nicht zu erörtern ist), daß reine Mittel niemals solche unmittelbarer, sondern stets mittelbarer Lösungen sind. (GS 2:191)

Here we have perhaps the essay's one unambiguously affirmative use of the word *Gesetz*, and who declares this law except Benjamin's own writing?—its extent only parenthetical! Its reach lasts the ambiguously determinate time of a parenthesis in which the determination of its scope through conversation is merely postponed, as if in echo of Scholem's thought in his lecture on Jonah that "deferral contains in itself the ground of duration, the *being* of justice."<sup>6</sup> Neither Jephcott's "enormous scope" nor "l'énorme portée" of Maurice de Gandillac's French translation (O 227) allows the non-German reader to notice the trace of the essay's topic *Gewalt* in "gewaltige Tragweite"—literally "how far it carries." Tellingly, what the parenthesis defers is neither decision nor judgment per se, but detailed discussion—*erörtern*—something that can be done only together and with ample time.<sup>7</sup>

But what is the content of this law whose operative scope cannot be determined here?

Daß reine Mittel niemals solche unmittelbarer, sondern stets mittelbarer Lösungen sind. (GS 2:191)

That pure means are never means for immediate solutions but always only for mediated ones. (§12)

That says unalloyed means are never those of direct solutions but always those of indirect solutions. (SW 244)

There is something pure—if only purely tautological—in the German that is not captured in the two English translations, although Fenves and Ng’s “immediate” comes closer to retaining the irony that *unmittelbarer*—translated by Jephcott as “direct”—requires a negating prefix and so will never be as direct, as original as the *mittelbar* from which it springs: pure means are never those of unmediated solutions but only of mediate ones. As if playing on the root verb for *Lösung*, which is *lösen*—to untie—Benjamin’s sentence plunges its reader in an open-ended and ongoing immanent process of unbinding or loosening.<sup>8</sup> Considered purely, without regard to ends, a *Mittel* (a means, a *moyen*) is not an instrument to an end but simply what lies in the middle, at least according to the word’s etymology: what allows you to reach the goal is also what stands between you and it.<sup>9</sup> And the upshot of this law is another detour:

Sie beziehen sich daher niemals unmittelbar auf die Schlichtung der Konflikte zwischen Mensch und Mensch, sondern nur auf dem Wege über die Sachen. (GS 2: 191)

They therefore never apply to the resolution of conflict between man and man, but apply only to matters concerning objects. (SW 244)

They thus never relate immediately to the arbitration of conflicts between one human being and another, but, rather only by way of things. (§12)

Jephcott displaces the Hegelian dualistic confrontation of man and man by defusing and diffusing it with the vague, euphemistic, and strangely nonconcrete “matters concerning objects”—a phrase worthy of diplomatic cant or Blanchotian/Jamesian conversation. But it seems worth carrying over the travel metaphor of *Weg*, as de Gandillac does with “par la voie des choses concrètes,” and as Fenves and Ng do, again for that sense of a detour without exit into a still unfolding process.<sup>10</sup> Reprising *Sache* in *sachlichsten* as if matter (objecthood? factuality?) were not a given but something achieved only by degrees, step by step, and with technique, the sequence of gnomic claims that follows continues to enact this immanent unfolding:

In der sachlichsten Beziehung menschlicher Konflikte auf Güter eröffnet sich das Gebiet der reinen Mittel. Darum ist Technik im weitesten Sinne des Wortes deren eigenstes Bereich. Ihr tiefgreifendstes Beispiel ist vielleicht die Unterredung als eine Technik ziviler Übereinkunft betrachtet. (GS 2:192)

In the most objective [*sachlichsten*] relation of human conflicts to goods there opens up a [the] realm of pure means. For this reason, technique [*Technik*] in the broadest sense of the word is its most proper domain. Its profoundest example is perhaps discussion [*Unterredung*] as a technique of civil accord. (§12)

The language here of self-opening and self-constituting realms and domains is perhaps worth lingering over for the utopian counterimage it provides to our own overpoliced borders: the sphere of pure middles/means/in-betweens is what opens itself to give technique its due, and language is Benjamin's privileged example of such technique, considered not as the punctual one-time communication of information, but (as Butler has suggested) as belonging to the immanent sphere of ongoing coming-to-understanding.<sup>11</sup>

There is a kind of splicing or montage of different threads of thought in the next paragraph, as is evident if we jump to the end of paragraph 13, where Benjamin returns to the figure of diplomats:<sup>12</sup>

Nur gelegentlich besteht die Aufgabe der Diplomaten im gegenseitigen Verkehr in der Modifikation von Rechtstordnungen. Im wesentlichen haben sie ganz nach Analogie der Übereinkunft zwischen Privatpersonen im Namen ihrer Staaten friedlich und ohne Verträge von Fall zu Fall deren Konflikte beizulegen. (GS 2:195)

Only occasionally does the task of diplomats in their mutual interaction consist in the modification of legal orders. In essence, diplomats must, on analogy with the accord between private persons, resolve conflicts peacefully and without contracts, case by case, in the names of their states. (§13)

As Fenves has argued elsewhere, diplomats—in analogy with prophets and translators—act with a power to which they themselves can lay no proprietary claim. They cannot keep or store their *Gewalt* for later. What they achieve once they cannot count on achieving again.<sup>13</sup> In Benjamin's claim that they work without binding contracts, we see again his studied refusal of generalization, a care not to let *x* determine *y*, however closely *y* might resemble *x* as it succeeds it.

This perhaps Nietzschean refusal to be bound to one's word by contract can help make sense of the stunning claim Benjamin makes in paragraph 12 about the evidence for language's special relation to nonviolence in the fact that early states did not sanction lying:

In [der Unterredung] ist nämlich gewaltlose Einigung nicht allein möglich, sondern die prinzipielle Ausschaltung der Gewalt ist ganz ausdrücklich an einem bedeutenden Verhältnis zu belegen: an der Straflosigkeit der Lüge. Es gibt vielleicht keine Gesetzgebung auf der Erde, welche sie ursprünglich bestraft. (GS 2:192)

For, in a discussion, not only is nonviolent agreement possible, but the suspension of violence in principle can be altogether explicitly documented by something significant:

the impunity of lying. There is probably no legislation on Earth that originally punished lying. (§12)

Fenves has helpfully articulated the relation here with the right to strike. In the narrative Benjamin tells of the “fall” or decay of states, impunity for lying is withdrawn at the same time that the right to strike is granted. Losing confidence in its own power (*Gewalt*), the state rescinds the right to lie, which was never in the first place articulated as a positive right but as an immunity from its prosecution. The state rescinds this immunity not because it condemns lying on moral grounds but out of fear of the violence it might provoke in the injured party. Whatever we make of the historical validity of this narrative, at stake in this deterioration are relations of trust permissive of betrayal—relations perhaps nowhere better exemplified than in Shakespeare’s sonnets, where the young man is loved for his lying impudence, not despite it.<sup>14</sup>

As evidence of the early republics’ noninterest in punishing lying, Benjamin cites a Latin motto: “*Ius civile vigilantibus scriptum est*” *bsz. Augen für Geld.*” Where Jephcott inexplicably drops Benjamin’s supplemental German paraphrase, “eyes for money,” so that until Fenves and Ng’s translation English readers would never lay eyes on this gold, Rainer Rochlitz’s edition is more generous to its readers, supplying them the following note:

Le droit civil a été écrit pour les vigilants: que ceux qui ont des yeux surveillent leur argent. (O 228)

Civil law has been written for the vigilant: that those who have eyes look after their money.

Well, this is *Herzenshöflichkeit*, indeed! Unless it is understood as a form of trusting reliance on the citizen’s literacy and readerly intelligence—as a form of faith in his or her active participation in the interpretation of the laws he or she is to live by—it’s hard not to be jolted by the two proverbs’ overt mean-spiritedness: the fault of deception is on the deceived.

But perhaps, after all, we are not that far from the practice of reading between the lines, filling in the gaps, supplementing one’s interlocutor’s silences that I began by associating with the culture of the heart. In fact there are two antithetical lines of interpretation I’d like to pursue here. The first is more obvious, less credible, and sure to be derided as naively primitivist: vigilance is the exercise of those who wish to store power—to be spared the labor of refounding the word; the written law is for those vigilant enough not to trust their own memories.<sup>15</sup> The expression “*Augen für Geld*” resonates with Jonathan Crary’s recent summary of Hobbes’s account of

the change in the role of state power when it comes to protecting the right to sleep: where the premodern sovereign was supposed to watch over all his sleeping subjects as the shepherd watches over his sheep, the modern state protects the property by watching over their riches while they sleep, and to do so criminalizes sleeping in public spaces.<sup>16</sup> Here one could trace a straight line to Benjamin's citation of Anatole France later in the essay: "Poor and rich are equally forbidden to spend the night under the bridges" (SW 249). In the translation of the Latin proverb into the German one is legible the story of this perversion—the deployment of written contract to safeguard power that has been reified as storable value.

But the second line of interpretation would go something like this: "the civil law was/is written for the vigilant" would mean the law has not even begun to be written: it has not been written in the sense of stored or put down for all time or committed to complete explicitness—or, as Derrida might remind us, writing should never have been confused with such an illusion of storage and fixity. The only way to read the written is to attend to the blanks.

I want to close with a kind of footnote to Başak Ertür's essay in this issue. Just as colonial conscription produced the fantasy of there being no alternative to modern European law and modern European state formation, the story of the Enclosures within Europe also writes over and erases the memory of commoning practices by criminalizing what were long held, if often seasonally determined, temporally variable rights of way, rights of access, rights of usufruct, rights of pasture, piscary, turbary, or estovers (field, pond, peatbog, or wood). As scholars of the commons well know, a common is not a free space to which anyone can come and in which anything goes; commons are defined by precise rules restricting uses and limiting practices. But these rules depend for their transmission on long and continued practice; marked by a certain degree of informality, variability, and discretionary enforcement—not universally applied at all times of year—they can appear without binding authority when judged from the perspective of modern law, and indeed, have often been dismissed or ignored as such. The forty-year-long occupation of the Zone à Défendre (ZAD) near Notre Dame des Landes works as a forceful reminder that the story of Enclosures, whatever the stranglehold of neoliberal capitalism, is still ongoing and still very much open: *Fall zu Fall*.<sup>17</sup>

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## Notes

1. Baier, *Moral Prejudices*, 99.
2. Barthes, *Neutre*, 40–42.
3. At the close of her essay "Techniques of Agreement, Diplomacy, Lying," Bettine Menke links the diplomat to the comedian of baroque theater, and one could also adduce the translator of Benjamin's "Task of the Translator."
4. Benjamin, "Zur Kritik der Gewalt," in *Gesammelte Schriften*, 191; Benjamin, "Critique of Violence," in vol. 1 of *Selected Writings*, 244. Further citations of Benjamin's essay are given parenthetically in the text, with the abbreviation GS used for the German; SW for Edmund Jephcott's translation, published in Benjamin's *Selected Writings*, vol. 1; and O for Maurice de Gandillac's French translation, published in *Oeuvres*. Parenthetical citations with paragraph numbers point to Julia Ng's translation of Benjamin's essay, "Toward the Critique of Violence," forthcoming from Stanford University Press, 2021.
5. Jephcott's "civilized outlook" should be firmly rejected because of (a) the close relation between civilizations and the concentrations of power necessary for state formation, the thrust of Benjamin's argument being a critique of the state whose legal means are always violent because the law (like state power) is a matter of seizing the right to violence (for this see also Pierre de Clastres's *Society against the State* and James C. Scott's *Against the Grain*); and (b) the colonialist paradigm according to which whatever precedes civilization is a historical blank.
6. Scholem, "On Jonah," 357.
7. As a gesture that seals what it postpones and postpones what it seals, the parenthesis, "(dessen gewaltige Tragweite hier nicht zu erörtern ist)," bears a dialectical relation to the essay's famously enigmatic final sentence:

Die göttliche Gewalt, welche Insignium und Siegel, niemals Mittel heiliger Vollstreckung ist, mag die waltende heißen. (GS 2:203)

Divine violence, which is the sign and seal but never the means of sacred dispatch, may be called pending violence. (§19)

In German *die Vollstreckung* (execution, carrying out) is commonly associated with judgment and verdict: the first example given in the online *Duden* is "die Vollstreckung eines Urteils" (<https://www.duden.de/rechtschreibung/Vollstreckung>). Benjamin's last sentence can be described as registering the receipt of a written judgment that remains unexecuted because unopened. One thinks of Dickinson's "'Tis the Seal Despair — / An imperial affliction / Sent us of the Air —" (in "There's a certain Slant of light"). *Duden* meanwhile gives for *erörtern*



“ausführlich und oft ins Einzelne gehend über einen noch nicht geklärten Sachverhalt sprechen” and names “eine Frage, einen Fall” as objects of the verb ([www.duden.de/rechtschreibung/eroertern](http://www.duden.de/rechtschreibung/eroertern)). So what Benjamin defers indefinitely is the movement of a careful going back and forth, which would come to an end only serially, on a case-by-case basis.

8. For the buried pun on “unweaving” in the German *Lösung* and its cognates, a pun that makes of the work of analysis (and mourning) a Penelope-like work of disentangling attachments, one by one, see Jean Laplanche’s essay “Time and the Other,” 249–53. My reading here benefits from Judith Butler’s and Peter Fenves’s helpful commentaries from the seminar’s previous day on what Benjamin means by *reine Mittel*. Reminding us of the Kantian cast of “pure” or “rein[e],” Fenves suggested we understand it not as a quality distinguishing some means from others, but as the effect of momentarily bracketing or turning off the question of ends. Butler also emphasized the absence of finality defining technique, in particular language as technique, as an ongoing form of conflict resolution distinct in its open-endedness from the trial or legal proceeding.
9. The online *Duden* gives as the word’s *Herkunft*: “ursprünglich=das zwischen zwei Dingen Befindliche, dann mit Bezug auf das, was zwischen dem Handelnden und dem Zweck steht, zur Erreichung des Zweckes dient; mittelhochdeutsch mittel = (in der) Mitte (befindlicher Teil), Substantivierung von mittel” ([https://www.duden.de/rechtschreibung/Mittel\\_Arznei\\_Geld\\_Behelf](https://www.duden.de/rechtschreibung/Mittel_Arznei_Geld_Behelf)).
10. Astrid Deuber-Mankowsky reminds me that *Sache* goes back to the Latin *res*, with its long tradition in Latin scholasticism of signifying the “essence” of being, so perhaps there is a connection here to the living soul of man discussed in the last paragraphs of the essay.
11. For a discussion of the ways in which the German term *Technik*, but in particular Benjamin’s use of it, enfolds and collapses both technique (style, handling, method, mode) and technology in the sense of mastery of material, see the introduction to Esther Leslie’s *Walter Benjamin: Overpowering Conformism*.
12. Unfortunately, in the short space of this article I will not be able to address perhaps the most important topic in paragraph 13 — Benjamin’s comments on the general strike.
13. See Fenves’s discussion of “plenary power” as “power of attorney” in *Messianic Reduction*, 219–21. See also Benjamin’s short fragment “Einmal ist Keinmal” or “Once Is as Good as Never,” in which he identifies work with non-retention, citing Trotsky’s “Denkmal” (“monument”) to his father’s labor in the cornfields: “He writes: ‘Touched, I watch him. My father moves simply and economically. You wouldn’t think he was at work. His steps are measured; they’re practice steps, as if he were looking for a spot where he could really make a start. His sickle makes its way without any artificial show of naturalness. You might be tempted to think he was not very sure of it — yet it cuts sharply and close to the ground, and throws off to the left in regular ribbons what it has cut down.’ Here we have the work habits of the experienced man who has learned every day and with every swing of the scythe to make a fresh start. He does not pause to look at what he has achieved; indeed, what he has done seems to evaporate under his hands and to leave no trace. Only hands like those will succeed in difficult things as if they were child’s play, because they are cautious when dealing with easy ones. ‘Never profit from an acquired élan,’ says Gide” (*Selected Writings*, 2:739–40).
14. Perhaps still unsurpassed here is William Empson’s chapter on “They that have power to hurt” in *Some Versions of Pastoral*.
15. Although Benjamin speaks of civil and not international law, we might still think here of the sorry history of US treaties with American Indian tribes, their worthlessness on paper

and flagrant disregard for the validity and currency of other kinds of promises and other ways of remembering them.

16. I am paraphrasing Crary's account in 24/7, 25–27.
17. The ZAD of Notre Dame des Landes was the site of a projected airport, plans for which were definitively canceled early in 2018. In the meantime, opponents of the airport began living there, forming a number of experimental farming collectives. The topic deserves a fuller discussion than the one I can give it here, but pertinent to Benjamin's essay would be the noninterest on the part of many of the Zadistes in state recognition or legalization: while normalization might provide protection from the kind of state violence on display in April of last year when many farms were bulldozed by police, the law's inability to recognize the communal and experimental nature of these projects also constitutes a violence of its own.

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