

The Creature Before the Law:
Notes on Walter Benjamin's *Critique of Violence*

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*Leopards break into the temple and drink to the
dregs what is in the sacrificial pitchers; this is
repeated over and over again; finally it can be
calculated in advance, and it becomes part of
the ceremony.*

Kafka, Parables and Paradoxes

Transforming as it does from an exemplar of meticulous philosophical analysis into an allusive political/messianic tract, Walter Benjamin's "Critique of Violence" is representative of all that is most difficult about his work. Against those critics who find the eschatological dimensions of Benjamin's texts unpalatable and/or philosophically bankrupt,¹ however, the wager of this paper is that it is possible to extract a philosophically sophisticated and politically interesting concept of the messianic from Benjamin. For it remains the case that the mortification of law carried out in "*Zur Kritik der Gewalt*" does not simply boil down to a naive antinomianism; that Benjamin's argument is far more subtle than any simple call for "a radical destruction of the legal order."² Indeed, if we read the text in conjunction with certain others in the Benjaminian *oeuvre* it becomes clear that it engages lucidly with a set of crucial, difficult questions about the status of law in

modernity.

Benjamin begins his argument in "Critique of Violence" like a good Kantian: two opposing positions, axiomatically consistent in themselves, are shown to have constitutive blindspots, each of which corresponds to that of the other in a perfect, paradoxical symmetry. The natural law tradition, predicated on the claim that there is a transhistorical Good toward which human action can and should comport itself, finds the justification (or otherwise) of the use of violence in whether it is deployed for the sake of these just ends. Violence operates here as a sort of "raw material,"³ a natural fact of life that is not itself interpretable in terms of justice, legitimation or legality; just means (violent or otherwise) are simply those that correspond to just ends. Positive law, on the other hand, is predicated on the claim that there is no natural or *given* Good that the human being has access to, is thus unable to justify violence with reference to the justness of ends, and so instead looks to the means themselves for legitimation of human action. Just means will produce just ends as a matter of course, and positive law therefore finds itself embroiled in a series of questions on the historical foundations and legal legitimation of state violence.

Having set up the two sides of his antinomy, Benjamin moves to the claim that both positive and natural law are dependent on a paradox. It runs as follows: in both cases, justice must be found in an alignment between means and ends, where the attainment of one will establish legitimation through the guaranteed attainment of the other. And yet in either case, this can only be obtained through inquiry into one half of the nexus at the expense of leaving the other entirely undetermined. Both traditions are for Benjamin engaged in a kind of sleight of hand whereby a relation is claimed to be established between two terms, when what in fact takes place is simply the elimination (or bracketing out) of one of them. "[If] positive law," as Benjamin puts it, "is blind to the absoluteness of ends, natural law is equally so to the contingency of means."⁴ There is a double circularity in operation here that undermines the claim of either party to a coherent concept of justice. Benjamin's strategy, then, is to "break" this "circular argument"⁵ of the justification of means through sole reference to ends or the justification of ends through sole reference to means. Importantly, though, Benjamin *does* privilege one side of the antinomy: natural and positive law may be tied up together in double circularity, but Benjamin will nevertheless find his way through this circle by radicalising the basic theses of positive legal philosophy. This is because the distinction in positive law between sanctioned and un-sanctioned violence is "meaningful,"⁶ or at least that it is so in a legal sense. The real question for Benjamin is precisely what light the very intelligibility of this distinction throws upon the original problem of

violence. His interest in this text is not in the justification or justifiability of violence, then, but rather in the questions raised by the very fact that we make a distinction between just and unjust violence in the first place. His desired goal is not to resolve the antinomy of means and ends but rather to deploy it in the development of a “philosophico-historical view of law”⁷ that would completely undermine it.

This is why the discussion turns to legal problems surrounding the legitimization of certain forms of violence. “It can be formulated as a general maxim of present-day European legislation,” says Benjamin, “that all the natural ends of individuals must collide with legal ends if pursued with a greater or lesser degree of violence.”⁸ Individuals do not possess the legal right to use violence for the sake of their own ends; as in the Hobbessian vision, it is precisely the right to the use of force in obtaining its ends that the citizen gives up to the sovereign for the sake of its own protection. Thus the state sets up, “in all areas where individual ends could be usefully pursued by violence,”⁹ a legal system in which these ends can be pursued by non-violent, sanctioned means. Benjamin goes on: “From this maxim it follows that law sees violence in the hands of individuals as a danger undermining the legal system.”¹⁰ The use of violence by individuals must be curtailed by the state because only the state may have the monopoly on violence: “violence, when not in the hands of the law, threatens it not by the ends that it may pursue but by its mere existence outside the law.”¹¹ Law must maintain the monopoly on violence if it wants to preserve its status as law, its very claim to legitimization. Violence threatens law not in spite but because of the fact that law has its origins in violence.¹² Benjamin points to the figure of the great criminal and explains its historical ability to both horrify and captivate the masses in precisely these terms. Such figures confront the violence of law “with the threat of declaring a new law.”¹³ This link between the violence of acting “outside” or “above” the law and the foundational violence of positing a new legal order makes such figures intolerable to the state. It is what sees them exert their strange fascination over ordinary citizens.

Here we see one of the central oppositions of the text beginning to come to light: the distinction between lawmaking and law-preserving violence. Lawmaking violence is foundational; it is the performative violence of a new constitution or a declaration of independence. The violence here is that of inauguration, of the law’s original setting-into-force. It is the violence of self-positing, the violence of an emergence *ex nihilo* of a legal/social/political system. This violence operates, as Jacques Derrida points out, in the future anterior: it is violence that finds legitimization not in the past but in a not-yet-realised legal order on behalf of which it claims to

speak.¹⁴ It is violence that *will have been* just. Law-preserving violence, on the other hand, is violence carried out by an already-founded state: it is conservative and protective, designed to defend or fortify a pre-existing legal order. It is violence that is deployable against uprising or a potentially lawmaking insurrection, but also simply the basic form of the day-to-day functioning of the legal system. Law is fortified every time a judge's gavel comes down.

The crucial point at this stage of Benjamin's analysis is that these two forms of violence are not rigorously separable.¹⁵ The argument here is that law can never be fully constituted; that the process of legitimation can never reach an end; that every new legal event or legal decision works not just to preserve law but engages each time in a renewal of the inaugural lawmaking moment. The foundation of a legal order, on this account, would not only be an historical event that grants legitimation to the present, but rather the law's hidden, constant accompaniment. Part of the argument here is that legitimation is contingent upon a foundation of historically determined, potentially contestable power structures; this means there is always the possibility, however small, of an uprising of lawmaking violence against the legal order. Each act of law-preserving violence, then, contains within it a defensive moment of lawmaking violence, where the legitimated regime re-poses itself as such. Law never quite shakes its original founding violence. It is always engaging in a kind of secret re-legitimation.

Of course, this problem runs in both directions, for the purity of law-making violence can itself be contaminated by the practical and administrative constraints of law-preserving violence.¹⁶ Benjamin decries the decline of parliamentary democracy on these grounds, arguing that "[w]hen the consciousness of the latent presence of [lawmaking] violence in a legal institution disappears, the institution falls into decay." Parliamentary democracies, Benjamin says, "offer the familiar, woeful spectacle because they have not remained conscious of the revolutionary forces to which they owe their existence"; they "lack the sense" of the violence of their own origins, unsettled by the pure positing force of their own inauguration.¹⁷ Lawmaking violence can call legitimation into question because it reveals the violence at its heart, so law-preserving violence turns away from its own original lawlessness, from the antinomian (in a sense *prenomian*) force at its origin, fearing its potential for appropriation by insurrectionist forces.¹⁸ Law-preserving forces thus find themselves in conflict with their own original principal: for Benjamin, parliamentary democracy contains an unresolved, indeed irresolvable contradiction that over time has an entropic effect on its institutions.

Benjamin points to the police as the modern face of this mutual infec-

tion between lawmaking and law-preserving violence. If lawmaking violence is required to prove itself with political victory, and law-preserving violence is "subject to the restriction that it may not set itself new ends,"¹⁹ then the singular violence of the modern police force consists in its partial emancipation from both of these conditions: ostensibly, the police are simply representatives of law-preserving violence, but the specificity of the situations in which they intervene means that they must inevitably employ lawmaking violence on a situational basis. The refrain that "it depends on the cop" comes to mind here: there are countless legal situations in which police must exercise a certain discretionary power, making decisions on the ground that exceed strict legality, but that *will have been* legitimated (if, for instance, an inquiry takes place in future). Or, in a perhaps more insidious register, we should think here of the "special powers" that have been granted to police on the basis of the supposed exceptionality of the terrorist threat: "the police intervene 'for security reasons' in countless cases where no clear legal situation exists."²⁰ It is worth re-emphasising that this is a particularly modern phenomenon, relating as it does to the separation of powers (and indeed to the ultimate impossibility of a pure separation). The gap between the legislative and executive, between lawmaking and law-preserving power, only truly opens in modernity with the decline of the absolute sovereign. For Benjamin, this gives the modern police force a paradoxical sort of brutality:

And though the police may, in particulars, everywhere appear the same, it cannot finally be denied that their spirit is less devastating where they represent, in absolute monarchy, the power of a ruler in which legislative and executive supremacy are united, than in democracies where their existence, elevated by no such relation, bears witness to the greatest conceivable degeneration of violence.²¹

The police, crossing the boundaries between lawmaking and law-preserving violence, exemplify the decay of law in modernity, revealing precisely what is "rotten"²² in it (one thinks here of *the filth* – a Cockney slang term for the police).

It is very important that Benjamin employs these motifs of rottenness and decay in making his critique of the disavowed violence of law. One is reminded in particular of Kafka. And of course, Benjamin himself wrote what remain some of the most perceptive works of Kafka criticism. In the most notable example of this work, he identifies Kafka's world as "the world of offices and registries, of musty, shabby, dark rooms."²³ Benjamin's Kafka is the obscene Kafka, the Kafka who has Joseph K. discover his judge's store of pornography in the courtroom, who has him seduced by his

lawyer's petite, syndactylic mistress. "Filth is the element of officials,"²⁴ says Benjamin, and what he finds in Kafka is precisely a commitment to unpacking the implications of the thesis of a fundamental link between modern law and filth, decay, rottenness. Importantly, the claim is not as simple as "the law is rotten" – this would be one way of framing the argument of the "childish anarchism"²⁵ that Benjamin himself ridicules – but rather relies on a more sophisticated argument about the relation between modern law, sovereignty and citizens. We can begin to see its outlines if we turn to the section in "Critique of Violence" on the death penalty.

Speaking of those who opposed critics of the death penalty, Benjamin writes that they "felt, perhaps without knowing why and probably involuntarily, that an attack on capital punishment assails, not legal measure, not laws, but law itself in its origin."²⁶ He goes on:

For if violence, crowned fate, is the origin of law, then it may be readily supposed that where the highest violence, that over life and death, occurs in the legal system, the origins of law jut manifestly and fearsomely into existence [...]. For in the exercise of violence over life and death more than in any other legal act, law reaffirms itself.²⁷

In the terms Benjamin will introduce a few pages later, the death penalty is perhaps the most brutal example of mythical violence, or violence that is immediate and in an important sense "bloody."²⁸ In mythical violence, or "bloody power over mere life for its own sake,"²⁹ what shows itself is the original hold law has over life itself. Mere life in Benjamin is a figure of fallen life, of sinful, dirty life; it is the distorted life of the hunchback, bent down by some unnamable cosmic burden. Benjamin's claim here is that the space opened up in modernity at the heart of law (as exemplified in the impossibility of any full exclusion or full inclusion of lawmaking violence into law-preserving violence) is in fact the site of a particular form of our subjection to it. Eric Santner, whose recent work on political theology represents a singularly clear and refreshing approach to Benjamin's philosophical project, provides a useful explication of these arguments:

What manifests itself as the law's inner decay is the fact that the rule of law is, in the final analysis, without ultimate justification or legitimation, that the very space of juridical reason within which the rule of law obtains is established and sustained by a dimension of force and violence that, as it were, holds the place of those missing foundations.³⁰

This "dimension of force and violence" represents the obscene dimension

of law, the zone in which there is a slippage between law preserving and lawmaking violence.³¹ This is the site of what Santner will call our “creaturely” tie to law (another way of framing the subjection of mere life as described by Benjamin), which is something more than our simple answerability to or responsibility before the legal order. Following both Beatrice Hanssen and Julia Lupton,³² Santner points out that the word creature derives from the Latin *creatura*, which signifies a being undergoing a process of creation. It is, Santner says, “not so much the name of a determinate state of being as the signifier of an ongoing *exposure*, of being caught up in the process of *becoming creature* through the dictates of divine alterity.”³³ The theological dimension of the term is crucial: a creature is first and foremost a *created* being, a being that lives in thrall to a sovereign (the German term *Kreatur* has the same connotations). As the history of the term progressed, however, it came to be synonymous with not simply God’s creations but rather with particularly monstrous strains of those creations: in this usage, it can evoke compassion, pity or even horror; it signifies a being marked by an indeterminacy that puts the borders between particular life forms in question. The creature thus becomes a being that dwells in the gaps between species, a threat to the very system of classification. And it is precisely this double meaning that Santner works with, developing a Benjaminian concept of the creature as a liminal being (and indeed as a being that emerges in liminal, exceptional situations) that finds itself biologically tied to sovereign power.

A key claim here is that this particular form of creatureliness is particular to humans; that human beings are not “just creatures among other creatures” but are in a sense “more creaturely”³⁴ than non-human animals. This is because the creaturely dimension of life opens up contemporaneously with the dimension of sovereignty and law. Indeed, one could make a case for the argument that modern humans are themselves more creaturely than pre-moderns, because of the particular tensions instilled by Enlightenment secularism. Remember Benjamin’s remark on the particular violence of the modern police force, whose spirit is more devastating because it does not represent the will of any absolute sovereign. As with Freud’s primal father who becomes more powerful in his absence, whose death casts a shadow of guilt upon all of his descendents, secular law has a peculiar biopolitical hold over its subjects not in spite but because of its lack of ultimate foundation. Or rather: secular law captures the mere life of its subjects in a novel way, forcing it to stand in as its new, highly ambiguous foundation. Human life itself is forced in modernity to bear the burden of the law’s own ungroundedness.

In a neat double pun, Santner refers to the “ibidinal”³⁵ economy of the

law and its “ex-citational” power over the human creature, arguing that there is a dimension of disavowed obscenity operating alongside or beneath those performative events by which a human being is initiated into a particular symbolic economy. Citation is understood here in terms of the problem of authority and its relation to desire; the claim is not only that the human creature is wracked by “ibidinal” urges that it can never properly satisfy, but that this basic impossibility gives institutions a paradoxical violent power. Think here of military hazings, the Russian *Dedovschina*, the fagging system in British public schools or even the obscure sexuality of an academic degree granting ceremony: these are all examples of the way in which institutional systems discharge the tensions created by the ungroundedness of law. Law in modernity constitutes itself on the basis of an originary violence in which “the very resources of legitimacy” link up with “a power of suspension and disruption.”³⁶ In this paradoxical moment, the law traverses an intimate zone at the heart of the human and captures something there that the subject itself cannot: its mere life, the simple fact of its being alive. This is why Giorgio Agamben writes that “a theory of the state of exception is the preliminary condition for any definition of the relation that binds, and, at the same time, abandons the living being to law.”³⁷ Mere or creaturely life is life that *pleads guilty* for the sake of sustaining the law, providing a hidden support for its obscene, exceptional dimension.³⁸

As always with Benjamin, one has to make some difficult interpretive decisions regarding the status of “Critique of Violence.” The piece is explicitly political, but as it progresses it enters a theological register, and ends with an unsettling paean to the power of divine violence. Derrida (and he is far from alone in doing so) responds to this invocation of the bloodless yet expiatory powers of divine violence and its capacity to disrupt the workings of mythical violence with a kind of horror. What he finds “perhaps almost unbearable in this text”³⁹ is the possibility that it could tempt the reader to interpret the Nazi “final solution” in terms of a manifestation of this divine violence. “When one thinks of the gas chambers and the cremation ovens,” says Derrida, “this allusion to an extermination that would be expiatory because bloodless must cause one to shudder.”⁴⁰ He goes on to invoke both Schmitt and Heidegger, and asks whether there could be complicity between their discourses, that of Benjamin, and “the worst.”⁴¹ Yet if one considers the fact that Benjamin spent his life in a sustained and explicit intellectual struggle against fascism, indeed that Benjamin probably committed suicide to avoid being captured by the Gestapo, then this starts to look like a strange move on Derrida’s part (and one that betrays an uncharacteristic lack of charity). At the same time, however, it is nevertheless the case that Benjamin’s rhetoric still has the power to induce a kind of horror on behalf

of even the most sympathetic reader, as when Benjamin, now identifying mythical violence “with all legal violence,”⁴² defines its divine antithesis as follows:

This very task of destruction poses again, in the last resort, the question of a pure immediate violence that might be able to call a halt to mythical violence. Just as in all spheres God opposes myth, mythical violence is confronted by the divine. And the latter constitutes its antithesis in all respects. If mythical violence is lawmaking, divine violence is law-destroying; if the former sets boundaries, the latter boundlessly destroys them; if mythical violence brings at once guilt and retribution, divine power only expiates; if the former threatens, the latter strikes; if the former is bloody, the latter is lethal without spilling blood.⁴³

First of all, it is worth contextualising this rhetoric of destruction, coming as it does from a young Benjamin writing in the politically, economically and culturally virulent environment of postwar Berlin (with massive inflation, growing radicalism on the Right and Left, unprecedented cultural and artistic production, etc.). Perhaps more importantly, however, the metaphysical and indeed speculative language of the text itself actually precludes any neat reduction to a concrete political program, and, with its denunciation of myth, especially any Far Right appropriation. Similarly, it seems naive or simply too easy to read Benjamin’s account of divine violence in terms of the glorification of the purifying powers of mass violence or a call to arms against the legal institutions of liberal democracy.⁴⁴ The text is far too ambiguous, far too esoteric in both style and content for it to be reducible to a manifesto for any concrete politics. My claim, then, is that “Critique of Violence” is both *less and more* “political” than it may seem on a first reading: less because it is not reducible to any concrete politics; more because, unlike any simple glorification of mass violence or call for the destruction of law, it actually has interesting (if largely implicit) political consequences.

The best place to turn here is back to Benjamin’s Kafka essay. In particular, we can turn to its passages on Kafka’s animals and creatures, embedded in which is a complex and compelling theory of the relation between animality and creatureliness that can help us unpack the implications of Benjamin’s theory of law. On Kafka’s animals:

One can understand, then, why Kafka never tired of hearing about the forgotten from animals. They are not the goal, to be sure, but one cannot do without them.⁴⁵

Can’t one see the animals in *The Burrow* or the giant mole ponder

as they dig in? Yet this thinking is extremely flighty. Irresolutely, it flits from one worry to the next; it nibbles at every anxiety with the fickleness of despair [...]. This much is certain: of all of Kafka's creatures, the animals have the greatest opportunity for reflection. What corruption is in the law, anxiety is in their thinking. It messes a situation up, yet it is the only hopeful thing about it.⁴⁶

On his creatures:

Odradek "stays alternately in the attic, on the staircase, in the corridors, and in the hall." So it prefers the same places as the court of law which investigates guilt. Attics are the places of discarded, forgotten objects. Perhaps having to appear before a court of justice gives rise to a feeling similar to that with which one approaches trunks in the attic which have been locked up for years.⁴⁷

Odradek is the form which things assume in oblivion. They are distorted. The "cares of a family man," which no one can identify, are distorted; the bug, which we know all too well represents Gregor Samsa, is distorted; the big animal, half lamb, half kitten, for which "the butcher's knife" might be "a release," is distorted. These Kafka figures are connected by a long series of figures with the prototype of distortion: a hunched back.⁴⁸

The animal has an essential flightiness, a constant flitting of consciousness that prevents it from concentrating its attention. This is illustrated by Kafka in "The Burrow," whose protagonist lives in a continuous state of hypertense anxiety.⁴⁹ And yet, as Benjamin indicates, Kafka's animals seem to possess a wisdom that is fascinating despite its near total inaccessibility to human reflection. This wisdom, it seems, is part of the happiness of Kafka's animals, and it exists in uneasy juxtaposition to their anxious dispositions: "Sometimes," says the protagonist of "The Burrow," "I lie down and roll about in the passage with pure joy."⁵⁰ Animals are exceptional in Kafka in that they display a joy in pure existing that is not readily available to the other figures in his taxonomy (his creatures, humans, angels and gods all carry various burdens). This beatific wisdom is what makes animals a crucial part of Benjamin and Kafka's modernist messianism, for it represents a sort of untapped possibility for human life. Kafka's animals are the repository of what Benjamin calls "the forgotten," and the ethical demand he finds in Kafka emanates from this forgotten animal substratum.

Kafka's creatures are distinct from animals in that they are figures of biological distortion. Odradek – an apparently immortal creature that looks like a "flat star-shaped spool for thread"⁵¹ – is paradigmatic here, both for

its uncanny appearance and for the sense of quiet foreboding it brings with it. "Can he possibly die?" asks the narrator who appears to be its owner (or who appears, at least, to have taken on a burden of responsibility for the creature). "Anything that dies has had some kind of aim in life, some kind of activity, which has worn out; but that does not apply to Odradek."⁵² If one considers the "half kitten, half lamb"⁵³ crossbreed that plagues another of Kafka's narrators, which seems to possess only those talents of the cat and the sheep that cancel each other out in practice, then it becomes clear that this dreadful absence of purpose may be a common property shared by his creatures. The other is quasi-humanity, as displayed in the crossbreed's "look of human understanding"⁵⁴ and indicated by Odradek's ability to speak. Kafka's creatures, Benjamin argues, are linked to the hunchback, a figure that is always present but never directly mentioned in his works. The link here is burden, and Benjamin will draw an analogy between the distorted life of creatures like Odradek, the repeated images in Kafka of "the man who bows his head far down on his chest: the fatigue of the court officials, the noise affecting the doormen in the hotel, the low ceiling facing the visitors in the gallery"⁵⁵ and the severe heaviness of what drives his human protagonists.

One could schematise the relation between these figures by saying: *the creature is the result of the forgetting of the animal*. On this account, the creature is the offspring of a lack of or failure in relation: not simply a half-way point between human and animal, but rather a figure of the human's denial of its own animality, a kind of return of the repressed in intensified form. Benjamin: "because the most forgotten source of strangeness is our body – one's own body – one can understand why Kafka called the cough that erupted from within him 'the animal.' It was the vanguard of the great herd."⁵⁶ The human, on this account, possesses an animality that it cannot fully assimilate, a life that is unforgettable to the extent that it is impossible to remember. The animal subsists in the opacity of the body, in one's obscure encasement in a biological system; the creature is what emerges as a result of the refusal of this haunting animal life.⁵⁷ This is why we find Benjamin characterising the Kafkan ethic in terms of *attentiveness*, understood as a particular sort of relation with the animal substratum of everyday life. Attentiveness would be the name for the maintenance of this relation to the opacity of one's own animal life: a "prayer of the soul" made on behalf of all living beings.⁵⁸

What does this tell us about Benjamin's theory of law? As we have seen, Benjamin's claim is that the exceptional dimension of law finds its support in mere life, which stands in and pleads guilty to supply its missing foundation. We can now supplement this claim by saying that the refusal or

failure of relation between human and animal – which is what provokes the emergence of mere or creaturely life – operates as the other side of this subjection to the disavowed violence of law. In fleeing or refusing animal life, we become creaturely subjects tied to the exceptional dimension of law. This is to say that the denial of the animal is a condition of the support of the law's exceptionality; that we are subject to the obscene, supplementary dimension of law insofar as we fail to maintain the proper relation to our own animality. Which is itself to say: if the obscene dimension of law is supported by creaturely life, and creaturely life emerges out of a failure in, or refusal of, the relation between human and animal, then it follows that an intervention into our ontology of human and animal life could be the catalyst for a new, non-violent relation to law. This would represent a release not from law as such, but from our biopolitical tie to the law's obscene dimension.

We are now in a position to understand precisely what Benjamin elucidates with his concept of divine violence. Crucial here is the claim (which is actually a microcosm of his entire theory of divine violence) that the hunchback will “disappear with the coming of the messiah.”⁵⁹ The hunchback, as we have seen, appears in Benjamin's work as the paradigm of mere or creaturely life. Its life is distorted, fallen: the clearest possible exemplification of the creaturely dimension of the human, weighed down by the obscene dimension of law. Divine violence, synonymous with the coming of the messiah, would therefore represent an intervention into precisely this dimension of human subjectivity. This is why it does not bring either guilt or retribution (which is part of the dialectic of mere or creaturely life), and instead only expiates. It also explains why it is a pure or bloodless violence: if mythical violence seizes human subjectivity through the “bloody” capture of mere life, then divine violence intervenes into this seizure and releases human life from its subjection to the rottenness of law. When Benjamin refers to divine violence as law-destroying, then, it is important to realise that what is destroyed here is not law *in toto* but simply our creaturely attachment to it. Thus too the link, clear in Benjamin and insisted upon by certain of his commentators, between redemption and a fundamental change in the human/animal relation. One thinks here in particular of Hanssen's claim that “humanity itself might be rescued in the image of animality,”⁶⁰ or the assertion from Agamben that “on the last day, the relations between animals and men will take on a new form, and [...] man himself will be reconciled with his animal nature.”⁶¹ Divine violence would redeem humanity from the obscene dimension of law through a suspension of the creaturely dimension of human subjectivity. It is the figure of a release effected by a reconfiguration of the relation between human and ani-

mal.

It is evident that there is something unexpected about Benjamin's messianism. It is that the messianic in Benjamin is a figure of not simply redemption, but of redemption from salvation. Like that of Kafka's, Benjamin's messiah is the messiah who comes by not coming, who comes "only when he is no longer necessary."⁶² Divine violence, that is, represents not the arrival of the divine on earth, but rather the earth's abandonment by the divine. The transformation of the relation between human and animal that takes place in divine violence is the precise opposite of a rescue of the former from the latter; divine violence would not redeem the human *from* its animality as much as *redeem it to* its animality. What Benjamin seeks is not a passage from earthly oblivion into the Kingdom but rather an earthly redemption from the desire or need to enter the Kingdom in the first place. Indeed, one could even say that there is a definite (if decidedly postsecular) atheism in Benjamin's messianism.⁶³ Divine violence represents a kind of cut whereby the profane world finally separates from the transcendent. It is "not an event in which what was profane becomes sacred and what was lost is found again," but "the irreparable loss of the lost, the definitive profanity of the profane."⁶⁴ It effects not the destruction of law but the shattering of our subjective ties to its obscene underside, not the end of the world but the passing of the figure of the world.⁶⁵ In the terms of Hölderlin's couplet, the spirit of Benjamin's historical-philosophical theory of law can be summarised as follows: if it is true that the saving power grows alongside the danger, then the danger also grows where the saving power lies. Redemption consists in a release from this very dialectic of danger and salvation.⁶⁶

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NOTES

¹ Cf. Howard Caygill, *Walter Benjamin: The Colour of Experience*, (London: Routledge, 1998), 149-52; Terry Eagleton, *Walter Benjamin: Towards a Revolutionary Criticism*, (London: Verso, 1985), 25; Beatrice Hanssen, *Walter Benjamin's Other History: Of Stones, Animals, Human Beings, and Angels*, (Berkeley: University of California Press, 2000), 23.

² Hanssen, *Walter Benjamin's Other History*, 21.

³ Walter Benjamin, "Critique of Violence", trans. Edmund Jephcott, eds Marcus Bullock and Michael Jennings, in *Selected Writings Volume 1* (Cambridge: Harvard University Press, 1999), 237.

- ⁴ Benjamin, "Critique of Violence," 237.
- ⁵ Benjamin, "Critique of Violence," 237.
- ⁶ Benjamin, "Critique of Violence," 238.
- ⁷ Benjamin, "Critique of Violence," 238.
- ⁸ Benjamin, "Critique of Violence," 238.
- ⁹ Benjamin, "Critique of Violence," 238.
- ¹⁰ Benjamin, "Critique of Violence," 238.
- ¹¹ Benjamin, "Critique of Violence," 239.
- ¹² Derrida writes: "What the state fears [...] is not so much crime or robbery, even on the grand scale of the Mafia or heavy drug traffic, as long as they transgress the law with an eye toward particular benefit [...]. The state is afraid of *founding* violence – that is, violence able to justify, to legitimate, or transform the relations of law, and so to present itself as having a right to right and to law," Jacques Derrida, "Force of Law: The Mystical Foundation of Authority," in *Acts of Religion* (London: Routledge, 2002), 268.
- ¹³ Benjamin, "Critique of Violence," 241.
- ¹⁴ Derrida, "Force of Law," 269.
- ¹⁵ "That which threatens the law already belongs to it, to the right to law, to the origin of law," Derrida, "Force of Law," 269.
- ¹⁶ "There can be no rigorous opposition between positing and preserving, only what I will call (and Benjamin does not name it) a *differential contamination* between the two, with all the paradoxes that this may lead to," Derrida, "Force of Law," 272.
- ¹⁷ Benjamin, "Critique of Violence," 244.
- ¹⁸ Werner Hamacher writes: "In order to remain what it is [...] law-imposing violence must become law-preserving, must turn against its original positing character," Werner Hamacher, "Afformative, Strike: Benjamin's 'Critique of Violence'," in Andrew Benjamin and Peter Osborne (eds), *Walter Benjamin's Philosophy: Destruction and Experience* (London: Routledge, 1994), 111.
- ¹⁹ Benjamin, "Critique of Violence" 243.
- ²⁰ Benjamin, "Critique of Violence," 243. Cf. also Derrida, "Force of Law," 277: "For today the police are no longer content to enforce the law and thus to preserve it; the police invent the law, publish ordinances, and intervene whenever the legal situation is unclear to guarantee security – which is to say, these days, nearly all the time."
- ²¹ Benjamin, "Critique of Violence," 243. One also thinks here of the "spirit" of those in modern law enforcement that possess less real authority than the police force, such as customs officers or even inspectors on public transport: there is, one could say, an inverse relationship between the level of authority possessed and its "Kafkaesqueness" in application.
- ²² Benjamin, "Critique of Violence," 242.
- ²³ Walter Benjamin, "Franz Kafka", trans. Harry Zohn, eds Jennings et al, in *Selected Writings* Volume 2 (Cambridge: Harvard University Press, 1999), p. 795.

- ²⁴ Benjamin, "Franz Kafka," 796.
- ²⁵ Benjamin, "Critique of Violence," 241.
- ²⁶ Benjamin, "Critique of Violence," 242.
- ²⁷ Benjamin, "Critique of Violence," 242.
- ²⁸ Benjamin, "Critique of Violence," 250.
- ²⁹ Benjamin, "Critique of Violence," 250.
- ³⁰ Eric Santner, *My Own Private Germany: Daniel Paul Schreber's Secret History of Modernity* (Princeton: Princeton University Press, 1996), 10.
- ³¹ Slavoj Žižek may have done the most recently to develop the claim that law is constituted on a repressed 'obscene underside.' Texts relevant to my discussion include: Slavoj Žižek, *Gaze and Voice as Love Objects* (Durham: Duke University Press, 1996), 98-103; Slavoj Žižek, "Neighbors and Other Monsters: a Plea for Ethical Violence", in *The Neighbor: Three Inquiries in Political Theology* (Chicago: University of Chicago Press, 2005), 134-90; and Slavoj Žižek, "Odradek as a Political Category", in *Lacanian Ink* Volume 24/25, 136-153.
- ³² Cf. Hanssen, *Walter Benjamin's Other History*, 150-62; Julia Lupton, "Creature Caliban," *Shakespeare Quarterly* 51, no. 1 (Spring 2000), 1-2.
- ³³ Eric Santner, *On Creaturely Life*, (Chicago: University of Chicago Press, 2006), 28.
- ³⁴ Santner, *On Creaturely Life*, 26.
- ³⁵ Eric Santner, *On the Psychotheology of Everyday Life*, (Chicago: University of Chicago Press, 2001), p. 50.
- ³⁶ Santner, *Psychotheology*, pp. 41-2.
- ³⁷ Giorgio Agamben, *State of Exception*, trans. Kevin Attell (Chicago: University of Chicago Press, 2005), 1.
- ³⁸ From here we can understand the tribulations of Joseph K. in a new light. The fundamental problem is not his infinite guiltiness before a transcendent Law; indeed his mistake is to assume that his guilt actually *belongs to him*. This is because the guilt, in fact, is actually that of the law itself: it is the hidden byproduct of the impossibility of its full and final legitimation, the secret (or indeed secretion) of its oscillations between lawmaking and law-preserving violence. Joseph K. embarks on a process doomed to bad infinity, searching for "the missing foundation of the institutional authority that issued the call" (Santner, *Psychotheology*, 51). His shameful, doglike demise is simply the result of this mistake: he dies as mere life because, unbeknownst to him, mere life was precisely the foundation for which he was searching.
- ³⁹ Derrida, "Force of Law," 298.
- ⁴⁰ Derrida, "Force of Law," 298.
- ⁴¹ Derrida, "Force of Law," 298.
- ⁴² Benjamin, "Critique of Violence," 249.
- ⁴³ Benjamin, "Critique of Violence," 249.

- ⁴⁴ Hanssen writes, for example: "The essay squarely fits in an antiliberal tradition that does not shun force to achieve its transformative sociopolitical agenda," Hanssen, *Walter Benjamin's Other History*, 3.
- ⁴⁵ Benjamin, "Franz Kafka," 810.
- ⁴⁶ Benjamin, "Franz Kafka," 810.
- ⁴⁷ Benjamin, "Franz Kafka," 811.
- ⁴⁸ Benjamin, "Franz Kafka," 811.
- ⁴⁹ Nietzsche writes: "They do not know what is meant by yesterday or today; they leap about, eat, rest, digest, leap about again, and so from morn till night and from day to day, fettered to the moment and its pleasure or displeasure, and thus neither melancholy nor bored [...] . A human being may well ask an animal: 'Why do you not speak to me of your happiness but only stand and gaze at me?' The animal would like to answer and say: 'The reason is I always forget what I was going to say' – but then he forgot this answer too, and stayed silent: so that the human being was left wondering," Friedrich Nietzsche, *Untimely Meditations*, trans. R J Hollingdale (Cambridge: Cambridge University Press, 1997), 60-1.
- ⁵⁰ Franz Kafka, "The Burrow," ed. Nahum N. Glatzer, in *The Penguin Complete Short Stories of Franz Kafka*, (Middlesex: Penguin Books, 1983), 327.
- ⁵¹ Franz Kafka, "The Cares of a Family Man," ed. Nahum N. Glatzer, in *The Penguin Short Stories*, 426.
- ⁵² Kafka, "The Cares of a Family Man," 429.
- ⁵³ Kafka, "The Cares of a Family Man," 426.
- ⁵⁴ Franz Kafka, "The Crossbreed," ed. Nahum N. Glatzer, in *The Penguin Short Stories*, 427.
- ⁵⁵ Benjamin, "Franz Kafka," 133.
- ⁵⁶ Benjamin, "Franz Kafka," 810.
- ⁵⁷ Of course, if the animal is ultimately inassimilable, then the problem could not simply consist in a failure of reconciliation (which would simply be a basic axiom of human life). Rather, it would have to consist in a *denial of this failure*. The problem is not the human's inability to render the opaque transparent, but its refusal to maintain itself in relation to this fundamental opacity. Thus, another way of framing the schema would be to say: *the creature is the result of the forgetting of the forgetting of the animal*. If the animal is the repository of the forgotten, then the creature is the form the animal takes when its forgetting is itself forgotten.
- ⁵⁸ Benjamin, "Franz Kafka," 812.
- ⁵⁹ Benjamin, "Franz Kafka," 811.
- ⁶⁰ Hanssen, *Walter Benjamin*, 165.
- ⁶¹ Giorgio Agamben, *The Open: Man and Animal*, trans. Kevin Attell (Stanford: Stanford University Press, 2004), 3.
- ⁶² Franz Kafka, "The Coming of the Messiah," in *Parables and Paradoxes*, (New York: Schocken Books, 1961), 81.
- ⁶³ It is possible to trace this commitment to materialism through all of Benjamin's

works. Here one could cite his ambivalence to aura in his essay on the work of art, where the decline of art's connection to ritual in capitalism deprives it of its sacred character, and in so doing opens the potential for new possibilities for its appropriation and use by the proletariat. One could point as well to his piece on the storyteller, where he praises Leskov for interpreting the Resurrection "less as a transfiguration than as a disenchantment" (Walter Benjamin, "The Storyteller," trans. Harry Zohn, editor Hannah Arendt, in *Illuminations* [New York: Schocken Books, 1969], 103), or to his description of his own project in terms of making "arable" the fields of the irrational with the "sharp axe of reason," of purifying the "entire ground [...] from the jungle of delusion and myth" (cited by Richard Wolin, *Walter Benjamin: an Aesthetic of Redemption* [Berkeley: University of California Press, 1994], xxiv). Benjamin's entire philosophy, despite its speculative nature, its richly imagistic style, and its deep engagement with theology and mysticism, is marked by an extreme and paradoxical sobriety. Even in his theory of divine violence, Benjamin remains a materialist.

⁶⁴ Giorgio Agamben, *The Coming Community*, trans. Michael Hardt (Minneapolis: University of Minnesota Press, 2005), 102. One also thinks of this text's opening image: the inhabitants of limbo who, lacking any vision of God, persist "without pain in divine abandon." These unbaptised beings are "[n]either blessed like the elected, nor hopeless like the damned"; instead, "they are infused with a joy with no outlet" (Agamben, *Coming Community*, 6).

⁶⁵ I Corinth 7:31.

⁶⁶ This formulation could potentially help us come to a better understanding of one of the problematic aspects of Agamben's work. A key tension in Agamben's texts, one could say, consists in the uneasy alliance it establishes between a Heideggerian and Benjaminian concept of the messianic. If it is true, as Antonio Negri has suggested, that there are "two Agambens" (Antonio Negri, "The Ripe Fruit of Redemption," *Generation Online*, accessed March 2008, <http://www.generation-online.org/t/negriagamben.htm>) – one Agamben condemned to fascination with death and one with a genuine radical impulse – then this understanding of a key Hölderlinian insight could potentially help us separate them.