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Critique, Coercion, and Sacred Life in Benjamin’s “Critique of Violence”

Judith Butler

I would like to take up the question of violence, more specifically, the question of what a critique of violence might be. What meaning does the term critique take on when it becomes a critique of violence? A critique of violence is an inquiry into the conditions for violence, but it is also an interrogation of how violence is circumscribed in advance by the questions we pose of it. What is violence, then, such that we can pose this question of it, and do we not need to know how to handle this question before we ask, as we must, what are the legitimate and illegitimate forms of violence? I understand Walter Benjamin’s essay “Critique of Violence,” written in 1921, to provide a critique of legal violence, the kind of violence that the state wields through instating and maintaining the binding status that law exercises on its subjects. When Benjamin offers a critique, he is offering at least two different kinds of accounts: in the first instance, he is asking: How does legal violence become possible? What is law such that it requires violence or, at least, a coercive effect in order to becoming binding on subjects? But also, what is violence such that it can assume this legal form? In asking the latter question, Benjamin opens up a second trajectory for his thought: Is there another form of violence that is noncoercive, indeed, a violence that can be invoked and waged against the coercive force of law? He goes further and asks: Is there a kind of violence that is not only waged against coercion, but is itself noncoercive and, in that sense if not some others, fundamentally nonviolent? He refers to such a noncoercive violence as “bloodless,” and this would seem to imply that it is not waged against human bodies and human lives. As we will see, it is not finally clear whether he can make good on this promise. If he could make good on it, he would espouse a violence that is destructive of coercion, shedding no blood in the process. This would constitute the paradoxical
posibility of a nonviolent violence, and in what follows I hope to consider that possibility in Benjamin’s essay.

Benjamin’s essay is notoriously difficult. We are given many distinctions to handle, and it seems as if we handle them only for a few moments, then let them go. There are two sets of distinctions that one must work with if one is to try to understand what he is doing. The first is the distinction between law-instating (rechtsetzend) and law-preserving (rechtserhaltend) violence. Law-preserving violence is exercised by the courts and, indeed, by the police and represents repeated and institutionalized efforts to make sure law continues to be binding on the population it governs; it represents the daily ways in which law is made again and again to be binding on subjects. Law-instating violence is different. Law is posited as something that is done when a polity comes into being, and law is made, but it can also be a prerogative exercised by the military in innovating coercive actions to handle an unruly population. Interestingly, the military can be an example of law-instating and law-preserving power, depending upon context; we will return to this when we ask whether there is yet another violence, a third possibility for violence that exceeds and opposes both law-instating and law-preserving violence. If we focus, though, on law-instating violence, Benjamin seems clear that the act of positing law, of making law, is the work of fate. The acts by which law is instituted are not themselves justified by another law or through recourse to a rational justification that precedes the codification of law, nor is law formed in some organic way, through the slow development of cultural mores and norms into positive law. On the contrary, the making of law creates the conditions for justificatory procedures and deliberations to take place. It does this, as it were, by fiat, and this is part of what is meant by the violence of this founding act. In effect, the violence of law-instating violence is summarized in the claim that “This will be law” or, more emphatically, “This is now the law.” This last conception of legal violence—the law-instating kind—is understood to be an operation of fate, a term that has a specific meaning for him. Fate belongs to the Hellenic realm of myth, and law-preserving violence is in many ways the byproduct of this law-instating violence, because the law that is preserved is precisely the law that has already been instated. The fact that law can only be preserved by reiterating its binding character suggests that the law is “preserved” only by being asserted again and again as binding. In the end, it would seem, the model of law-instating violence, understood as fate, a declaration by fiat, is the mechanism by which law-preserving violence operates, as well. The fact that the military is the example of an institution that both makes and preserves law suggests that it provides a model for understanding the internal link between these two forms of violence. For a law to be preserved is for its binding status to be reasserted. That reassertion binds the law again, and so repeats the founding act in a regulated way. We can see here, as well, that if the law were not to make itself anew, not to be preserved, it could very well be that the site where a given set of laws would cease to work, cease to be preserved, cease to be made binding once again, would be the military, since it seems to be the institution that is exemplary by at once
preserving and enforcing law, and thus the site where law might be arrested, cease to work, even become subject to destruction.

If we are to understand the violence at work in both law-instating and law-preserving violence, we must consider another violence, one that is to be understood neither through the notion of fate nor, indeed, as Hellenic or “mythic violence.” Mythic violence establishes law without any justification for doing so, and only once that law is established can we begin to talk about justification at all. Crucially, law is founded without justification, without reference to justification, even though it makes reference to justification possible as a consequence of that founding. First the subject is bound by law, and then a legal framework emerges to justify the binding character of law. In consequence, subjects are produced who are accountable to the law and before the law, who become defined by their relation to legal accountability. Over and against this realm of law, in both its founding and preserving instances, Benjamin posits a “divine violence,” one that takes aim at the very framework that establishes legal accountability. Divine violence is unleashed against the coercive force of that legal framework, against the accountability that binds a subject to a specific legal system and stops that very subject from developing a critical, if not a revolutionary point of view on that legal system. When a legal system must be undone, or when its coerciveness leads to a revolt by those who suffer under its coercion, it is important that those bonds of accountability be broken. Indeed, doing the right thing according to established law is precisely what must be suspended in order to dissolve a body of established law that is unjust.

This was surely the argument of Georges Sorel in his Reflections on Violence, which profoundly influenced Benjamin’s discussion of the general strike, the one that leads to the dissolution of an entire state apparatus. According to Sorel, the general strike does not seek to implement this or that particular reform within a given social order, but seeks to undo the entire legal basis of a given state. Benjamin brings the Sorelian position together with a messianic thinking that gives his view a theological and political meaning at once. Divine violence not only releases one from forms of coerced accountability, a forced or violent form of obligation, but this release is at once an expiation of guilt and an opposition to coercive violence. One might respond to all of this with a certain fear that only anarchism or mob rule might follow, but there are a few propositions to keep in mind. Benjamin nowhere argues that all legal systems should be opposed, and it is unclear on the basis of this text whether he opposes certain rules of law and not others. Moreover, if he traffics here with anarchism, we should at least pause over what anarchism might mean in this context and keep in mind that Benjamin takes seriously the commandment “Thou shalt not kill”—to whose meaning I will shortly return. Paradoxically, Benjamin envisions the release from legal accountability and guilt as a way of apprehending the suffering and the transience in life, of life, as something that cannot always be explained through the framework of moral or legal accountability. This apprehension of suffering and transience can lead, in his view, to a kind of happiness. Only through re-
course to Benjamin’s notion of the messianic can one see how the apprehension of a suffering that belongs to the domain of life that remains unexplained through recourse to moral accountability leads to, or constitutes, a kind of happiness. In my conclusion, I’ll try to make clear what I take this conception to be when I consider his “Theologico-Political Fragment.”

Benjamin was working with several sources when he wrote “Critique of Violence”; they included Sorel’s *Reflections on Violence*, Hermann Cohen’s *Ethic of the Pure Will*, and Gershom Sholem’s kabbalistic inquiries. In a sense, he was working along two trajectories at once: a theological one and a political one, elaborating, on the one hand, the conditions for a general strike that would result in the paralysis and dissolution of an entire legal system, and, on the other, the notion of a divine god whose commandment offers a kind of injunction that is irreducible to coercive law. The two strands of Benjamin’s essay are not always easy to read together. There are those who would say that the theology is in the service of the theory of the strike, whereas others would say that the general strike is but an example of—or an analogy to—divine destructiveness.

What seems important here, though, is that divine violence is communicated by a commandment that is neither despotic nor coercive. Indeed, like Franz Rosenzweig before him, Benjamin figures the commandment as a kind of law that is neither binding nor enforceable in a way that requires legal violence. When we speak about legal violence, we are referring to the kind of violence that maintains the legitimacy and enforceability of law, the system of punishment that lays in wait if laws are broken, the police and military force that back up a system of law, and the forms of legal and moral accountability that make sure individuals remain forcibly obligated to act according to the law, indeed, to gain their civic definition by virtue of their relation to the law.

Interestingly enough, it is through a reconsideration of the biblical commandment, specifically, the commandment “Thou shalt not kill,” that Benjamin articulates his critique of state violence, a violence that is in many ways exemplified by the military in its double capacity to enforce and to make law. Although we are accustomed to thinking of the divine commandment as operating in an imperative way, mandating action on our part and ready with a set of punitive reactions if we fail to obey, Benjamin makes use of a different Jewish tradition of understanding the commandment, which strictly separates the imperative that the law articulates from the matter of its enforceability. The commandment delivers an imperative precisely without the capacity to enforce in any way the imperative it communicates. The commandment is not the vocalization of a furious and vengeful God, and in this view Jewish law more generally is decidedly not punitive; moreover, the commandment associated with the Jewish God is here opposed to guilt, even seeks an expiation of guilt, which, according to Benjamin, is a specific inheritance from the mythic or Hellenic traditions. Indeed, Benjamin’s essay offers in fragmented and potential form the possibility of countering a misconception of Jewish law that associates it with revenge, punitiveness, and the induction of guilt. Over and against the idea of a
coercive and guilt-inducing law, Benjamin invokes the commandment as mandating only that an individual struggle with the ethical edict communicated by the imperative. This is an imperative that does not dictate, but leaves open the modes of its applicability, the possibilities of its interpretation, including the conditions under which it may be refused.

We have in Benjamin a critique of state violence inspired in part by Jewish theological resources, one that would oppose the kind of violence that strikes at what he calls “the soul of the living [die Seele des Lebendigen].” It is important to tread carefully here, since it would be a mistake to say this essay constitutes a “Jewish critique,” even though a strand of Jewish theology runs through it, and certainly it makes no sense to call this a “Jewish critique” because Benjamin was a Jew. If the critique can justifiably be called “Jewish,” that is only as a result of some of the critical resources Benjamin brings to bear. And it is important to remember that Sorel, who was not Jewish and who brings no clearly Jewish resources to bear in his critique (unless we consider Bergson in this light), has surely influenced this essay as much as Scholem or Cohen. Although Benjamin clearly equivocates about the possibility and meaning of nonviolence, I will suggest that the commandment, as thought by Benjamin, is not only the basis for a critique of legal violence but also the condition for a theory of responsibility that has at its core an ongoing struggle with nonviolence.

Here I will insert an aside, to make clear what I think are some of the political implications of this reading, since I see two that I would want to embrace. If part of the vulgar representation of Judaism is that it subscribes to a concept of God or to a conception of law based on revenge, punishment, and the inculcation of guilt, we see an illuminating remnant of a different Judaism in the Kabbalistic strains that inform Benjamin’s thought. Thus, if part of the reduction of Judaism that we confront in popular representations of its meaning consists in identifying Judaism with a wrathful and punitive God, and Christianity with a principle of love or caritas, we would have to reconsider these distinctions. We also see, I think, the traces of a counter-rabbinic movement in the early twentieth century that informed the work of Rosenzweig and ultimately Martin Buber, one that was associated with the notion of spiritual renewal and that worried about both assimilationism, on the one hand, and rabbinic scholasticism, on the other. This movement was also critical of efforts to establish a legal and political territoriality for Judaism, and some of these arguments have important resonance for rethinking Zionism today. Rosenzweig, for instance, both opposed legal coercion and invoked the commandment as way of figuring a noncoercive law. He remarks that, whatever the specific stipulations of a commandment, each and every commandment communicates the demand to “love God.” Indeed, in The Star of Redemption Rosenzweig writes that God’s commandments can be reduced to the statement “Love me!” In the 1910s and 1920s, both Rosenzweig and later Buber opposed the idea of a “state” for the Jewish people and thought that the critical and even spiritual power of Judaism would be ruined or, in Buber’s words, “perverted” by the establishment of a state with legal coercion and sovereignty as its basis.
Rosenzweig died too early to revise his stand, but Buber came to embrace a version of Zionism that would include a federated state jointly and equally administered by “two peoples.” Benjamin, so far as I know, took no such view of the founding of a state in the name of Zionism, and he deflects the question time and again when pressed by his friend Scholem in their correspondence. What seems to matter here, for those who seek to make use of his text as a cultural resource for thinking about this time, is at least twofold: it opposes what sometimes amounts to an antisemitic reduction of Jewishness to so much blood-letting at the same time as it establishes a critical relation to state violence, one that might well be part of an effort to mobilize critical Jewish perspectives against the current policies, if not the constitutional basis of citizenship, of the state of Israel. As you may know, it is sometimes said that to criticize the state of Israel is to criticize Judaism itself, but that view forgets that Judaism offers an important set of perspectives that were critical of Zionism before its triumph in 1948 and that now continue in some forms on the left, both within Israel/Palestine and throughout the diaspora.

Of course, Benjamin’s essay has its present-day detractors, many of whom would doubtless argue that it fails to anticipate the assault of fascism on the rule of law and parliamentary institutions. Between the writing of Benjamin’s essay in 1921 and its contemporary readers, several historical catastrophes have ensued, including the extermination of more than ten million people in Nazi extermination camps. One could argue that fascism ought to have been opposed precisely by a rule of law that was considered binding on its subjects. But it follows equally that if the law that binds its subjects is itself part of a fascist legal apparatus, then it would appear that such an apparatus is precisely the kind of law whose binding force should be opposed and resisted until the apparatus fails. Benjamin’s critique of law, however, remains nonspecific, so that a general opposition to the binding, even coercive character of law seems less savory once we consider the rise of fascism, as well as the flouting of both constitutional and international law that characterizes U.S. foreign policy in its practices of war, torture, and illegal detention. But it was surely in light of the rise of European fascism that some critics have taken distance from Benjamin’s essay.

Benjamin’s essay received a trenchant reading by Jacques Derrida in his “Force of Law” and became a controversial foil for Hannah Arendt in her “On Violence.” At the time that Derrida wrote his essay on Benjamin, he worried openly about what he called “the messianic-marxism” that runs through “Critique of Violence” and sought to distance himself from the theme of destruction and to value an ideal of justice that is finally approximated by no specific or positive law. Of course, later Derrida would revisit messianism, messianicity, and Marxism in Specters of Marx and in various essays on religion. In the essay on Benjamin, Derrida made clear that he thought Benjamin went too far in criticizing parliamentary democracy, and that Benjamin’s critique of legal violence could lead to an antiparliamentary political sentiment that was associated too closely with fascism. At one point, Derrida claims that Benjamin rides “an antiparliamentary wave” that
was the very wave that carried fascism. Derrida also worries that Benjamin wrote to Carl Schmitt in the same year that he published “Critique of Violence,” but we don’t learn what, if anything, in that letter gives cause for concern. Apparently the letter is about two lines long, indicating that Benjamin is thankful for Schmitt for sending on his book. That formal expression of thanks hardly forms a basis for inferring that Benjamin condones Schmitt’s book in part or in whole.

Arendt, in “On Violence,” also worries that views such as Benjamin’s do not understand the importance of law in binding a community together and maintains that he failed to understand that the founding of a state can and should be an uncoerced beginning, and in that sense nonviolent in its origins. She seeks to base democratic law on a conception of power that makes it distinct from violence and coercion. In this sense, Arendt seeks to solve the problem by stabilizing certain definitions, engaging in what might be termed a stipulative strategy. In her political lexicon, violence is defined as coercion, and power is defined as nonviolent, specifically, as the exercise of collective freedom. Indeed, she holds that if law were based in violence, it would therefore be illegitimate, and she disputes the contention that law can be said to be instated or preserved by violence.

Indeed, whereas Arendt understands revolutions to instate law and to express the concerted consent of the people, Benjamin maintains that something called “fate” originates law. And whereas Derrida, in his reading of the essay, locates the messianic in the performative operation by which law itself comes into being (and so with law-establishing power, with fate, and with the sphere of the mythic), it is clear that for Benjamin the messianic is associated with the destruction of the legal framework, a distinct alternative to mythic power. In what remains, I would like to examine this distinction between fate and divine violence, and to consider the implications of Benjamin’s messianic for the problem of critique.

Let us remember that Benjamin is making at least two sets of overlapping distinctions, one between law-founding and law-preserving violence, and then another between mythic and divine violence. It is within the context of mythic violence that we receive an account of law-founding and law-preserving violence, so let us look there first to understand what is at stake. Violence brings a system of law into being, and this law-founding violence is precisely one that operates without justification. Fate produces law, but it does so first through manifesting the anger of the gods. This anger takes form as law, but one that does not serve any particular end. It constitutes a pure means; its end, as it were, is the manifesting itself.

To show this, Benjamin invokes the myth of Niobe. Her great mistake was to claim that she, a mortal, was more fecund and greater than Leto, the goddess of fertility. She offended Leto immensely and also sought, through her speech act, to destroy the distinc-
tion between gods and humans. When Artemis and Apollo arrive on the scene to punish Niobe for her outrageous claim by taking away her children, these gods can be understood, in Benjamin’s sense, to be establishing a law. But this lawmaking activity is not to be understood first and foremost as punishment or retribution for a crime committed against an existing law. Niobe’s arrogance does not, in Benjamin’s words, offend against the law; if it did, we would have to assume that the law was already in place prior to the offense. Rather, through her hubristic speech act she challenges or tempts fate. Artemis and Apollo thus act in the name of fate, or become the means by which fate is instituted. Fate wins this battle and, as a result, the triumph of fate is the establishment of law itself.

In other words, the story of Niobe illustrates law-instating violence because the gods respond to an injury by establishing a law. The injury is not experienced first as an infraction against the law; rather, it becomes the precipitating condition for the establishment of law. Law is thus a specific consequence of an anger that responds to an injury, but neither that injury nor that anger are circumscribed in advance by law.

The anger works performatively to mark and transform Niobe, establishing her as the guilty subject, who takes on the form of petrified rock. Law thus petrifies the subject, arresting life in the moment of guilt. And though Niobe herself lives, she is paralyzed within that living; she becomes permanently guilty, and guilt turns into rock the subject who bears it. She becomes permanently petrified, and the retribution that the gods take upon her is apparently infinite, as is her atonement. In a way, she represents the economy of infinite retribution and atonement that Benjamin elsewhere claims belongs to the sphere of myth. She is partially rigidified, hardened in and by guilt, yet full of sorrow, weeping endlessly from that petrified well-spring. The punishment produces the subject bound by law—accountable, punishable, and punished. She would be fully deadened by guilt if it were not for that sorrow, those tears, and so it is with some significance that it is those tears to which Benjamin returns when he considers what is released through the expiation of guilt. Her guilt is at first externally imposed. It is important to remember that it is only through a magical causality that she becomes responsible for her children’s deaths. They are, after all, not murdered by her hand, and yet she assumes responsibility for this murder as a consequence of the blow dealt by the gods. It would appear, then, that the transformation of Niobe into a legal subject involves recasting a violence dealt by fate as a violence that follows from her own action, and for which she, as a subject, assumes direct responsibility. To be a subject within these terms is to take responsibility for a violence that precedes the subject and whose operation is occluded by the subject who comes to derive the violence she suffers from her own acts. The formation of the subject who occludes the operation of violence by establishing herself as the sole cause of what she suffers is thus a further operation of that violence.

Interestingly enough, fate characterizes the establishment of law, but it does not account for how law, or legal coercion in particular, can be undone and destroyed. Rather, fate establishes the coercive conditions of law by manifesting the subject of guilt; its effect
is to bind the person to the law, establishing the subject as the singular cause of what she suffers and steeping the subject in a guilt-ridden form of accountability. Fate also accounts for the perennial sorrow that emerges from such a subject, but fate cannot be the name that describes the effort to abolish those conditions of coercion. To understand the latter, one must move from fate to God, or from myth, the sphere to which fate belongs, to the divine, the sphere to which a certain nonviolent destruction belongs. We have yet to understand in what precisely this nonviolent destruction consists, but it seems to be the kind of destruction that Benjamin imagines would be directed against the legal framework itself and, in this sense, would be distinct from the violence required and waged by the legal framework.

Quite abruptly toward the end of his essay, Benjamin resolves that the destruction of all legal violence becomes obligatory (249). But we do not understand whether this is a violence that is exercised by particular legal systems, or a violence that corresponds to law more generally. His discussion remains at a level of generality that leads the reader to assume that it is law in general that poses a problem for him. When he writes that the destruction of all legal violence is obligatory, it would appear that he writes at a moment and in a certain context that remains undelineated within the essay.

Earlier, he has distinguished between the political general strike, which is lawmaking, and the general strike, which destroys state power and with it the coercive force that guarantees the binding character of all law—legal violence itself. He writes that the second kind of strike is destructive, but nonviolent (246). Here he is already proposing a nonviolent form of destructiveness. He turns in the final pages to a discussion of God to exemplify and understand this nonviolent form of destructiveness. Indeed, it may be said that God has something to do with the general strike, since both are considered to be destructive and nonviolent at once. God will also have to do with what Benjamin calls an anarchism and not with lawmaking. Thus if we think that God is the one who gives us the law or, through Moses, relays a dictation of what the law should be, we must consider again that the commandment is not the same as positive law, which maintains its power through coercion: as a form of law, the commandment is precisely noncoercive and unenforceable.

If what is divine in divine violence neither gives nor preserves the law, we will be left in a quandary about how best to understand the commandment and, in particular, its political equivalent. For Rosenzweig, the commandment is emphatically not an instance of legal violence or coercion. We think of the God of Moses as giving the commandment, and yet the commandment is not an instance of law giving for Benjamin. Rather, the commandment establishes a point of view on law that leads to the destruction of law as coercively binding. To understand the commandment as an instance of divine violence may seem strange, especially since the commandment cited by Benjamin is “Thou shalt not kill.” But what if the positive legal system to which one is bound legally demands that one kill? Would the commandment, in striking at the legitimacy of that legal system,
become a kind of violence that opposes violence? For Benjamin, this divine violence has the power to destroy mythical violence. God is the name for what opposes myth.8

It is important to remember not only that divine power destroys mythical power, but that divine power expiates. This suggests that divine power acts upon guilt in an effort to undo its effects. Divine violence acts upon lawmaking and the entire realm of myth, seeking to expiate the marks of misdeeds in the name of a forgiveness that assumes no human expression. Divine power thus does its act, its destructive act, but can only do its act if mythic power has constituted the guilty subject, its punishable offense, and a legal framework for punishment. Interestingly enough, the Jewish God, for Benjamin, does not induce guilt and so is not associated with the terrors of beratement. Indeed, divine power is described as lethal without spilling blood. It strikes at the legal shackles by which the body is petrified and forced into endless sorrow, but it does not strike, in Benjamin’s view, at the soul of the living. Indeed, divine violence acts in the name of soul of the living. And it must also then be the soul of the living that is jeopardized by the law that paralyzes its subject through guilt. This guilt threatens to become a kind of soul-murder. By distinguishing the soul of the living from “life” itself, Benjamin asks us to consider what value life has once the soul has been destroyed.

When we ask what motivates this turn against legal violence, this obligation to destroy legal violence, Benjamin refers to “the guilt of a more natural life” (250). He clarifies in “Goethe’s Elective Affinities” that a “natural kind” of guilt is not ethical and is not the result of any wrong-doing: “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, which manifests itself in man as guilt” (308). He does not elaborate on this notion of a natural life in “Critique of Violence,” though elsewhere in the essay he refers to “mere life [blosse Leben].” He writes, “mythic violence is bloody power [Blutgewalt] over all life for its own sake [um ihrer selbst]; divine violence is pure power over all life for the sake of the living [reine Gewalt uber alles Leben um des Lebendigen]” (250). Positive law thus seeks to constrain “life for its own sake,” Divine power does not safeguard life itself, however, but life only for the sake of “the living.” Who constitutes “the living” in this notion? It cannot be everyone who merely lives, since the soul of the living is different, and what is done “for the sake of the living” may well involve taking away mere life. This seems clear when Benjamin refers, for instance, to the plight of Korah—a biblical scene in which an entire community is annihilated by the wrath of God for not having kept faith with his word—as an example of divine violence.

It is with some consternation, then, that we must ask whether the commandment “Thou shalt not kill” seeks to safeguard natural life or the soul of the living, and how it discriminates between the two. Life itself is not a necessary or sufficient ground to oppose positive law, but the “soul” of the living may be. Such an opposition may be undertaken for the sake of the living, that is, for those who are alive by virtue of that active or living soul. We know from the early part of the essay that “the misunderstanding in natural law
by which a distinction is drawn between violence used for just ends and violence used for unjust ends must be emphatically rejected.” The kind of violence that he calls “divine” is not justified through a set of ends but constitutes a “pure means.” The commandment “Thou shalt not kill” cannot be a law on the order of the laws that are destroyed. It must itself be a kind of violence that opposes violence, in the same way that the mere life controlled by positive law differs from the soul of the living, which remains the focus of divine injunction. In a rather peculiar twist, Benjamin appears to be reading the commandment not to kill as a commandment not to murder the soul of the living, and therefore as a commandment to do violence against the positive law that is responsible for such murder. An example of the positive law’s seizure of mere life is capital punishment. In opposing legal violence, Benjamin would now seem to oppose capital punishment as the legally mandated violence that most fully articulates and exemplifies the violence of positive law. Over and against a law that could and would sentence a subject to death, the commandment figures a kind of law that works precisely to safeguard some sense of life against such punishments—but which sense? Clearly this is not a simply biological life, but the deathlike state induced by guilt, the rocklike condition of Niobe with her endless tears. Yet it is in the name of life that expiation would be visited upon Niobe, which raises the question of whether the expiation of guilt is somehow a motivation or an end for the revolt against legal violence. Are the bonds of accountability to a legal system that reserves the prerogative of capital punishment for itself broken by a revolt against legal coercion itself? Does something about the claim of “the living” motivate the general strike, which expiates the guilt that maintains the hold of legal coercion upon the subject? The desire to release life from a guilt secured through legal contract with the state—this would be a desire that gives rise to a violence against violence, one that seeks to release life from a death contract with the law, a death of the living soul by the hardening force of guilt. This is the divine violence that moves, like a storm, over humanity to obliterate all traces of guilt, a divine expiative force and thus not retribution.

Divine violence does not strike at the body or the organic life of the individual, but at the subject who is formed by law. It purifies the guilty, not of guilt, but of its immersion in law and thus it dissolves the bonds of accountability that follow from the rule of law itself. Benjamin makes this link explicit when he refers to divine power as “pure power over all life for the sake of the living.” Divine power constitutes an expiating moment that strikes without bloodshed. The separation of legal status from the living being (which would be an expiation or release of that living being from the shackles of positive law) is precisely the effect of the blow, the strike, and its bloodless effect.

But is this violence truly bloodless, if it can involve the annihilation of people, as in the Korah story, or if it relies on a questionable distinction between a natural life and the soul of the living? Is there a tacit Platonism at work in the notion of the “soul of the living”? I would like to argue that there is no ideal meaning attached to this notion of the
"soul," since it belongs precisely to those who are living, and I hope to make clear how this works in my concluding discussion.

Benjamin begins to articulate this distinction when he concedes that violence can be inflicted "relatively against goods, right, life, and suchlike," but it never absolutely annihilates the soul of the living (die Seele des Lebendigen; 297–98). Although divine violence is violence, it is never annihilating in an absolute sense, only relatively. How do we understand this use of the term "relatively [relativ]? And how, precisely, does it follow that Benjamin proceeds to claim that it cannot be said that his thesis confers on humans the power to exercise lethal power against one another? "The question 'May I kill?' meets its irreducible [Unverrückbare: unmovedable, fixed—literally, not able to make crazy or to make veer from the path] answer in the commandment "Thou shalt not kill"" (250). That the commandment is irreducible and unmovedable does not mean that it cannot be interpreted and even contravened. Those who heed the commandment "wrestle [sich auseinanderzusetzen] with [it] in solitude and, in exceptional [ungeheuren] cases, . . . take on themselves the responsibility of ignoring it" (250).

Over and against the mythic scene in which the angry deed establishes a punitive law, the commandment exercises a force that is not the same as a marking by guilt. The divine word, if it is a performative, is a perlocutionary speech act, which depends fundamentally on being taken up to take hold. It works only by being appropriated, and that is surely not guaranteed. Benjamin describes the commandment’s nondespotistic powers: "the injunction becomes inapplicable, incommensurable, once the deed is accomplished," which suggests that any fear that the commandment provokes does not immediately bind the subject to the law through obedience. In the example of mythic law, punishment instills guilt and fear, and Niobe exemplifies the punishment that lays in wait for anyone who might compare him or herself to the gods.

Benjamin’s commandment entails no such punishments and lacks the power to enforce the actions it requires. The commandment, for Benjamin, has no police force. It is unmovedable, it is uttered, and it becomes the occasion for a struggle with the commandment itself. It neither inspires fear nor exercises a power to enforce a judgment after the fact. Hence, he writes, "no judgment of the deed can be derived from the commandment" (250). Indeed, the commandment cannot dictate action, compel obedience, or level judgment against the one who complies or fails to comply with its imperative. Rather than constituting a criterion of judgment for a set of actions, the commandment functions as a guideline [Richtschnur des Handelns]. And what is mandated by the commandment is a struggle with the commandment, whose final form cannot be determined in advance. In Benjamin’s surprising interpretation, one wrestles with the commandment in solitude.

As a form of ethical address, the commandment is that with which each individual must wrestle without the model of any other. One ethical response to the commandment is to refuse (abzusehen) it, but even then one must take responsibility for refusing it. Responsibility is something that one takes in relation to the commandment, but it is not
dictated by the commandment. Indeed, it is clearly distinguished from duty and, indeed, obedience. If there is a wrestling, then there is some semblance of freedom. One is not free to ignore the commandment. One must, as it were, wrestle with oneself in relation to it. But the wrestling with oneself may well yield a result, a decision, an act that refuses or revises the commandment, and, in this sense, the decision is the effect of an interpretation at once constrained and free.

One might expect Benjamin to safeguard the value of life over violence and to coin a notion of nonviolent violence to name this safeguarding action, this strike against the shackles of the law, this expiation of guilt and resuscitation of life. But he makes clear that those who prize existence over happiness and justice subscribe to a position that is both “false” and “ignominious [niedrig].” He objects to the understanding of “existence” as “mere life” and suggests that there is “a mighty truth” in the proposition that existence is to be prized over happiness and justice if we consider existence and life to designate the “irreducible, total condition that is ‘man’ . . . man cannot, at any price be said to coincide with the mere life in him” (251). As is clear in Benjamin’s agreement with the Jewish view that killing in self-defense is not prohibited by the commandment, the commandment against killing is based not on the sacredness (heiligkeit) of life itself (a notion that correlates with guilt) but on something else. He does not refuse the notion of the sacred in trying to establish the grounds and aims of the commandment against killing, but he wants clearly to distinguish what is sacred in life from mere or natural life.

The temptation to read Benjamin as subscribing to an otherworldly doctrine of the soul or the sacred emerges temporarily when he refers to “that life in man that is identically present in earthly life, death, and afterlife” (251). Even then, he only refers to the sacred through a conjecture and a parenthetical appeal: “however sacred man is [so heilig der Mensch ist], . . . there is no sacredness in his condition,” which includes bodily life and its injurability. What is sacred is some restricted sense of life that is identical in this life and the afterlife—but what sense are we to make of this? Benjamin introduces the problem of the sacred and of justice only in the context of a conjecture, suggesting that it belongs to an indefinite future, if to any time at all. How are we to adjudicate Benjamin’s claims? Is this appeal to another life, to a sense of life that is beyond the body, the maneuver of the “spiritual terrorist [der geistige Terrorist]” who supplies the “ends” that justify violence? That would seem to be at odds with Benjamin’s earlier claim that divine violence does not act according to specified ends, but rather as a pure means. By the latter phrase, he seems to suggest that divine violence consummates a process but does not “cause” it, that we cannot extricate the “ends” it achieves from the “means” by which it is achieved, and that instrumental calculations of that sort are overcome.

Let us first understand the restricted sense of life that emerges within Benjamin’s conjecture. If there is something sacred or divine in this restricted sense of life, then it would seem to be precisely that which opposes guilt and the law-enforcing violence of positive law. It would consist in that which resists or counters this form of legal violence,
and we have seen that this kind of hostile counter-violence is itself the expression of what remains unbound, unguilty, or expiated. In this essay, however, we see that divine violence is allied with the general strike and what is revolutionary, and this in turn is allied with what contests and devastates the legal framework of the state. I would suggest that this sacred or divine sense of life is also allied with the anarchistic, with that which is beyond or outside of principle. We saw this anarchistic moment already when the solitary person is conjured as wrestling, without model or reason, with the commandment. It is an anarchistic wrestling, one that happens without recourse to principle, one that takes place between the commandment and the one who must act in relation to it. No reason links the two. There is in this solitary coming to terms with the commandment a nongeneralizable moment that destroys the basis of law, one that is called forth by another law in the name of life and in the hope of a future for the living outside the shackles of coercion, guilt, and accountability that keep the legal status quo unchallenged. The destruction or annihilation of state power belongs neither to lawmaking nor to law-preserving violence. Although an epoch is founded through this abolition or revolutionary destruction of legal violence, no law is made from this place, and the destruction is not part of a new elaboration of positive law. Destruction has some odd permanence to it, and this makes sense if we consider that the anarchistic moment in any effort to come to terms with the commandment is one that destroys the basis of positive law. It also makes sense when we consider the theological sense of the messianic with which Benjamin himself is coming to terms in this essay, which not only informs the restricted sense of life we have been investigating but counters the Platonic reading of his understanding of the soul.

I would suggest that the anarchism or destruction that Benjamin refers to here is to be understood neither as another kind of political state nor as an alternative to positive law. Rather, it constantly recurs as the condition of positive law and as its necessary limit. It does not portend an epoch yet to come, but underlies legal violence of all kinds, constituting the potential for destruction that underwrites every act by which the subject is bound by law. For Benjamin, violence outside of positive law is figured as at once revolutionary and divine—it is, in his terms, pure, immediate, unalloyed. It borrows from the language in which Benjamin describes the general strike, the strike that brings an entire legal system to its knees. There is something speculative here when Benjamin claims that expiatory violence is not visible to men and that it is linked to eternal forms: the life in man that is identically present in earthly life, death, and afterlife. Reading “Critique of Violence” together with the “Theologico-Political Fragment,” written at about the same time, we can discern claims worth careful consideration: first, that nothing historical can relate itself to the messianic; second, that this expiatory violence can be manifest in a true war or divine judgment of the multitude against a criminal (252).

At this point, there still seems to be cause for worry. Is Benjamin offering justification for a true war outside of all legality, or for the multitude to rise up and attack a criminal
designated as such only by themselves? His final reference to a sacred execution would seem, as well, to conjure similar images of lawless masses rising up to do all sorts of physical violence in the name of some sacred power. Is this Benjamin riding "an antiparliamentary wave," one that brings him perilously close to fascism? Or does so-called sacred execution attack only the totalizing claims of positive law? He has already claimed that divine or sacred violence is not to be justified by a set of ends, though he seems to claim that a specific relation between the actor and the divine is stake in divine violence.10

So how do we interpret what he claims here? Benjamin does not call for violence, but rather suggests that destruction is already at work as the presupposition of positive law and, indeed, of life itself. The sacred does not designate what is eternal, unless we understand destruction itself as a kind of eternity. Moreover, the notion of the sacred invoked by Benjamin implies that destruction can have no end and that it is redeemed neither by lawmaking nor by a teleological history. In this sense, destruction is at once the anarchistic moment in which the appropriation of the commandment takes place and the strike against the positive legal system that shackles its subjects in lifeless guilt. It is also messianic in a rather precise sense.

In conclusion, then, let us consider the precise meaning of destruction in the messianic conception with which Benjamin is working. Consider first the claim from the "Fragment" that "in happiness all that is earthly seeks its downfall [im Glück erstrebt alles Irdische seinen Untergang]" (312–13). This downfall does not happen once, but continues to happen, is part of life itself, and may well constitute precisely what is sacred in life, that which is meant by "the soul of the living." For the Benjamin of the "Theologico-Political Fragment," the inner man, linked to ethical solicitude, is the site of messianic intensity. This makes sense if we keep in mind the solitary wrestling with the commandment that constitutes Benjamin’s view of responsibility, one that remains radically distinct from, and opposed to, coerced obedience. The messianic intensity of the inner man is conditioned or brought about by suffering, understood as misfortune or fate. To suffer from fate is precisely not to be the cause of one’s own suffering, is to suffer outside the context of guilt, as a consequence of accident or powers beyond one’s control. When fate succeeds, however, in creating positive law, a significant transmutation of this meaning of fate ensues. The law wrought by fate succeeds in making the subject believe that he or she is responsible for her own suffering in life: in other words her suffering is the causal consequence of her actions. Fate inflicts a suffering that is then, through law, attributed to the subject as his or her own responsibility.

Of course, this is not to say that there is, or should be, no responsibility. On the contrary. But Benjamin’s point is to show at least three interrelated points: (1) that responsibility has to be understood as a solitary, if anarchistic, form of wrestling with an ethical demand; (2) that coerced or forced obedience murders the soul and undermines the capacity of a person to come to terms with the ethical demand placed upon her; and (3) that the framework of legal accountability can neither address nor rectify the full
conditions of human suffering. The suffering to which Benjamin refers is one that is coextensive with life, one that cannot be finally resolved within life, and one for which no adequate causal or teleological account can be given. There is no good reason for this suffering, and no good reason will appear in time. The messianic occurs precisely at this juncture, where downfall appears as eternal.

In the “Fragment,” the perpetual downfall of human happiness establishes transience as eternal. This does not mean that there is only or always downfall, but only that the rhythm of transience is recurring and without end. What is called immortality corresponds, in his view, to “a worldly restitution that leads to the eternity of downfall, and the rhythm of this eternally transient worldly existence, transient in its totality, in its spatial but also its temporal totality, the rhythm of Messianic nature, is happiness” (313). Benjamin understands happiness to be derived from this understanding, this apprehension of the rhythm of transience. Indeed, the rhythmic dimension of suffering becomes the basis of the paradoxical form of happiness with which it is twinned. If the rhythm of the messianic is happiness, and the rhythm consists in an apprehension that all is bound to pass away, undergo its downfall, then this rhythm, the rhythm of transience itself, is eternal, and this rhythm is precisely what connects the inner life of the person, the person who suffers, with what is eternal. This seems to account for the restricted sense of life invoked by the commandment. It is not the opposite of “mere life,” since transience surely characterizes mere life, but it is mere life grasped as the rhythm of transience. This provides a perspective counter to the view that life itself is sinful, that guilt must bind us to the law, and that law must therefore exercise a necessary violence on life.

There is, then, a kind of correlation between inner life and a suffering that is eternal, that is, unrestricted to the life of this or that person. The inner life, understood now as suffering, is also the nongeneralizable condition of wrestling with the commandment not to kill; even if the commandment is contravened, it must be suffered. This solitary wrestling and suffering is also the meaning of anarchism that motivates moves fatal to coercive law. Coercive law seeks to transform all suffering into fault, all misfortune into guilt. By extending accountability beyond its appropriate domain, however, positive law vanquishes life and its necessary transience, both its suffering and its happiness. It turns its subjects into wailing stones. If the positive law establishes a subject accountable for what she suffers, then the positive law produces a subject steeped in guilt, one who is compelled to take responsibility for misfortunes that are not of her own doing, or one who thinks that, by virtue of her will alone, she could put an end to suffering altogether. Whereas it is surely the case that humans cause harm to one another, not all of what any of us suffer can be traced to the actions of another. The expiation of the guilty subject through divine violence takes place when the self-centered notion of the subject as harmful cause is tempered and opposed by the realization of a suffering that no amount of prosecution can ever abate. This expiation unshackles the subject from the fugitive narcissism of guilt and promises to return the subject to life—not mere life, and not some eternal beyond, but life in this sense of its
sacred transience. For transience to be eternal means that there will never be an end to transience and that perishing inflects the rhythm of all life. Benjamin thus does not defend life against death, but finds in death the rhythm, if not the happiness, of life, a happiness that requires an expiative release for the subject of guilt which would be the undoing of that subject itself, a decomposition of that rocklike existence.

In Benjamin’s early writings on art, he refers to something called “critical violence,” even “sublime violence,” in the realm of the work of art. What is living in the work of art moves against seduction and beauty. Only as a petrified remnant of life can art bespeak a certain truth. The obliteration of beauty requires the obliteration of semblance, which constitutes the beautiful, and the obliteration of guilt requires the obliteration of marks—so in the end both signs and marks must be arrested for the work of art to evoke its truth. This truth is to take the form of language, of the word in the absolute sense (a view that proves problematic for understanding the visual field as distinct from the linguistic one). This word, in Benjamin’s sense, gives organizational unity to what appears, although it does not itself appear; it constitutes an ideality embedded in the sphere of appearance as organizing structure.

In “Critique of Violence,” the word is the commandment, the commandment not to kill, but this commandment can be received only if it is understood as a kind of ideality that organizes the sphere of appearance. What is sacred in transience is not found outside that transience, but neither is it reducible to mere life. If the condition of “mere life” must be overcome by sacred transience, then it follows that mere life does not justify the commandment that proscribes killing. On the contrary, the commandment is addressed to that which is sacred and transient in human life, what Benjamin calls the rhythm of the messianic, which constitutes the basis of a noncoercive apprehension of human action. And though Benjamin claims that it cannot be the singularity of the body that stands in the way of killing, he does seem to suggest that the notion of an extra-moral transience allows for an apprehension of human suffering that exposes the limits of a notion of morality based on guilt, the metalepsis of moral causality that produces paralysis, self-beratement, and endless sorrow. And yet Benjamin seems to preserve something of endless sorrow from this account. After all, Niobe not only regrets what she has done but mourns what she has lost. Transience exceeds moral causality. As a result, Niobe’s tears may provide a figure that allows us to understand the transition from mythic to divine violence.

Niobe boasted that she was more fecund than Leto, and so Leto sent Apollo to kill her seven sons. Niobe continued to boast, and Leto sent Artemis to kill her seven daughters, though some say that one daughter, Chloris, survived. Niobe’s husband takes his life, and Artemis then turns Niobe into rock, but a rock from which tears stream eternally. One could say that Niobe caused her punishment, and that she is guilty of arrogant boasting. But the fact remains that it was Leto who thought up that punishment and ordered the murders of Niobe’s children. It was, as well, Leto’s children, Apollo and Artemis, who implemented her legal authority, thus constituting its legitimacy retroac-
tively. Only with that punishment does law emerge, producing the guilty and punishable subject who effectively conceals and effects law-instating power. If divine violence is not involved in the making of law but mobilizes the messianic in its powers of expiation, then divine power would release the punished subject from guilt.

What would Niobe’s expiation look like? Can we imagine? Would justice in this case require a conjecture, the opening up of the possibility of conjecture? We can imagine only that the rock would dissolve into water, and that her guilt would give way to endless tears. It would no longer be a question of what she did to deserve such a punishment, but of what system of punishment imposes such a violence upon her. We can imagine her rising up again to question the brutality of the law, and we can imagine her shedding the guilt of her arrogance in an angry refusal of the violent authority wielded against her and an endless grief for the loss of those lives. If that sorrow is endless, perhaps it is also perennial, even eternal, at which point it is her loss and also part of the “downfall” that links her loss to the rhythms of destruction that constitute what in life is sacred and what of life makes for happiness.

There remain many reasons to be suspicious of Benjamin’s arguments in this early essay, since he does not tell us whether it is obligatory to oppose all legal violence, whether he would support certain forms of obligation that coercively restrain those in power from doing violence, and whether subjects should be obligated to the state in any way. Clearly he is not offering a plan for the future, but only another perspective on time. The essay ends on a note of destruction, but not transformation, and no future is elaborated. This does not mean, however, that there can be no future. Earlier he has noted that, for Sorel, the proletarian general strike engages a kind of violence that is, “as a pure means, . . . nonviolent.” In explaining this, he writes, “for it takes place not in readiness to resume work following external concessions and this or that modification to working conditions, but in the determination to resume only a wholly transformed work, no longer enforced by the state, an upheaval [ein Umsturz] that this kind of strike not so much causes as consummates [nicht so wohl veranlasst als vielmehr vollzieht)” (246).

This consummating upheaval links the general strike with divine violence. The latter also breaks with modes of coercive enforcement and opens onto a sense of time that refuses teleological structure and prediction. Specifically, the messianic thwarts the teleological unfolding of time. (The messiah is that which will never appear in time.) The messianic brings about expiation, displacing guilt, retribution, and coercion with a broader conception of suffering in relation to an eternal or recurrent transience. In this sense, Benjamin’s critique of legal violence compels us to suspend what we understand about life, loss, suffering, and happiness, to ask about the relationship between suffering, “downfall,” and happiness, to see what access transience affords to what has sacred value, in order to oppose a deadening of life and a perpetuation of loss by means of state violence. Sacred transience could very well function as a principle that shows us what it is about mere life that is worth protecting against state violence. It might also suggest why
the commandment “Thou shalt not kill” functions not as a theological basis for revolutionary action but as a nonteleological ground for the apprehension of life’s value. When the suffering one undergoes becomes understood as a recurrent, even eternal rhythm of downfall, then it follows that one’s own suffering might be dispersed into a recurrent rhythm of suffering, that one is afflicted no more and no less than any other, and that the first-person point of view might be decentered—dissipating both guilt and revenge. If this recurrent downfall gives life its rhythms of happiness, this would be a happiness that would in no sense be purely personal.

We can perhaps also discern in Benjamin’s discussion the conditions of critique, since one must have already departed from the perspective of positive law to ask about and to oppose the violence by which it gains its legitimation and self-preserving power. The law legitimates the violence done in the name of the law, and violence becomes the way in which law instates and legitimates itself. This circle is broken when the subject throws off the shackles of law or finds them suddenly removed or undone, or when the multitude takes the place of the subject and refuses to implement the demands of law, wrestling with another commandment whose force is decidedly undespotic. The individual who struggles with the commandment is likened to the population that elects a general strike, since both refuse a certain coercion and, in the refusal, exercise a deliberative freedom that alone serves as the basis of human action. Benjamin notes that under the conditions of a rigorous general strike, especially when the military refuses to do its job, “the action diminishes instances of actual violence” (247). Although we call a strike an “action” against the state, it is, as Werner Hamacher notes, an omission, a failure to show, to comply, to endorse, and so to perpetuate the law of the state. If this refusal to act is itself violent, then it is directed against the imperative to act itself, a way of relieving the law of its power and force by refusing to instate it again and again, refusing the repetitions of implementation by which the law preserves and instates itself as law across time. The law can and will “go under,” the law will have its “downfall,” and that will link this action with the destruction of what has existed historically in the name of a new and different time—an “upheaval,” as Benjamin remarks. To offer a critique is to interrupt and contravene law-preserving power, to withdraw one’s compliance from the law, to occupy a provisional criminality that fails to preserve the law and thus undertakes its destruction. That Benjamin’s essay ends so abruptly might be understood as a kind of sudden ending, the very operation of critique on the model of a destruction and upheaval that contravenes teleological time.

Imagine, if you can, that Apollo and Artemis tell their mother to get a grip and refuse to obey her command, or that the military, refusing to break up a strike, effectively goes on strike itself, lays down its weapons, opens the borders, refuses to man or close the checkpoints, all its members relieved of the guilt that keeps obedience and state violence in place, prompted rather to withhold their action by the memory and anticipation of too much sorrow and grief, and this—in the name of the living.