

Law, Violence, History

A Brief Reading of the Last Paragraph of Walter Benjamin's "Toward the Critique of Violence"

PABLO OYARZÚN

ABSTRACT This article offers a reading of the concluding paragraph of Walter Benjamin's "Toward the Critique of Violence." It discusses Benjamin's assertion that only a philosophical-historical approach can provide the key to a critique of violence in light of his essay's discussion of legal violence, and in light of his discovery of radically different types of violence. Benjamin argues that the legal order remains enclosed in a cycle of law-positing and law-preserving violence. Moreover, the legal order inherits the essential trait of myth and of mythic violence: ambiguity. This article shows that guilt is the destiny of those subjected to mythic (and legal) forms of violence. The fateful cycle of legal violence can be undone only by the irruption of an absolutely heterogeneous type of violence, which Benjamin calls divine violence. Its peculiarity consists in the fact that, in deposing legal violence (and the legal order as a whole), divine violence also deposes itself as violence. Although divine violence cannot be attested to as a fact or as a force unequivocally acting in the profane—that is, the human—context, it is nevertheless immanent to the profane world. Its immanence is the immanence of the messianic.

KEYWORDS divine violence, law-positing violence, law-preserving violence, myth, legal order

Considering justifications of violence and the criteria that positive law applies to distinguish between legitimate and illegitimate forms of violence, Walter Benjamin refers elliptically to "a historical-philosophical reflection" as the "standpoint beyond the philosophy of legal positivism but also beyond natural law"¹ that will allow for the development of a critique of legal violence. If the meaning of the criterion pertaining to positive law can be discerned from within this law's realm, the value of the "sphere of application" of this criterion must be criticized from an external standpoint. But why this standpoint should be a philosophico-historical one is something that is not apparent at this point in the text. Only in the essay's last paragraph does Benjamin return to the philosophy of history—the philosophy of the history of

violence—as a key to the critique of violence. “Philosophy”—placed in quotation marks without explanation—is such a key, because it can give us an understanding of violence’s inception and denouement (*Ausgang*), allowing for a comprehensive view of what might be called “the time of violence,” and this also means the end of violence, the untimely time of the end of the violence that is referred to law and state. This is what remains hidden to any gaze that keeps in its sights “only . . . what is closest at hand,” namely the entire historical unfolding of legal violence as seen in its “temporal data” (§19).

“The critique of violence is the philosophy of its history”: the sentence that opens the essay’s last paragraph would thus summarize the epistemological plan of the essay as a whole. Benjamin’s *critique*, which from the beginning showed its Kantian filiation and therefore its transcendental approach, must deal, insofar as it addresses violence as its object, with the historical difference that determines this very “object.” This is a difference that in its turn determines what is conceived of and regularly experienced as *history*, an impersonal instance that in principle involves us all. What is conceived of is the closure of this history (of history) on itself. And this closure is cyclical. The fateful movement of myth is what dynamizes and at the same time arrests this history. What breaks this closure and its impersonality, which involves everyone, is the abrupt, immediate opening of an “epoch,” a “new historical epoch” that is the *epochē* of history as it is conceived of and experienced by “us all.” In what follows, I will offer some reflections on the meaning of this break.

The last paragraph of Benjamin’s essay concludes a long and highly complicated argument, one that begins with a (rhetorical) question posed at the end of his discussion of lawmaking and law-preserving violence. Here Benjamin restates a question that he poses at the beginning of the essay (§§2–3): a question about the compatibility of justified means and just ends, which is thus also a question about the conceptual ground of the institution of law and its fate-imposing violence. But this question entails a more decisive one: the question of whether there is another—an absolutely other—kind of violence, which would be beyond all relationships between means and ends, a violence that is beyond law and immediate (§19). The formulation of this question precedes the first inscription of the name of God in the text, accompanied by the cardinal distinction between the justification of means, which legitimates a violence crowned by fate, and the justice of ends, which is God’s exclusive province. Of course, what has been said about legal violence is essential to Benjamin’s understanding of their incompatibility, inasmuch as it introduces a dialectical tension between law-positing and law-preserving violence, which inevitably leads to the weakening and final replacement of established law by a new law, which will succumb to the same fate. In the end, this dialectical tension, which has no outcome, which is closed in on itself, is the fate of the law to the extent that it is the law of fate—in other words, to the extent that it is fate as

law. In a similar way, the possibility of a different kind of violence—not yet divine, but exercised in the human sphere—is anticipated in Benjamin’s analysis of the an-archic, proletarian, revolutionary strike, of which it is paradoxically said that “as pure means, [it] is nonviolent” (§13).

As I have noted, Benjamin discusses a dialectic of law-positing and law-preserving violence. This is a dialectic of ups and downs that spins in a circle, a dialectic that is a cycle, that repeats itself time and again. This repetition is due to the structural co-implication of both types of violence, a co-implication that determines the ambivalence of law and the undecidability of all matters of law. By virtue of this co-implication, the weakening of law-positing violence is already at work at the very moment when the law is instated. Just as law-positing violence is “represented” in law-preserving violence, the latter is necessarily implied in law-positing violence: the violence that is intended to preserve the law is inherently involved in any instatement of the law, insofar as any law needs to be firmly established and can be established only by means of a force that constantly enforces obedience, guaranteeing the rule of law and its permanence. So it could be said of the dialectical matrix of legal violence that law-positing violence affirms and denies itself at once. Nonetheless, this denial has to be forgotten, the contingency of law’s origin obliterated, in order for the law to be fully in force. But this weakening does not affect law *as such*. In fact, the essential aim of law-preserving violence is to preserve law itself, not to preserve a particular legal order or what the law regulates (social coexistence, for instance). The law’s weakening belongs essentially to the operation of the law, for without enforcement law is deprived of its force. Readers may recall Thomas Hobbes’s warning: “And Covenants, without the Sword, are but Words, and of no strength to secure a man at all.”² Indeed, the dialectic of rising and falling is the “logic” of law.

Yet this dialectic, which is in itself irresolvable, shows much older traces, scars from an ancient time that has become immemorial. The legal order inherits what could be called the essential trait of myth: ambiguity (*Zweideutigkeit*). Mythic ambiguity generates mythic law (or law, simply) by provoking a transgression that gives rise to this very law in the first place, as is suggested in a quotation of Hermann Cohen (§16). In this sense, the ambiguity of myth and of mythic violence is burdened with destiny. It could be said that it is the ambiguity of an utterance whose interpretation is fatal, like that of an oracle.³ The oracle’s lesson tells us that this ambiguity is a function of language, which, being undecidable, forces anyone who consults the oracle to decide, driving her ineluctably to her destiny. This destiny is haunted through and through by ominous ambiguity, for she cannot in fact decide the undecidable, but only—hopelessly—interpret it, in and with her own life. Her fateful decision—which is not properly the decision of an already constituted subject, but rather the shudder of a mere living being—makes her from that point forward accountable for everything that is proximate or remote in a chain of conse-

quences, as the cause of so many effects, as responsible for everything that fate may inflict upon her. The name of this accountability is guilt, and guilt is what reveals itself as a precondition of decision, according to a circularity that is inherent in the realm of fate: the creature becomes guilty by virtue of its fateful decision, but at the same time it cannot but acknowledge — no matter which decision it makes — that its decision is the expression and the proof of its original culpability, of its being subject to the (violence of the) law.

In this way, guilt is the condition of possibility of what we call the subject. It has no birthdate: it is immemorial. In a sense, myth certainly opens time, but it is time arrested: a time of condemnation, a “cycle maintained by [the] mythic forms of law,” one that constitutes the subject as the subject of guilt, and simultaneously determines the subject’s life as “bare life.”⁴ Guilt could thus be described as the affection of ambiguity, of the undecidable. To be guilty is to be subject to ambiguity. Not even death can “free” the subject from guilt, inasmuch as she, while living, has been reduced to mere life, has become a wretched bearer of guilt. Unlike in Kafka’s *Trial*, here it is not shame but guilt that outlives the subject. Law, as the heir of myth, rationalizes mythic substance through the relation of means and ends, of causes and effects, and is at once the production of the subject *and* of bare life. Its time is already consummate; it is the time of *faits accomplis*, deeds accomplished (in their structural meaning and value and consequences) before they are done.

The shaping of the legal sphere by fate leads to the continued existence of myth in the epoch of law. And law has ways to ensure this continuity, through precisely those methods aimed at the preservation of law. Let me linger briefly on the case of the police. In a certain sense, this institution could be considered the modern version of mythical ambiguity, being a power invested with authority and with the right to exercise violence in order to ensure law enforcement, that is to say, in order to ascertain in each specific case the (applicability of the) law.⁵ We might be tempted to say that the police have the *right* to decide the undecidable, but in fact the category of decision (which Benjamin calls “metaphysical”) is alien to this institution, whose only capacity, as seen from the standpoint of the “problematic of right,” is to preserve the undecidability of the latter through its vile service to security. What it secures is, if anything, legal violence *as such*. It is in this sense, I think, that Benjamin speaks of a suspension of the difference between law-positing and law-preserving violence in the case of the police, a suspension that makes it paradigmatic (in a way comparable only to the military) of all mythic and legal violence. The spectral character of this institution not only suggests a haunting omnipresence — which tends to make people guilty *a priori* — but also indicates that the police are the most degraded and corrupted vestige of the mythic manifestation of the gods.

The fateful enchanted circle of mythic forms of law has to be undone; in precise terms, it has to be deposed (*entsetzt*). That is, law-positing (the *Setzen* of the

law) and its dialectical iterative and inner teleological cycle have to be radically interrupted, disconnected (*ausgeschaltet*). This deposing of law and ultimately of state violence appears as the highest task and moral obligation to which the critique of violence gives rise. And it is violence that is needed for the completion of this task, which would open history onto a nonteleological time and order. This violence must not be alloyed with the forms of law; it cannot be, in any sense of the word, a “legal” violence, a violence justified by law and by the ends that it may serve and secure. Unalloyed violence, pure violence, violence as a means that is neither justified nor unjustified, a means in itself as it were, a violence that is absolutely indifferent to ends and for this very reason is immediate—this is, in a word, violence “beyond the law” (*jenseits des Rechtes*). Here “beyond” does not imply an unattainable and unimaginable vanishing point, a sort of transcendence; it is the work of deposing legal violence that opens this “beyond” in the first place. In these terms, *Entsetzung*, properly speaking, is the operation of divine violence: it not only de-poses (or annihilates) law but at the same time it deposes itself *as* violence, inasmuch as it prevails “beyond the law,” is utterly alien to all instatements of law and to any relation of means and ends. It occurs as immediate, unmediated mediacy: it strikes. This deposing of itself as violence, which paradoxically renders divine violence non-violent and so makes it absolutely heterogeneous to all coercive violence, may be described as an event-driven co-implication of violence and nonviolence. Yet this co-implication is different from the one between law-positing and law-preserving violence. It does not further law’s dialectical cycle, nor any other cycle, under the guise of teleology; it is in fact a break in the co-implicated realities that reveals the spurious continuation of mythic order: nonviolence, as pure violence, is the end of all legal violence. If in the case of mythic law the essential matrix is ambivalence, which remains in all subsequent legal institutions as the indelible trace of myth, then in the case of divine violence the essential matrix is imminence⁶: the invisible (and enduring) approach of divine sovereignty, of justice, which suspends legal order at any moment in time, in manifestations of divine violence that are incomparable, affording a glimpse (that is, an experience) of a liberated sphere *jenseits des Rechtes*, “beyond the law.”

This violence, as what Benjamin calls “pure violence” (*reine Gewalt*), has its supreme human manifestation in revolutionary violence, like the violence wielded in the proletarian general strike. It is thus possible that in human violence divine violence may manifest itself. But this has no guarantee. A sign of this missing guarantee is Benjamin’s emphatic point about the confrontation, the solitary wrestling, with the universal-singular commandment “Thou shalt not kill” (§18). As I noted previously of the “irreconcilable conflict” between justified means and just ends, it is impossible to resolve human problems, let alone to achieve emancipation from the circle of all previous historical conditions of human existence, through a total

exclusion of violence (§14). But human violence always runs the risk of being not only brutal, cruel, bloodthirsty, and horribly murderous in particular and dramatic moments; it also risks becoming constant, everywhere insidiously present, not in the same way for everyone, but rather discriminating between those who are to be protected and those from whom the worst deeds are supposedly to be expected, although they are deprived of the ability to avenge their extreme vulnerability. This is the way of law-positing and law-preserving violence, both of which are expiatory (demanding of retribution) and not in any sense redemptive. They permanently reinforce established power relations as well as power itself as a principle: “The positing of law is the positing of power . . . power the principle of all mythic law-positing” (§15). But human violence, under certain conditions, may be a manifestation of divine violence. It is not that God directly exercises violence in miracles (§18), as in the story of the annihilation of Korah’s band. In the human space of the profane, it is not possible to verify the occurrence of such a manifestation of divine violence, whereas legal violence is clearly recognizable. Take war, for instance: “Divine violence may manifest itself in true war” (§19). What Benjamin calls “true war” is not a special kind of war, different from historical wars, which would be “false” because they consummate an initial campaign of usurpation with the establishment of a new law. The “truth” of war, as one of the eternal forms at the disposal of divine violence, is attested in the “incomparable effect” by which war may allude to divine violence, where the latter is nothing other than a shining forth as “sign and seal,” that is, a sovereignty without agency, act, or ulterior purpose, as consummate and immediate justice.

The space of the human is the space of the profane. But profane order may favor the coming of the messianic, as is said in the so-called “Theologico-Political Fragment.”⁷ There may be fleeting moments in which the *vox populi* coincides with the *vox Dei*. These revolutionary moments, which are violent in an incomparable, unique sense, wash away all violence from the space of the human.

Coda

When I first presented this reading in mid-June of 2018, a broad feminist movement had been in full swing in Chile for more than two months. Since then, women students, calling for a “feminist occupation” of their precincts, have occupied universities, and they have marched through the centers of the country’s major cities. If surveys are even minimally trustworthy, then a vast majority of the Chilean population supports this movement. Interestingly enough, what was initially at stake in these demonstrations was not some kind of specific demand, which could be satisfied with the adoption of a specific law. This differentiates the movement from the massive demonstrations of 2011, which protested against the indebtedness of university students and their families, and called for “free, quality, and public

education.” These demands aimed at a new legal framework; one of the cardinal points was the strict prohibition of profit in education, where the latter was considered a social right, not a consumer good. Indeed, the most visible leaders of this movement are now acting as parliamentarians. In the current feminist movement, by contrast, the demands concern violence, specifically gender violence, as in the increasing number of cases of femicide, sexual harassment, and abuse. These demands also address blatant and persistent inequalities that—as we all know very well—in former times were passed over in silence, as if they were simply part of the state of things. But it is not the claim for equal rights that constitutes the central issue of the movement: nothing less than a complete end of gender violence is demanded, as in the broad movement *Ni Una Menos*. This should be the end of a whole system; call it patriarchy, late capitalism, or neoliberalism. Chile’s right-wing government has tried to manage the situation and has proposed a “women’s agenda.” One of this agenda’s measures seeks to promote equal treatment in health-care: given that women are charged more for private health insurance, the solution proposed raises costs for men so as to match women’s expenditures and, of course, to safeguard the huge profits of health insurance companies. (To be sure, this idea was quickly dropped.) Although the government responded quickly, its agenda was considered fundamentally insufficient, not least, I would argue, because of its merely legal character. What the feminist movement is demanding is cultural change, and a change in subjectivity. It seeks to affirm diverse embodied forms of life and gender, a fluidity of bodily existence and presence between public and private spheres. In a symbolic act, women have resignified the black hoodie, which for a long time has been associated with violent anarchist demonstrations, often infiltrated by police. These demonstrations used to mark the final phases of many student demonstrations. Not only in the protest marches, but also in the occupation of the Pontificia Universidad Católica de Chile, an event whose only precedent dates to fifty-one years ago, female students wearing colorful hoods held banners bearing slogans, without any use of violence. Women marching with their breasts naked held signs that read, “So, is this what you want to see?” And so on. Note that a fundamental issue in the feminist movement is the demand for nonsexist education; this suggests that the movement’s critical demand is for the production of a new, liberated social (and individual) “subject.”

While a huge crowd held a vigil in front of the Argentinian Parliament, waiting for the vote on the legalization of abortion, I couldn’t help but think of Benjamin’s pure violence while considering the various demonstrations and political events occurring at that moment in my country, or while listening to the movement’s spokespersons, who do not ignore the major internal and external difficulties their movement must face.

PABLO OYARZÚN is a professor of philosophy and aesthetics; director of the Bicentennial Initiative, a project for the development of the humanities, arts, and social sciences at the Universidad de Chile; and director of the Interdisciplinary Center for Studies in Philosophy, Arts, and Humanities at the same institution. His research revolves around metaphysics; ethics; epistemology; the philosophy of language and aesthetics; and the theory of art and literature, culture, education, and politics. The author of more than 400 publications, Oyarzún will publish three books in English in the near future: *Literature and Skepticism* (working title), an English translation of *Between Celan and Heidegger*, and *Doing Justice: Three Essays on Walter Benjamin*.

Notes

1. Benjamin, "Toward the Critique of Violence," §4. Hereafter cited parenthetically.
2. Thomas Hobbes, *Leviathan*, chap. 17.
3. Benjamin does not mention the Greek Oracle in this context, but what he says of it in *The Origin of the German Tragic Drama* seems consistent with the discussion of fate in the "Toward the Critique of Violence": "The Oracle in tragedy is more than just a magical incantation of fate; it is a projection of the certainty that there is no tragic life which does not take place within its framework," 115; vol. 1, book 1 of *Gesammelte Schriften*, 294.
4. At this point we should recall what Benjamin says in his reading of Goethe's *Elective Affinities*: "With the disappearance of supernatural life in man, his natural life turns into guilt, even without his committing an act contrary to ethics. For now it is in league with mere life (*dem bloßen Leben*), which manifests itself in man as guilt" (*Selected Writings*, vol. 1, bk. 1, 1913–1926, 308; *Gesammelte Schriften*, vol. 1, bk. 1, 139).
5. In each specific case: this is, as it were, a counterimage of the singularity of justice, which is universal with respect to each case, but not universalizable, as similar as other cases may be. This is the meaning of the "incomparable effects" in which divine violence may be at work.
6. This imminence is dual: it is the ever-possible messianic interruption as well as the time of the catastrophe. These moments are inseparable.
7. Benjamin, *Selected Writings*, vol. 3, 1935–1938, 305.

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