Violence without Law?

On Pure Violence as a Destituent Power

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I. A Juridical System of Powers

The positing of a relation between transcendence (Law, justification, ground, origin, nature, essence) and immanence (casus, situation, position, culture, existence), has been often placed as the point where theological, philosophical and legal ‘fundamental’ questioning of positing and of power find their fragile point of intersection. It is archetypically instructive, in this regard, that in the decisive clash during the 13\textsuperscript{th} century between the ‘pagan’ philosophy of Aristotle and the evangelic Faith of the Christian monastic orders (and in particular the Franciscans) a doctrine of two powers comes to characterise God’s power.\textsuperscript{1} God’s power is formed on a relation between potentia absoluta and potentia ordinata. Potentia absoluta is God’s creative power as a perfectly absolute and indifferent (excepted) power to the created world and the needs and being of creatures (God could replace his creation with another). His absolute power transcends the created world. Potentia ordinata is God’s ordered power as immanent to creation, adapting itself to the prevailing conditions and situations of the created. These powers and their relation form the dogma of a functional ontology between a conditioning and a conditioned power, a state of exception and one of normalcy, or, in the terms of constitutionalism, between constitutive and constituted power.

God’s absolute power, perhaps, has been a key model for the transcendent causes (beyond human experience). Transcendent causes typically locate the origin, or first cause, of a certain situation as external to
the situation. Such an external cause assumes the arch-position or dignity of an absolute master or sovereign ruler. This kind of transcendence enables the absoluteness of the ruler’s power, while at the same time necessitating a problem. Transcendence necessarily leads to the distinction from, and vicarious support of, a second power. At the very point of a limitless and indifferent power the question arises of the positing of limits. Power is related somehow with its created situation or world. The second (ordered) power appears as necessarily immanent to the created world. In other words, immanent causes are located within the effects to which they give rise. The power of the absolute master must be distinguished from the particularity of his action or position, but at the same time he has ordered his indifferent power in a particular direction that must be reckoned with in relation to absolute power. Otherwise God’s rule could be subject to the embarrassing indifference of the created towards its creator. The enactment of absolute mastery is coupled with the threat of the demolition of the absoluteness of mastery, its transcendent causality.

In late modernity when God ‘dies’, the world must continue to be commanded and ruled and the relation between the two powers must survive its crisis. The indifference of absolute power towards its creation must confront the indifference of the created towards its master. In order for the imperative power that supposedly commands this world to survive the consequences of its creation or commands-in-action, it must be continuously confronted with its duality, its scission: between law and fact, cause and action, state of exception and norm. Nihilistic immanence is turned into itself, into a zero degree of self-reference, yet appearing as still
commanded by a transcendent phantasmagoria. In the time of a still prevalent nihilism it is the Nothing that assumes the place of an absolute power, however more than ever the threatening neutralisation of its own zero degree power could at any moment be exposed itself as a Nothing that cannot command, a pure void: the nothing as primary cause could be exposed as a no-thingness. For the campaigners of transcendental causes the void must continue to be filled.

Consider Carl Schmitt who, with some proximity to Descartes or Kant, will discover a compromising relation between law and its exception, through the sovereign’s capturing of its outside in advance. The power of the sovereign must remain unlimited, for he must be able to command the resetting (transcending) of his limits. Alternatively consider Spinoza, who proposed a singularly uncompromising absolute immanence. God’s absolute mastery becomes perfectly immanent in the world (nature) and ceases to be a mastery of the world. In Spinoza, however, while God is stripped of his sovereign rule, whereby his power is immanent in the world and not immanent to another cause, the effect may be said to be comparable to its opposition. The difference between Schmitt and Spinoza could be said to be that while Schmitt collapses transcendence into the sovereign’s zero degree of power so to continue to render it operative, Spinoza contracts immanence to God’s own zero degree of power to render it inoperative. Yet the result remains at least comparable, despite the differences, in that in either way God can remain enabled and powerful (intentionally so in Schmitt, and ironically so in Spinoza).²
The situation of modern law may be particularly instructive of the problem at hand. The modern state has not only the right but also the duty to go against the will of its subjects in the name of its immanent order. This purported immanence of the law to itself (as we are to be governed by law rather than absolute masters), recreates a transcendent relation to itself ‘as’ a semi-external cause (a Law of law). This is the type of immanence that Deleuze and Guattari criticized as pseudo-immanence.\(^3\) If human actions in relation to legal actions were once separable (as events that could, on occasion, give rise to procedural situations – *actiones* – to which the law could relate and decide upon), today legal positions are said to relate, in contrast, to every event in society. Juridification (*Verrechtlichung*), a probably modern condition, universalizes the categorizations of law to the whole world. The earlier form of a posited law would once ask the question of whether an act falls within the jurisdiction of the law (one jurisdiction among others). In addition, the law, today, cannot but also answer self-referentially the question of whether the application of the distinction between right and wrong in respect to all human actions, is juridically right itself. In order for the law to juridify the world it must become immanent to it in the most absolute manner possible. To do so, however, it has to posit itself as immanent to a transcendent Law (of law). For the juridical system’s maintenance of the distinction between life (world) and law, the law must turn, bereft of another absolute master, to its self-mastery. A paradox that the mythologeme of law must find a way to ever render smooth.

By raising its *quaestio juris* the law cuts through the world with its binary code of (legally) right and wrong, in order to place itself in a self-
commanding world that it, however, rules. Yet in the age of nihilism and functional differentiation of ‘society’, the law cannot assess itself in order to decide whether it itself is true or untrue, just or unjust, without being confronted with the abyss of its creative as well as disruptive, now, self-reference. The law will set its limits at the same time as it purports to delimit itself and be pseudo-immanent to the world. The law must create another juridical world (a fictio) in order to maintain its indifference with the so-called real world, and at the same time it must collapse the world to its fictio. It must capture above all the relation between the two worlds and collapse it in an ever spectacular relation, whereby fact and right, exception and norm, can be only located in a zone of indistinction. The juridical description of the world is a life-falsification, an impoverishment, yet while this remains an Achilles heel for the law, the law must presuppose a masterless plane of normativity in the name of its self-imposed necessity of mastering.

Legal order in its required orthodoxy must appear as a state of peace. Its own form of immanence to the world must hide the fact that its second fictional world has no guarantee of being ‘the best of all possible worlds’. Hence the law cannot avoid placing itself in a position of guilt towards the world as such, at the same time as it places all events and all human actions as subject to the law’s suspicion. It must capture the void that threatens its power and claim it as its own void, its own juridical state of exception, an infinitely displaceable and replenished void. To do so, an absolute (‘secular’) sovereign will need to pre-empt the world and presuppose the outside of its rule, as if it is existent in the (juridified) world.
No fact or act shall remain unturned (non-juridified). Every action shall remain potentially guilty through the fate-giving law that can co-exist with its outside (exception). For instance, Gunther Teubner’s ‘self-deconstructing’ law, the relation of the law to the world shall forever acknowledge its undecidability, its fragility and self-suspicion, in order to continue to command the world in the name of the law’s own outside (justice or self-transcendence). Teubner’s law is a kind of self-activist law (not dissimilar, in one sense, to Schmitt’s sovereign law). Apologist and critic meet at the structuring and re-structuring of a relation to a juridical impoverishment of the world.

If modern law ‘has to’ situate a point of self-emergence or power, it is in this manner not dissimilar to philosophy. Philosophy takes as its starting point the non-denial of such self-situating, yet participates in the problem of its own (turned juridical since, at least, Kant) power. If in philosophy the positing is always a positing of a limit-thesis, which must however at the same time acknowledge its limits, then every positing contains within itself a destructive violence (a fragility or self-suspicion) that threatens it with another positing. The positing must hold excess within a limit and at the same time expose itself without limit to an excess. If, in turn, the law can maintain its efficiency against its own transcendence or destruction, then it can only do so by maintaining at least a minimal zero-degree relation between two worlds (the world of real effects, actions, situations or events and the world of its office [ufficium]), its being-at-work ‘in the name’ of Law. Life as a juridical institution (where life and law are
collapsed into a zone of indistinction) becomes the enabling device through which the law can exceed itself and maintain its _ufficium_ intact.

In opposed philosophical terms such necessity out of a contingency emerges today as yet another form of vertigo before a void. A meta-physics (what lies beside a situation) that can be expressed (shown), but not proven, as the peculiar ‘taking place’ of situational life. Lacking an essential primary cause, its cause cannot be an absent condition (still a predisposed hidden condition to which only the privileged can have access), or a mere non-conditionality (still a condition), but the exposition of any condition as a contingent necessity and a necessary contingency: the situation of a para-transcendent life of immanence. It is asserted, for instance by Agamben, that human beings have no essential substance, destiny or vocation, but only contingency as the only peculiar self-effacing immanent necessity of their power (_potentia_) to act. Inessential, yet necessary, contingency has no cause outside itself. Human power in its ability to be and not be confronts constantly its own unconditionality. Human acts must be made, acted (when they are made or acted) without a necessary claim to operativity, by posing the affirmation of their inoperativity as a plane of immanence and their only consistency.7

For Agamben no meta-act determines an act, other than the affirmantive synchronous pure potentiality of each contingent power of action, expression and existence. Contingency as a pure potentiality, in the exposure of every form signs no contracts and yet consists, perhaps, for itself the zero degree of another unbreachable _nomos_ (a _nomos_ that does not command a – distributive – justice, but remains an apportionment without
shares). The law in its originary form is a non-ordered array of letters. Limits, distinctions, will be drawn, but they will be met by the synchronous contingency and potentiality of their exposure as limits drawn and positions held in their potentia. The crucial strategy of Agamben to exit what could be awkwardly termed the structure of transimmanence, is that coming to being (genesis) is not an operation in the name of some sanctified cause, thing or essence. Being can be admitted to no tribunal for it has committed no wrong (or right, for that matter, which could then be opposed to another right). In this sense, coming to being is, paradoxically, a truly transcendental experience (an existential nomos) only when it is understood as properly immanent in its power (pure potentiality). Our continuous genesis in a scission, a continuous syntagm of syncopes (privations, passions), means that no absolute order or community pre-exists our common immanent plane of potentiality.

Not a theodicy but a kosmodicy, not a Law but a properly human law, a form-of-life, a way of life (ethos). If human beings are born out of a continuous passage or scission between what is variably called nature (physis) and culture (logos), (f)acts exist, within their counter(f)actual dynamism. The relation to a transcendent is turned into the transcendence immanent in human life, an existential power. To the separation of a life that can be hollowed out (mere or bare life) in order to be juridified, Agamben opposes a life that cannot be separated from its form and vice versa (a form-of-life). To the fictional state of exception, Agamben (via Benjamin) opposes a real state of exception that ceases to claim to produce the real from the outside of dynamic existence.
II. The Systematization of Juridical Violence

It is useful to appreciate Benjamin’s *Critique of Violence* as a confrontation with a problem. The problem is that of how to show a plane of possibility for what Benjamin calls divine, or pure violence: the possibility of a violence that is absolutely outside or beyond the law. A peculiarly phrased problem in that it claims for the proving of a ‘right’ to non-juridical violence, a non-justification displacing all justifications. Benjamin wishes to break the dialectic of ‘law-founding and law-preserving violence’ or the state’s systematization of violence, by decomposing the foundational (Kantian) juridical structure of a juris-dictio (a saying of right that is at the same time a right to say; a potentia ordinata that is at the same time related to a potentia absoluta). Benjamin, in this sense, rejects the so-called juridical monopoly of law/right, as much as the juridical monopoly of violence. In Benjamin’s case, a saying of right, a situation of violent action, does not claim to find its cause outside of itself (in some Right of rights). The right of revolutionary violence or pure violence, in this sense, points not to the juridical framing of rights/Right, but to the ethical category of a situated right.

Benjamin writes that pure (divine) non-juridical violence cannot be recognized as such in particular cases as to whether it has been realized or not (*SW* 1: 252). Benjamin could be said to stage his own type of absolute immanence at this point, by investing in the divine such indifference to the world that any claim to be working ‘in the name’ of the divine would
become redundant. Does this not increase, in fact, the power of the divine to an exponential degree? Agamben has compared Benjamin’s statement to Schmitt’s: ‘it is impossible to ascertain with complete clarity when a situation of necessity exists…’. If, indeed, as Agamben shows, the necessity of sovereign violence, for Schmitt, is founded on this very impossibility (or undecidability), then pure or divine violence appears to be founded, in turn, on a somehow identical structure of negativity.

If sovereignty is recognized as based on a structure of a presupposed and reproduced state of exception, then pure violence is structured like an exception too, only its exception is a once-and-for-all without a claim to reproducibility. Benjamin counter-poses a real state of exception to a fictional or pseudo-exception. The fictio juris of Schmitt’s attempts to enclose outside in advance the case of the opposite of the rule of law, whereas Benjamin wishes to show that what lies outside the law is pure violence without recourse to the law. Benjamin is not interested in maintaining the continuum of the dialectic of violence within a juridical systematization of human action. For Benjamin, as well as Agamben, an over-juridification of life has taken place, which must be responded to by a de-juridification of the ethical plane of existence. Breaking this continuum of juridification would be, to the existing systematization of the duration of violence, a once-and-for-all rupture. Is such violence available to us?

Will the new situation that ruptures the continuum of violence and depositions the old law, not always impose or require a new law? The proposition in question could perhaps be reconstructed to suggest that to the pseudo-dialectic of violence and law, Agamben and Benjamin counter-pose
a human law (a law that does not claim to find its cause and justification outside of its immanent existence). Truly human law would be an ethics, a way of life. What may then be the plane of immanence of the conception of violence outside and beyond the schema of the ‘Law of law’? A hollow space, a void? This would remain a peculiar claim to immanence unless perhaps this void was understood as absolutely immanent in itself. By affirming this indifferent (to human power) void, human life would turn all negative relation to a plane of immanence, into a positive ontology without a relation outside itself. In this sense human life lacking any principle, archē (not even the empty but still powerful archē of an empty command to command) would affirm its ungovernability. As ungovernable human power is conceived as truly anarchic (epekeina, beyond being, in an absolute sense: without a possible relation to an identity). This is not, however, a naïve life of ‘anything goes’ (that would still be a relation to a principle, a panomie, a plenitude).

There would be no differential relation of powers between life and institutions (forms). Only the self-negation (affirmation) of a life de-void of essential determination that is not structured by the necessity of having to be its own law-giver, auto-nomos, or receive its law from outside, a heteronomos. This would be a life that does not accuse itself, nor can it be accused from outside of its ethos. Law, as much as life, after the destruction of the systematization of juridical violence and its pseudo-dialectics, is, however, anything but simple. Pure violence is not another claim to the purity of Being or the absoluteness of Law. It is pure only in the sense of being immanent in itself, modest, that is, existential, and responsible for its
powers and actions. It does not act in the name of a principle that exceeds its case, position and contingency. It can only be transcendent in its immanence.

It is worth revisiting the systematization of juridical violence that Benjamin counter-poses in the ‘Critique of Violence’. Gewalt, contains in German an ambiguity that forms its problem. As a word that refers to both potestas (power) and violentia, it is a term that entails a dual sense: both the negation of the law and its realization. Any transcendent ends to the law are neutralised in the state’s systematization of Gewalt, while the authority of such neutralization remains intact and is over-valorised as the surplus value of the law’s violence. The origin of what Benjamin terms as mythical violence or law is a situated ‘violence crowned by fate’ (SW 1: 242). Crowned as in justified, grounded. Legal dogmatism or mythology asserts a fated law through the impure mixture of ideality and nature. To the dogmatic pseudo-dialectic between positive law and natural law must be counter-posed a pure violence that undoes this bond.

Natural law asserts that the rightful foundations of law are exclusively accessible to (natural) reason, while the scepticism of positive law asserts that the rightful foundations of law are exclusively accessible to the State’s norms. The presupposition of both is a relation to a general rule or command. The illusion that unites the two, for Benjamin, becomes clear through their employment of the means-ends dialectic: ‘just ends can be attained by justified means, justified means used for just ends’ (SW 1: 237). Whether through an established norm of the State or a universal natural principle, coercive force leads to justice and leaves the law’s claim to act in
the name of a higher cause intact. Principles are turned either way to permissory justifications for the means or ends that claim to glorify a power in its general (absolute) form. Each time, the relation to such an absolute power or ground, is the covering or transposition of the arbitrariness of violence/force. Violence, either way, will be situated (as to its justification) outside the act of violence itself. Violence is structured as a means to an end and it is stamped by a relation to transcendence (to an end outside of itself). Otherwise the duration of violence would be breakable and its positing in a particular time, space and situation would be exposed. In this sense, for Benjamin, law-positing violence and law-preserving violence are bound up with the maintenance (Ver-waltung, GS 2.1: 203/SW 1: 252) or continuum of violence.

The logic (justificatory and foundational) of Gewalt does not come, for Benjamin, to exhibit itself historically; it does not manifest in historical terms but under the cloak of mythic outer sanctification (SW 1: 251). What is at stake for such juridical violence is the coincidence of anomie with panomie (legal plenitude), so that the law can maintain its hold on history by appearing to coincide with all possible reality. The reality of an individual’s pursuit of ‘natural ends’ through violent means is denied through the systematic rationalisation of Gewalt as the exclusive means of the juridical power inherent in the state. The reduction of Gewalt to juridical means, means that the use of violence can only be justified as this kind of means: either as state violence that preserves law [rechtserhaltende Gewalt] and protects it from violation, or as a violence (revolutionary or reformist) that leads to the creation of a new law [rechtsetzende Gewalt]. As
Rosenzweig notes: ‘The meaning of every violence is that it founds new law. It is not the negation of law, as is believed by those attracted to its subversion act, but on the contrary is its foundation’. Even when the law is confronted with its decay (it is programmed to do so by suppressing its own self-founding violence), the law can re-assert itself in an evolutionary continuum of its mythic status. In this sense, too, the extra-statist violent exercise of power by the individual can momentarily appear subversive, but then actually constitutes the confirmation of the juridical framing of a continuum of violence. Such counter-violence claims the throne of power, while leaving the dogma of the enthronement intact.

For Benjamin, the truly revolutionary escalation must necessarily pass through the practice of another kind of Gewalt that can break the dual nature of the state’s violence. This wholly other Gewalt is founded on the assumption that not every kind of violence will found a new law within the continuum between the ‘constitutional state’ and the ‘repressive state’. It is a rupture primarily with the atemporal and essential continuum of this dual power, that Benjamin’s other type of violence must achieve. In this regard Furio Jesi writes:

That which primarily distinguishes revolt from revolution is a different sense of time. … One can say that revolt suspends historic time and unexpectedly replaces it with a time in which everything is valued for itself, independently of its consequences and of the complex of transitoriness and perenniality of which history consists. The revolution instead falls completely and deliberately in historic time.
For Benjamin, in the ‘Critique of Violence’, the genuine proletarian strike forms such a rupture [die Frage nach andern Arten der Gewalt, GS 2.1: 196/SW 1:247] under certain conditions. The destruction of state power and violence is not an end but the lived praxis of the proletariat. To end the violent continuum of the law becomes then not a conquest of power or a reforming progression, but a break of the Zweck-Mittel-Relation. It is a whole transformation (gänzlich veränderte) of the ethical relations (sittliche Verhältnisse), of the way of life as such so that in such action, as Benjamin wrote much earlier, ‘justice is the ethical side of the struggle [Gerechtigkeit ist die ethische Seite des Kampfes]’.12

Yet the strategies of radical reformation of the law and that of militarised revolt against the law find their mutual limitation, if seen through the guise in which the function of the police in democratic states is not merely the enforcement of the law, but the essential operation of the violence continuum (cf. SW 1: 242-43). In the function of the police the indistinction of law and Gewalt is exposed as the greatest possible degeneration of Gewalt. The police who are to guarantee the conforming to the law show that such conformity is not direct, but must be enacted, policed. In the exposition of the absoluteness of the law, in the continuum between its enactment and enforcement, the purported indistinction with represented reality in the fusion of the dual power of the State/police is exposed.

The greatest effort of juridical Gewalt was perhaps directed at rendering its representation infinite (and therefore, ironically for its ordered model, orgiastic). It is a question of extending representation as far as the
too large and too small of individual situated difference. Adding in this sense a hitherto unsuspected dimension to representation – in other words, inventing juridical techniques (state of exception; natural law; Grundnorm), which allow it to integrate the depth of difference in itself that is, allow representation to conquer the obscure and threatening outside. Allowing the juridical continuum, henceforth, to include the difference, which is too small and to dismember the difference which is too large (revolution). This effort has always permeated the world of the juridical representation (fictio) of the world.\textsuperscript{13}

III. Pure or Divine Violence

There is justice, but not for us. It is crucial to appreciate that for Benjamin justice is not a political or juridical category but an existential or ethical one. Benjamin’s aim, as expressed in ‘On the Program of the Coming Philosophy’ (1918), is to transform ‘the entire context of ethics’ (\textit{SW} 1: 105) and in doing so transform all social, legal and political vocations. It is this understanding that forms his reference to a pure violence or divine violence. Mythical violence is essentially tragic in the sense that the tragic hero is a guilty-innocent hero, who in his quest for justice and truth cannot but expose his guilt at the same time with his innocence, arriving at a point of undecidability between the two. Mythical tragedy, however, is a partial understanding of the tragic in that it is presented as immanent (a natural form of justice) in its transcendence (rupture). It is not a genuine bipolarity, but a pseudo-bipolarity, akin to the juridical pseudo-dialectic between law-
founding and law-preserving violence. This partial understanding of tragedy, and of the pseudo-dialectic of juridical or mythical violence, shares in the institution of a permanent state of exception as the primary cause of fate.

For Benjamin, the essence of pure violence is not to decide a conflict between two supposedly equal positions (or rights), but rather to interrupt this continuum [Ausnahmezustand] as it is named in ‘On the Concept of History’. The Kantian ‘divine command’ serves as a counter-example. The task to obey the law is ultimately derived from a divine command authorising bloodshed in the name of justice.\(^{14}\) In contrast, for Benjamin all authority is of God’s creation, but this serves to demystify state power, rather than sanctify it. For Kant: ‘A people should not inquire with any practical aim in view into the origin of the supreme authority [obersten Gewalt] to which it is subject’.\(^{15}\) For Benjamin, the heterogeneity of the divine means that one cannot ground one’s right or power in it. Human authority is essentially groundless and all that remains is: a non-essential life, a way of living itself. Hence: ‘Mythic Gewalt is bloody Gewalt over mere life for its own sake; divine Gewalt is pure Gewalt over all life for the sake of the living’ (SW 1: 250). Given the non-availability of divine authority as a ground for human power, to the separation of a sphere of life (mere or bare life), on the basis of which we may treat each other as means in the name of a direct or vicarious absolute authority, is rendered impossible. Hence, Benjamin’s end is not the perfection of human power but the liquidation of juridical Gewalt.
If (divine) justice is not accessible to us, then what remains is the understanding of (human) justice as, in Benjamin’s earlier formulation, the ethical side of the struggle [Gerechtigkeit ist die ethische Seite des Kampfes].\(^{16}\) Agamben’s early analysis of the ungroundedness of human action in *Language and Death: The Place of Negativity* is helpful in understanding what could be understood as ethical in this regard. A functional relation of every *conditum* to an *absconditum* presupposes that, given the ungroundedness of human being, violence is the originary (and therefore rendered naturalised, sacred) fact (a ‘having-been’) of politics and law. In turn this necessitates the assumption of power by a sanctified sovereign through a sacrificial institution (systematization) of violence. Agamben explains that, instead:

Violence is not something like an originary biological fact that man is forced to assume and regulate in his own praxis through sacrificial institution; rather it is the very ungroundedness of human action (which the sacrificial mythologeme hopes to cure) that constitutes the violent character (that is contra naturam, according to the Latin meaning of the word) of sacrifice. All human action, inasmuch as it is not naturally grounded but must construct its own foundation, is, according to the sacrificial mythologeme, violent. And it is this sacred violence that sacrifice presupposes in order to repeat it and regulate it within its own structure (LD 105-6).

With Schmitt, in the so-called secular political-theologization of sovereign (absolute) power, the ungroundedness of human action necessitates the sacrificial mythologeme of sovereignty, of a supreme ruler anew aiming to fill such ungroundedness by procuring a sanctified foundation or ground (that may remain in force, without significance). God and nature as
foundations of human power may be ‘dead’, but the structure of presupposition that authorizes a sacred act of foundation remains intact. Things however are more complicated. Agamben writes:

The unnaturalness of human violence – without common measure with respect to natural violence – is a historical product of man, and as such it is implicit in the very conception of the relation between nature and culture, between living being and logos, where man grounds his own humanity. The foundation of violence is the violence of the foundation (LD 106).

Action, violent action, must, in the sacrificial mythologeme’s construction of foundational power, remain always a causative action (otherwise there would be no guarantee of a direct relation to both the ground and the things that form its subjects as such). A causative action aims to reconcile freedom and necessity in the guise of a sacrificial mythologeme, so that action will be each time the midwife of history. Only violence that serves the end of history’s necessary laws (natural, historical, evolutionary, political) will be ‘just violence’. The justification of violence is each time posited outside of the act itself under the cloak of a sacred violence. Agamben, in his early text ‘On the Limits of Violence’, writes:

It simply places violence within a broader theory of means that justify a superior end; the end is the sole criterion to determine the justice of the means. Benjamin correctly noted that, while such a framework can justify the application of violence, it fails to justify the principle of violence itself. Ultimately, any theory that defines the legitimacy of revolutionary means through the justice of their end is as contradictory as legalistic theories that guarantee a just end by legitimizing repressive means.17
You must believe in some kind of cosmic, natural or divine providence (a founding force of law) for this kind of violence to be proclaimed preemptively just. Consequently: ‘A theory of revolutionary violence is meaningless within historical theodicy, which paradoxically renders the revolutionary into a kind of Pangloss, convinced that everything is happening for the best, in this best of all possible worlds’.\(^\text{18}\) It is in this sense that divine or pure violence for Benjamin must not seek to identify a pre-emptive justification of violence, but rather propose an understanding of a violence that requires no justification from anywhere else than within itself.

**IV. A Destituent Power**

Agamben could be said to have developed Benjamin’s theory of divine violence further in his conception of a destinuent power. It is a destinuent power, not a constituent power, which Benjamin perhaps has in mind when he opposes a power that destroys the law (only to recreate it in a new form) and a pure violence that deposes all positing of law (in order to open a new historical era; SW1: 251-52). Benjamin was aware of the key problem for any conception of such a destinuent power in that bourgeois power is in its essence an-archical, and all its efforts lie in sanctifying such anarchy (groundlessness) under the cloak of yet another mythologeme of justification between means and ends. This is the problem that Agamben expresses:
It is precisely because power constitutes itself through the inclusion and the capture of anarchy and anomy, that it is so difficult to have an immediate access to these dimensions, it is so hard to think today something as a true anarchy or a true anomy. … A really new political dimension becomes possible only when we grasp and depose the anarchy and the anomy of power. But this is not only a theoretical task: it means first of all the rediscovery of a form-of-life, the access to a new figure of that political life whose memory the Security State tries at any price to cancel.  

To the sacrificial system of juridical violence and power, Agamben, in his early piece ‘On the Limits of Violence’ (1970) opposed an understanding of sacrifice in primitive rituals, which aimed through sacrifice to resurrect primordial chaos: ‘making humans contemporaries of the gods and granting them access to the original dimension of creation’.  

Agamben, at that moment in time, writes:

Whenever the life of the community was threatened, whenever the cosmos seemed empty and vacant, primitive peoples would turn to this regeneration of time; only then could a new era (a new revolution of time) begin. … It is almost as though these peoples, no longer bound to a way of life determined by purely cyclical and biological temporality, felt more keenly the need to periodically regenerate time, ritually reaffirming the violence at the origin of their history.

Such a violence, which through the spilling of one’s own blood offered the regaining of the authority to participate in the creation of a new historical world by rupturing the continuity of time, is in this early text, seen, by
Agamben, as an affirmation of life. This may indeed be paradoxical, given the problem of the sacrificial mythologeme that Benjamin and Agamben criticize. This understanding of the destituent sacrificial ritual must be understood in a manner that differentiates it from the mythologeme that aims to perform sacrifice in order to merely resume itself. The difference lies between the type of sacrificial action that aims to teleologically reestablish itself anew and the one that, as pure violence, aims at a new historical era.

The pseudo-sacrificial paradigm will depose the old law in order to re-affirm its own self (and its authority or power). Repressive violence (what enforces law) and delinquent violence (which defies law) are negations of the other without becoming negations of the self. The genuine paradigm of sacrifice or violence is one that does not depose the old law without paradoxically deposing also itself. In the 1970’s text Agamben had already sketched such an understanding:

Revolutionary violence is not a violence of means, aimed at the just end of negating the existing system. Rather, it is a violence that negates the self as it negates the other; it awakens a consciousness of the death of the self, even as it visits death on the other. Only the revolutionary class can know that enacting violence against the other inevitably kills the self; only the revolutionary class can have the right (or perhaps, the terrible imperative) to violence. Like sacred violence before it, revolutionary violence can be described as passion, in its etymological sense: self-negation and self-sacrifice. …

Revolutionary violence is an extreme act of self-negation: a willing that paradoxically abdicates its own willing. In this manner the genuine
revolutionary, for Agamben, casts himself into the absolute which breaks apart the bond between words and deeds, will and action, cause and effect, and in this manner violence becomes self-negation in which violence belongs neither to its agent nor its victim. This is evidently the power and the limit of revolutionary violence. Is it not that the sacrifice of the homines sacri forms the paradigmatic practice of this kind of pseudo-sacrifice, which aims not at negating the (sovereign) self but reaffirming its power? At the same time is it not that such self-negation can appear identical to the kind of self-negation of responsibility that characterizes the anomie of bourgeois power, that negates its anomie in order to found its nomos through establishing a sacrificial pseudo-dialectic? A kind of self-negation can be seen in the negation of responsibility that marks the late modern oikonomia or government in neo-liberal capitalism, whereby the procedural and managerial administration of human affairs means that no person as such can be responsible, but a performative process (which as it is not an agent, no person can be usually held accountable). In the secular and functional democratic law of late-modernity, the law determines its own guilt, but by acting ‘in the name of the Law’, the representatives of the Law cannot be usually found to be responsible (since they are mere functionaries).

For Agamben, self-negation becomes genuine when it is elation and dispossession of the self, akin to a divine delirium. Perhaps self-negation could be understood not as non-accountability, but as a fully assumed responsibility without recourse to a justification outside the self. It is this that politics is not capable of. Genuine revolutionary violence does not only
depose power (the old law) but also renders power (including its own) inoperative as such; in order to neutralize it as a paradigm of an operation or initiation. In such neutralization, revolutionary violence inaugurates a new (anarchic) reality. But what is violence that imposes no operative law? To rupture the homogeneous flux of time through the passion of revolutionary violence (self-negation) means to consciously confront the self’s own negation. It means to become able to contemplate salvation only to the extent of losing one’s self in what cannot be saved, one’s own ungroundedness.

Revolutionary violence does not aim to teleologically change the world, but instead, leaving life to its own eternal irreparability, to abandon all active attempts ‘to mend the world’ in the name of a new essence or operativity. It does not aim at a sacrificial religion of violence or a tragic religion, but at the rendering of negation (death) as ordinary and meaningless in affirming the renewal of life for the sake of the living. In such affirmation our own-most (death) becomes affirmed at the same time as our indifferent heterogeneity. If divine justice as the principle of all end-making is not a means to an end but a manifestation of the existence of the gods, human justice is not a means to an end but a manifestation of the irreparable existence of the living.

Pure violence or revolutionary Gewalt is non-derivable: it arises where the sphere of life (the living body) is immediately threatened in a real state of exception. Natural law, ironically, offers a comparable, at least, device. Natural necessity requires no authorisation from posited law nor establishes a new law – quia necessitas non habet legem. What juridical
violence (posited violence, positive law) suppresses above all is the violence that is exercised by such natural necessity, because it was once the case that while positive law could be renounced, such natural necessity was held as irrenounceable and formed a real exception to the posited law. In a modern reversal when posited law attempts to assume the form of an atemporal law, a law without limits that attempts to capture its outside in advance, a revolutionary or pure violence stands opposed as a temporalized situation, without any limits that would be determined from outside the exceptional situation that has arisen.

Such violence is not limitless, but situational: its limits are determined from within its situation and ultimately by its own self-negation, its singularity rather than a claim to universal or uniform identity: ends that are just in one situation, are singular ends. There can be no principle of justice. Benjamin’s and Agamben’s strategies are in this sense proximate to the ever-lasting battle between natural and positive law. They perhaps point to an absolute reversal of the natural in the posited. It is perhaps in this manner that their position is intensified when it is seen as one where the subject of the right to revolutionary violence on the ground of a real necessity is not the person but the situation itself. It is, in one sense, the paradoxical (natural) ‘right’ of the situation to be a situation (a tautology) that self-negates its rightness.

Hence pure or natural violence (in this particular human sense) cannot be possessed. There is no direct natural right to things since human beings are essentially inoperative; what remains direct is the use of things in a universalized state of necessity. The ‘source’ of a self-negating
revolutionary power is located in the fact that pure power or violence cannot be stored up, but only exercised in a singular situation as a contraction or rupture. This is why Benjamin will insist that it is impossible to know whether there is such a thing as pure Gewalt generally: ‘it does not come to light for human beings’ (SW1: 252; translation modified). This is also why Benjamin can say that divine violence can only be destructive in this world. Only in the coming world can it be anything but destructive. In this reading divine or pure justice is heterogeneous to positive law, yet it experiences its own singular nomos: it is not identical with a pre-posited essence of existence. Pure justice as an ethical category is, in this sense, not identical with a having to be, with a categorical imperative. Instead it finds itself in the paradoxical formation of a singular nomos: the not having to be of a having to be. Pure violence as deforming violence turns formation itself to its potency because for it ‘the messianic kingdom is always present’.  

Human life can only turn to its own inoperativity to affirm a plane of immanence after the deposition of the metaphysics of a Law of law. For its powers to remain entirely its own after the neutralization or rendering-inoperative of the law, the act of human beings is conceived as other than a having to be, a norm. Agamben writes:

Since power (archê) constitutes itself through the inclusive exclusion (the ex-ceptio) of anarchy, the only possibility of thinking a true anarchy coincides with the exhibition of the anarchy internal to power. Anarchy is that which becomes possible only in the moment that we grasp and destitute the anarchy of power. The same goes for every attempt to think anomaly ….  


The first step is to release the form of power, law and life that the dispositif of the pseudo-exception (as the fundamental structure of the archē) has captured and deformed. Agamben writes:

Something is ‘excepted’ in the state and, in this way, ‘politicized’: but, for that to happen, it is necessary that it be reduced to the state of ‘nudity’ (bare life, anarchy as war of all against all, anomy as being-in-force [vigenza] without application…). We know of life only bare life …, of anarchy we understand only the war of all against all, of anomy we see only chaos and the state of exception, etc.26

Agamben has emphasized the arduous task of such revolutionary or destituent power in that this can only become sufficient if it becomes the form-of-life adequate to the new historical era. Not a what, but a how: an ontology of modality. Agamben writes:

The decisive problem is no longer ‘what’ I am, but ‘how’ I am what I am. It is necessary, in this sense, to radicalize the Spinozan thesis according to which there is only being (substance) and its modes or modifications. Substance is not something that precedes the modes and exists independently from them. Being is not other than its modes, substance is only its modifications, its own ‘how’ (its own quomodo). Modal ontology makes it possible to go beyond the ontological difference that has dominated the Western conception of being. Between being and modes the relation is neither of identity nor of difference because the mode is at once identical and different – or, rather, it implies the coincidence – that is, the falling together [cadere insieme] – of the two terms. In this sense, the problem of the pantheist risk is badly put: the Spinozist syntagma Deus sive (or) natura does not mean ‘God = nature’: the sive (whether sive derives from the conditional and concessive si or the anaphoric sic) expresses the modalization, that is, the neutralizing and the failure as much of identity as of difference. What is divine is not being in itself, but its
own sive, its own always already modifying and ‘naturing’ – being born – in the modes. Modal ontology means rethinking from the start the problem of the relation between potentiality and act.\textsuperscript{27}

In this way, a form-of-life encounters its immanent inoperativity. Pure \textit{Gewalt} in this sense is a living that immanently coincides completely and constitutively with its destitution, so that living can remain continuously within what it can do. To perceive potentiality as a lack that requires a cure or salvation would mean to remain subjected to a fated law, a law that still condemns human beings to the guilt-nexus of the living, a destinal debt. The juridical command must still command, even in its state of impotence, because it remains the demonic structure according to which potentiality is a fault that must be repressed.

The coincidence of the law’s command with the real is not possible (in the form of mythical violence) unless a functionary acts what it has to be through the oracle or spell of the command that commands nothing but an absolute imperative: \textit{Command!} In \textit{Opus Dei: An Archaeology of Duty}, Agamben locates in sacramental liturgy (the unceasing re-actualisation of the sacrifice by Christ as \textit{leitourgos}, the high priest) the central mystery of Christianity as one of ministry/praxis. In this liturgical ontology the always-pure \textit{opus operatum} (the effective reality of the sacramental act) and the \textit{opus operantis} (or \textit{opus operans}) – the carrying out of the action by the agent (who can be pure or impure), establishes the institutional separation of an individual from his functional act. Agamben writes: ‘As it happens in every institution, it is a matter of distinguishing the individual from the function he exercises, so as to secure the validity of the acts that he carries
out, in the name of the institution’ (OD 21). There is no ethical connection between the subject and his action, instead a functional relation where the subject is subsumed in it. This is the mystery of operativity/praxis – ‘in effectiveness being is inseparable from its effects’ (OD 25).

In modernity, effectiveness coincides with being itself: effectus is ‘the operation that actualizes a potential from the outside and in this sense renders it effective’ (OD 43, emphasis added). Thus this is the ontological model of constitutive vicariousness: there is no originary place of liturgical praxis, it is always-already an ‘alteration’ (function). Being is, here, something that must be realised (Plotinus) a hypostatic process of putting-to-work (energheia) (OD 57-58). In this manner, the official is a being of command, a juridical functionary, rendering (or erasing) his being under the command of a debitum that commands the execution of a duty without remainder (without impotence). The zero degree of the original modality of law dissolves being into a being commanded by an infinite guilt/debt. To which the law can only as a result respond with the necessity of a coercive act. In this manner the systematized continuum of violence, grounded in the zero-degree of a command that commands nothing, attempts to once more flee from its impotence and adopt it as its ultimate necessity. In a time of generalised anxiety as the internalized command of everyday life, the need, as well as the difficulty, of deposing this ontology, for Agamben, goes through the abdication of the commanding of one’s (supposedly revolutionary) functionary self.
Notes

1 See the special issue of Divus Thomas – 115 (2012/2) – on The Theology of ‘Potentia Dei’ and the History of European Normativity.


3 See Gilles Deleuze & Félix Guattari, What is philosophy? (London: Verso, 1994). As to whether they escape the problem that will remain the question of another work.


6 See Agamben’s Opus Dei (2013).

7 See generally the first part of Agamben’s Potentialities.

8 Carl Schmitt, Political Theology: Four Chapters on the Concept of Sovereignty, trans. George Schwab (Chicago, IL: The University of Chicago Press, 2005), 6, translation modified as in SE 55.


12 Walter Benjamin, ‘Notizien zu einer Arbeit über die Kategorie der Gerechtigkeit’, Frankfurter Adorno Blätter VI (1995), 42. These notes can be located in Geschom Scholom’s transcription as an entry in his diary in 1916; they were then published in 1995 in the Frankfurter Adorno Blatter with a commentary by Hermann Schweppenhäuser, but are not included in the Gesammelte Schriften. An English translation of Benjamin’s text is included and extensively discussed in Eric Jacobson, Metaphysics of the Profane: The Political Theology of Walter Benjamin and Gershom Scholem (New York: Columbia University Press, 2003), Part III.

13 This is an adaptation of Deleuze’s description of philosophy’s effort at rendering representation infinite. See Gilles Deleuze, Différence et répétition (Paris: Presses Universitaires de France, 1968), 262.


16 Benjamin, ‘Notizien zu einer Arbeit über die Kategorie der Gerechtigkeit’, 42.


26 Agamben, ‘What is a destituent power?’, 72.

27 Agamben, ‘What is a destituent power?’, 74.

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