Rechtsphilosophie after the War

A Commentary on Paragraphs 4–6 of "Zur Kritik der Gewalt"

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ABSTRACT What resources does philosophy have at its disposal for a critical analysis of the role of violence in a war of all against all? Faced with this question, Walter Benjamin discovers that legal positivism, which believes in the capacity to derive how law ought to be from the sheer concept of a "correct" law, is constitutively blind to the possibility that values may be misaligned with law, and that the basic structures of law and consensus might come after the fact of power. Drawing on the work of contemporaneous legal theorist Leonard Nelson, this article argues that Benjamin developed a potent critique of the dialectic of recognition at work in the legitimation of violence, making way instead for an analysis of what remains unrecognizable to the normative order: power, loitering as a "nonvalue" in the gap between values and legal ends.

KEYWORDS Walter Benjamin, Leonard Nelson, legal positivism, value theory, recognition

I

Walter Benjamin's main concern in paragraphs 4–6 of "Toward the Critique of Violence" is "the question concerning the justification of certain means that constitute violence."[1] This question may also be posed in the following terms: What resources does philosophy have at its disposal for a critical analysis of the role of violence under contemporary legal circumstances (*Rechtsverhältnisse*)? At first glance the question seems to be an innocuous way to establish a connection between "the state of the field" (in this case, jurisprudence, or *Rechtsphilosophie*) and the stuff of the argument later in the essay. But in 1920 Benjamin had just moved back to Berlin, a little more than a year after the Spartacist and Bolshevist uprisings and their bloody suppression by government troops and the Freikorps and mere months before the Kapp Putsch and the government's call for a general strike in response. This was then quickly followed by the Ruhr uprising, the quelling of which resulted

DOI 10.1215/26410478-7708323 |

in the deaths of hundreds of revolutionary workers. In short, it was a time of revolutionary and counterrevolutionary movement, of government and countergovernment, during which the "deployment" of violence was, as Benjamin puts it, "still permissible," not just outside of but "even in the present legal order" (§6). With the justness of ends up for grabs, as it were, it would have seemed equally unproductive to consider just ends as a way to "justify" the means (as natural law does) or justified means to "guarantee" the justness of ends (as positive law does) (§3). The criticizability of "violence as a principle" (§1) requires a temporary suspension of the question of ends and their justness. What criteria do we have, then, for a critique of violence?

It is precisely this question, with which §4 opens, that establishes the ground for a consideration of the essay's relevance today. With the revolutionary events ushered in at the end of World War I, there clearly arose the question of how to define the "norms" whose recognition would reshape the societies of entire nations. Crucial to this question was how to relate reality to how it ought to be, that is, how to derive from observations of actually existing laws and ordinances some prognoses for a community to come, whose ends are served by law as it should be—in sum, the question involved a judgment on law as a value (*Wert*), which is to replace the notion of a legal end (*Zweck*) knowable in itself. Positive law tends to believe in the possibility of synthesizing value and reality, and of deriving the value of law from the sheer concept of a "correct" law. But under the circumstances of a *bellum omnium contra omnes*, the synthesis of value and reality seems at best an irritatingly optimistic delusion, or else achievable only by dictum, in which case jurisprudence has given way to politics. Similarly, under today's *Rechtsverhältnisse*, there appears to be a multitude of partisan views on justice—"values," which are invoked in predominantly Anglo-American contexts whenever the political justification or normative ground of a given policy is called for—that are nevertheless aggregated in such a way that they can be used as the sole and necessary condition for determining the "correct" law, even though they are insufficient for this purpose. A synthesis, it seems, is achievable only through the intervention of will and power—and indeed, in recent years, many countries around the world have seen an overt shift toward appealing to power, be it invested in the state or an authority figure, when it comes to determining the laws that govern the life of the community.[2] Both in the wake of World War I and today, the question of a criterion for justness seems unanswerable and to give way to a situation in which there is no question of whether or not power, or indeed violence, has been applied, only a question of what value has been assigned to its use. There is, in short, no doubt that law has sanctioned the use of violence, and that political surrogates have been put in the place of law. The task of a critique of violence, then, is to discover a standpoint from which the action of assigning value to violence, its legitimation, can itself be evaluated.

For today as for the year 1920, Benjamin's "question concerning the justification of certain means that constitute violence" (§4)—which harks back to the call, in the essay's opening paragraph, for "a differentiation in the sphere of means itself, without regard for the ends they serve" (§1)—thus asks what it means to make a distinction between "sanctioned" and "nonsanctioned" violence. He does not ask what forms fall under either classification (the "application" [*Anwendung*] of the distinction), but rather what it means for there to be any such thing as "legitimate" violence at all (which is an "evaluation" [*Beurteilung*] of the distinction) (§4). This question cannot be approached by natural law, whose principles do not admit of a distinction between legitimate and illegitimate means ("the conditionality of means"), because in its view all means are justified if the ends are just. By contrast, positive law does draw a distinction in principle between kinds of means, viz., violence, and so, unlike natural law, positive law can furnish Benjamin's investigation with its "hypothetical foundation" (§4). As he writes in §5, positive law "demands from every form of violence evidence of its historical origin, which under certain conditions conserves its legality, its sanction." And so the distinction between sanctioned and nonsanctioned violence can find its "hypothetical ground" in "the presence or absence of a general historical recognition of [the] ends" of sanctioned violence (§5). For Benjamin, however, the point of discerning the role played by recognition is not to follow legal positivism in enumerating the "legal forms of violence" that have existed in history, but rather to make obvious "the *meaning* (*Sinn*) of the differentiation of violence into legitimate and illegitimate" (emphasis added) that legal positivism accomplishes. The differentiability of violence into legitimate and illegitimate *means* that the "historical" character of the sanction applied to violence—its *Anerkannt-heit*, its *Sanktioniert-heit*—confers on legal violence its value. That is, recognition supplies the distinction between legitimate and illegitimate violence, and it legitimates violence in recognizing it. Recognized violence is legitimate violence—"the recognition of legal forms of violence [*Rechtsgewalten*] manifests itself most tangibly in the submission, without any resistance in principle, to its ends" (§5). For this reason, "the presence or absence of a general historical recognition of its ends"—that is, recognition in general, as a function that confers value onto violence—will need to be evaluated, not so that forms of legal violence may be identified, but so that recognition as a valuation may be evaluated for *its* value.

To carry out this evaluation, then, a "standpoint beyond [both] the philosophy of legal positivism [and] natural law" (§4) needs to be discovered. Benjamin calls this standpoint "historical-philosophical" (§4), and it makes discernible, though is not reducible to, what he later identifies as the "law of oscillation" that dictates the "dialectical back and forth in the formations of violence." According to this law, the advent of each formation of violence simultaneously heralds a "new decay"

of violence (§19). The philosophy of history implied by this law might seem to be a dialectic of recognition, of the legitimation of violence, on which the positivist tradition affords a perspective, and which indicates where and when legitimated violence consolidates and diminishes in tandem with certain discursive practices. Recounting the history of these discursive practices would reveal how "under certain conditions" a shifting set of recognitions affects whether violence is regarded as natural or legal, whether it slips from the one to the other classification, and whether it grounds the state's claims to be legitimate. Moreover, such a history would underscore the importance of understanding what those "certain conditions" are that "conserve" the legality and maintain sanction of violence in this way (§5). Yet Benjamin does not seem to be primarily concerned with such discursive practices. The type of recognition he attributes to positive law is, like positive law itself, not interested in any actual recognition of violence, only in the classification of its forms. As with any classificatory system, anything that falls under a class will have a name and a function in accordance with its singularity—but there will also be something that falls outside of that class and that is therefore not "recognized" as what it is. The problem with legal positivism, as previously mentioned, is that it believes it can derive the value of law from the sheer concept of a "correct" law, which it simply considers as "just" law. It is incapable of identifying anything except as a class of "recognized," viz., sanctioned violence. For instance, "class struggle" appears for positive law only "in the form of the right to strike guaranteed to workers" (§7); in this form the strike serves only "the implementation of certain ends" and implies "a readiness in principle to perform as before the omitted action" once its ends have been achieved (for instance, in the case of the general strike called by the government to bring the Kapp Putsch to an end). The strike that upsets these recognized ends, which turn out to be synonymous with the ends of the state and of law, however, will be met with hostility and declared illegal (as in the government's suppression of the Ruhr uprising). Positive law cannot "recognize" that "function through which violence can . . . appear so threatening to law" and "arouse the sympathy of the mass against law" (§6); it can only register this moment of nonrecognition as an "objective contradiction in the legal situation" (§7). The problem when values abound and are deemed to be a sufficient condition for determining the "correct" law is that anything capable of grounding and modifying legal situations is received as a threat because it threatens to undermine the normative order of recognition itself.

Adopting hypothetically the distinction between legitimate and illegitimate violence, Benjamin therefore acknowledges that there is a historical dimension to violence so as to discover a criterion for its critique, only to suggest immediately that the distinction begets a category of violence that is sanctioned by law while simultaneously producing classes of violence that are seen to subvert that legiti-

mation (and thus suffer the relevant consequences in the name of preserving law). Thus, as Benjamin writes, "if the standard established by positive law to assess the legality of violence can be analyzed only according to its meaning, then the sphere of its use must be criticized with regard to its *value*" (§4, emphasis added). In identifying the need to adopt a standpoint outside the sphere of legal recognition in order to assess the value of recognition's evaluative system, Benjamin assumes a position not unlike what Charles Baudelaire (whose poetry Benjamin was translating at the time) says of "convictions": he holds none but those that are unrecognizable by the people of his time.[3] While Baudelaire's is a statement made in the context of his attempt to find a poetic means to disarticulate modernity from the idea of progress, Benjamin's is ultimately a position staked out to wrest a counterposition from the dialectic of historical recognition, a position that takes as its starting point none of the positions apparently available in a given time. To return to the opening of §4: What resources, then, does *Rechtsphilosophie* have at its disposal to comprehend this sheer counterpositioning against position-taking, against the values that are produced by its most fundamental criterion of distinction and without which jurisprudence seems to have no corpus? What criteria do we have for a critique of violence outside of the dynamic that both legitimates violence and classes it as a subversion of legitimation?

II

As Benjamin notes, "The meaning of the distinction between legitimate and illegitimate violence is not immediately obvious" (§5). The meaning of this distinction also hinges on how one is to understand the "historical-philosophical" standpoint that does not mistake the distinction for the historicization and contextualization of forms of violence. For historicization might explain the emergence in time of certain forms of legitimated violence, but it thereby does away with the criticizability of violence and the problem of its recognition. At this juncture, it is instructive to consider what Benjamin might have meant by the term *historical* as he used it in connection with law and violence. To this end, it is necessary to go back a few years in time, to 1916, when, a couple of years into the war, Benjamin would have read the following sentence: "Die Anwendung des Verstandes kann uns höchstens lehren, welche Mittel zu bestimmten Zwecken tauglich sind, nicht aber, ob diese Zwecke selber für uns verbindlich sind oder nicht" (The use of the understanding can at most teach us which means are suited to particular ends, but not whether these ends themselves are binding for us). This statement is taken from an essay published in the 1916 issue of Kurt Hiller's journal *Das Ziel*. As its title indicates, the essay is devoted to the question "of the vocation of the philosophy of our time for the renewal of public life" ("Vom Beruf der Philosophie unserer Zeit für die Erneuerung des öffentlichen Lebens"). It is also a call to action of sorts. Its author,

Leonard Nelson, was the founder of a circle dedicated to the renewal of the ideas of Jakob Fries, one of Kant's late contemporaries. Departing from what he saw as Fries's "mathematical-natural-scientific" interpretation of Kantianism, Nelson argues for the strict separation and clarification of the differences between reason and understanding, which, according to Nelson, Kant had mixed up.[4] Resulting from this confusion, Nelson argues, was Kant's misleading attempt to ground metaphysical principles in "empty" or "logical" reflection. Arising from this, in turn, was a failure to replace the old forms of authority, which "modern natural science" had destroyed, with new and adequate norms. In Nelson's account, this failure led to the emergence after Kant of the perceived need to seek legitimacy outside the scope of reason. In the mathematical natural sciences, this took the form of conventionalism, which, although "purposive" for thinking about nature, nonetheless ended up in skepticism and the impossibility of deciding the validity of objective norms or superstitions. In public life, Nelson argues, there arose a political "Romanticism" (42), which retreated to mystical authority as the foundation of the law, bringing with it the suppression of the ideas of human rights and cosmopolitanism by nationalistic conceit and the thirst for power (43), as well as the reduction of individuals to "mere means [*blosse Mittel*]" that serve the ends of the state (47). (The example he gives is of Hegel's theory of the state as expression of objective spirit, which, he argues, leads to a heteronomy: the state alone is an end in itself—namely, the self-actualization of the divine—while the individual is subordinated to it as to an external norm.)

Nelson attributes this "faith in authority" (*Autoritätsglaube*) (40) to the "triumph of the historical school over natural law and its handing off the task of legislation to time itself" (43)—a perspective according to which the sheer temporal passage of authorities, and not the understanding, is supposed to "teach us whether (or not) . . . ends are binding for us" (38). Parrying the threat this poses to autonomy can, for Nelson, therefore only be the wholesale separation of reason from reflection: that is, reason, precisely as the source of the highest truths and legitimacy, has no choice but to harbor them in a domain that is "dark," nonreflexive, and unknowable to the individual, and that is therefore independent of all arbitrary regulation (41). And, though Nelson does not say so explicitly in this essay, it can be inferred that insofar as the domain of these highest truths and legitimacy harbored by reason is originally unavailable to the calculations of the understanding, this dark and nonreflexive domain also therefore bears the outline of the free development of an antiauthoritarian alternative, brought to "clarity," as it were, only in the history of its practice.[5] From the accounts of his biographers and contemporary readers, it is strange to hear Nelson maintain that the source of legality lies in darkness—his legacy has largely been associated with the social democrats. At this time, however, he was associated with the school reform movement at large, having attended

Gustav Wyneken's *Landerziehungsheim* in Bieberstein and been immediately enthused by his experiences there. The essay may even be related to his nascent attempts during this time to found the Internationale Jugend-Bund (which he ultimately did in 1917), which was the precursor to the Internationalen Sozialistischen Kampf-Bundes founded in 1926, which would play a role in the resistance during World War II.

In fact, it was probably due to these pedagogical-political connections that Nelson was included in this issue of *Das Ziel* alongside articles such as the one by Kurt Peschke, another Hiller associate. Peschke's contribution is simply titled "Rechtsphilosophie." This article, in a nutshell, notes that *Rechtsphilosophie* may well be reconceived as a synonym for *Politik*. In the age of conflict, Peschke argues, there is no such thing as *das Recht* for jurisprudence, as no deeper necessity exists to bind theory and practice in German *Rechtsphilosophie*, which, for its part, seems to have abdicated all efficacy in regard to practical questions of the moment.[6] That is, collecting and categorizing the various ways in which existing recognized laws are correctly applied will not make jurisprudence into a logical science: it will not bring positive laws together under a unified end (57). Therefore, it is neither concepts of law nor the discovery of the highest ends of each law but rather *power* (*Macht*) that organizes the way positive laws are decided. This power arises from conflict between the parties that are vying to rule; and instead of concerning itself with nothing but the validation and application of recognized laws, *Rechtsphilosophie* should correspondingly be a "*critical* evaluation of validated law, and a *voluntaristic* setting of ends for future law"—that is, a *Wertphilosophie* of law based on a complete revaluation of law cum values. *Rechtsphilosophie* in this sense of how law should be is *Politik* in the broadest sense of the word: a critique of the will from the perspective of power (62).[7]

A year later, in 1917, Nelson published a book titled *Jurisprudence without Law* (*Rechtswissenschaft ohne Recht*) that draws briefly on Peschke and also elaborates on a thesis expounded in his 1916 essay: the "faith in authority," now recast as the "belief in the law's binding force,"[8] must be jettisoned in favor of the view that there is no such thing as "right" (*Recht*) independent of human recognition that would also be valid for the sphere of human affairs. The convergence of human and divine law, as Nelson puts it, can occur only if this "recognition" of the law is not bound to "existence in the external world," but may be unspoken, its normativity not necessarily coincident with norms that are externalized and, in effect, arbitrary. Nelson's critique of legal positivism (a "juridical nihilism" that he blames for having produced a "practical nihilism in national life" as a result of reducing the concept of law to custom and a fortuitous equilibrium holding in check mutually destructive forces) comes to a head in a chapter on "relativism," in which he criticizes fellow legal theorist Gustav Radbruch for insufficiently distinguishing between

the "end of law" and its "value" (131). According to Nelson, Radbruch's failure to distinguish between end and value leads him to wrongly conclude that the concept of a "correct law" (*richtiges Recht*) immediately gives the law its value, without an intervening evaluation that determines whether or not a law is indeed "correct." When Radbruch claims that "law is what just law should be" ("Recht ist dasjenige, was gerechtes Recht sein sollte"), he therefore fails to see that in fact the "correct" law only serves as a necessary, but not yet sufficient, condition for life to have a value, and that rather than a value accruing immediately to something that corresponds to correct law, a "nonvalue" (*Unwert*)[9] accrues to that which deviates from that law. As Nelson points out, Radbruch's error leads him to neglect a whole other possible conception of law, namely that correct law is neither a means to other ends nor an end that is higher than all other values, but a negative condition that in fact restricts the value of all possible positive ends of law (133).

It is striking that Nelson published *Rechtswissenschaft ohne Recht* at the height of war in 1917—and that this book appears in a bibliography Benjamin maintained while working toward a continuation of his "Toward the Critique of Violence" well into the mid-1920s. But Nelson would have attracted Benjamin's attention for another reason as well, which is that another essay included in the 1916 issue of *Das Ziel* was Benjamin's "The Life of Students" ("Das Leben der Studenten"). There is not enough space here to flesh out a reading of Benjamin's own pedagogical-political project in view of the critiques of legal positivism that were published alongside it. But suffice it to say that, at the very least, all of this suggests that Benjamin's ideas on the inadequacy and necessary revaluation of the valuations that *Rechtsphilosophie* applies to violence can be placed in the same context as his wartime ideas on political pedagogy—a link that Benjamin himself intimates in his enigmatic reference to the "powers within education to inflict punishment" (§6) and to "educative violence" (§18) toward the end of the essay.

One important commonality in particular deserves mention, however. This commonality is established by the theory of history with which Benjamin opens "The Life of Students." In that text, the "task," which Benjamin calls "historical," is to "give shape to the immanent condition of perfection [found in the present], purely as an absolute, and to make it visible and dominant in the present," or, put in other words, "to cognitively liberate what is to come [*das Künftige*] from its *misshapen* [*verbildete*] form in the present."[10] To do so, however, it does not suffice to turn to "pragmatic descriptions" of individual institutions or mores. Rather, it is necessary to capture, in an image of whose inadequacy and inevitable decay the critic seems to be fully cognizant, that very inadequacy of the present for *das Künftige* (142). In view of the aim of the essay—"to test the spiritual value of a community [*den geistigen Wert einer Gemeinschaft*]"—there is, as he says, "a very simple and reli-

able criterion," namely whether the community's and the individual's ends meet. But whereas every individual strives for totality, and the "value of an achievement" (*der Wert einer Leistung*) is measured according to whether an individual's "whole and undivided being comes to expression," society determines achievement not at all as totality but as something "completely fragmented and derivative" (144). Thus "the purpose of critique is this alone" (142): to recognize and bring to the absolute "purely" those "elements of the final condition [*Endzustand*], which do *not* manifest as some shapeless progressive tendency but rather as the most endangered, disreputable, and derided creations and thoughts that are embedded deep in every present moment" (141, emphasis added). For this reason, Benjamin regards "student life" precisely as the "likeness" and "allegory" for the "highest condition of history" (141). In this sense, and in spite of other differences, the political pedagogies that Nelson, Peschke, and Benjamin developed around Kurt Hiller in the mid- to late 1910s share an interest in revaluating value around species of *Unwert*. Or, to borrow from Nietzsche, they share an interest in calling into question "the *value* of these 'values'" and, in so doing, in engaging in a "*critique* of moral values"[11] that takes future humanity genuinely into account.

By virtue of their insistence on the "historical" character of the critical task, the opening paragraphs of "Toward the Critique of Violence" might also be understood as something of a "focal point" or *Brennpunkt*, as Benjamin calls it in "The Life of Students," in which "history is gathered and reposes" until "grasped" (*erfasst*) "in its metaphysical structure" as the "crisis" in which the very essence of things—will they be one thing or another, something or not—is decided (141). "The meaning of the differentiation of violence into legitimate and illegitimate," as Benjamin says, "is not immediately obvious"; the "end" of violence is brought into concert with its value through a "general historical recognition" that decides, through its absence or presence, whether this violence has a "legal" or a "natural" viz. nonlegal end. At the same time, what this valuation of violence makes "not immediately obvious" is that its value is a nonvalue, so to speak, loitering on the edge of recognition in "misshapen form" between (following Nietzsche's typographically drawn terminological distinction) 'value' understood as what gets recognized as "correct" law, and *value* understood as the commitment involved in the evaluation that designates something as 'value' in the first place. For the dialectic of recognition only serves to reproduce the legality or illegality of violence; it is incapable of "recognizing" violence as such. Benjamin's insistence on "history," by contrast, exposes "general historical recognition" as a *value* that classifies violence only according to whether it upholds or perverts the equivalence between values and law on which the order of recognition depends for its own continued existence. As such, Benjamin's "historical" analysis makes emergent a blind spot in the normative order of recognition: a gap between legal ends and values, which law must attempt to close

inasmuch as it sees itself as "correct" law and aligned with values by definition, but in which law's "intention" (§6) to preserve itself registers only as a nonvalue in the order of recognition. And if (following Nietzsche's terminology once again) this nonvalue registers as the *value* of "general historical recognition" in the sense of its production of a negative condition that restricts the set of all possible 'values' of positive legal ends, it also inadvertently lets all manner of "nonvalues" proliferate that contest the equivalences between 'values' and legal ends reproduced by the regime of recognition. Not only does the revaluation of 'values' open up the possibility that just ends might be achieved by illegitimate means; it also suggests that justice itself might be an *Unwert*, not synonymous with "correct law"—and recognizable to the legal-political establishment only as *il*legitimate.

Benjamin's prime example for nonvalue is the "people" gathered in "secret admiration" around the "great criminal" in §6. In this instance, "general historical recognition" evaluates as a threat to law the violence presented by the individual (*Einzelperson*), the "great criminal," whose character and deeds then call for dissection and penalization. Still, "the people," and their "admiration" for the "great criminal," are what fall outside recognition's classificatory system, being both the envy and the subject of "law's" apparatus of recognition. This "secret admiration" is ambiguous and thus presents a threat to the theory that violence is either legitimate or illegitimate solely in relation to the establishment; the admiration exists regardless of the moral repugnance of the criminal's deeds, and so is not aligned at all with the pursuit or the denial of the ends of the state, but rather with an utter disregard for its dialectic of legitimation and delegitimation. The "people," it turns out, might find the law misaligned with their 'values.' This scenario also begs the question: "Who," if not "the people," is the "law"? "Who" or "what" recognizes whom?

Read in the light of Benjamin's thesis on history in "The Life of Students," "historical recognition" is a "point of decision." This same thesis returns in the essay's conclusion, where, on the topic of the "philosophy of [the] history" of violence, Benjamin writes that "the idea of its ending [*Ausgang*]"—its emergence into clarity as nonvalue, as a function of power rather than the outcome of a rational or progressive process—"makes possible a critical, discriminating and decisive attitude towards its temporal data" (§19). In this view, "the hypothetical ground for the classification of [legal forms of violence]," which Benjamin says "should lie in the presence or absence of a general historical recognition of its ends," is that point of distinguishing the disparity between that which "submits" to legal ends and that which does not, but in a way that unsettles recognition's self-reproductive instinct (§5). The "people," and their unsettling, openly "secret" admiration, the "people" whose values are often invoked by government and policymakers whenever the state's existence is at stake: this "people" and this "mass [*Menge*]" never merely conform to or "deform" the external and "historically recognized" leading of a life in

obeisance to legal ends as distinct from historically unrecognized life in pursuit of natural ends. Rather, this "people" and this "mass" are always, as in Benjamin's texts, in the genitive, as points out of which "admiration" and "sympathy" irradiate, but never as substantial in themselves. They are the "taxpayer's hard-earned dollars," the "blue-collar worker," or the "people of Europe," fictional entities called on to legitimize cuts to higher education or the gutting of social services, whose "voice" is maximized when fear of the foreigner is needed to drown out the suspicion that political economy has made each worker, each "achievement," imminently replaceable and expendable, but which is distorted when it appeals for the restoration of balance between peoples, between people and things, or between present and future people. In sum, the "people" are the 'value' most desired and most feared by legal order. Their *value*, on the other hand, has to remain inscrutable to the normative order of recognition if they—and the order of recognition—are to retain their 'value.'

If it is true that legal violence is the manifestation of the disjunction between "legal" and "natural" ends as a deformative image of what is to come in the present, then there are two claims to be considered. First, the pursuit of individual ends becomes excluded from the legal order de jure, with the result that such ends acquire the character of "naturalization." We see this return toward the end of the essay as well, where Benjamin refers to the strangely inorganic notion of an *Aggregatzustand* (aggregate state) to describe the bodily integrity of the possibly moral being—a biochemical continuity on the basis of which the bodily life underpinning moral agency seems "fated" to collide with the legal order. It is a "mere existence" outside of the legal order insofar as it must be framed as such. The tautological character of this statement merely describes the only "way" that moral life "can be" under such circumstances.

Second, and importantly, legal violence issues forth from a framework within which we consider moral categories and terminologies. As a result, the individual's pursuit can be regarded as posing a danger to the state. For the very same reason, then, the legal order might be imagined to "diminish" itself—a thought that prepares the way for the later discussion, indebted to Sorel, of the revolutionary general strike that appears, of its own accord, to undo violence. Historical recognition, then, "diminishes" legal violence. And it does so by virtue of positing a limit to historical recognizability, deciding the place and time at which there are limits enforceable on the history of violence—and letting "values" emerge into view as functions of power.

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Notes

1. Benjamin, "Toward the Critique of Violence," §4. Hereafter cited parenthetically.
2. However else one might characterize the populist movements insurgent across the Americas and Europe today, one thing seems to be clear: they are aggregations of those who self-identify as "the people" around "strong" figures who are deemed, by virtue of their sheer show of power, to be the best amplifier of "the people's" "values," which "the people" perceive as being misaligned with the existing political or legal "establishment." Benjamin's remarks here, which capture a moment in political theory's genealogy in which positivism's insistence on the primacy of empirical over normative claims increasingly met with challenges from the proliferation of values, principles, and ideas of justice making claims on subjects both individual and collective, suggest how even the type of theory that would acquire the name "normative" after World War II, and which concerns itself with how "ought" supplements "is" at the ground of our political engagement with one another, may suffer from a constitutive blind spot when it comes to its own commitments. Insofar as normative theory thinks about how values, standards, and principles make claims on us, without however considering how even basic structures of law and consensus might come after the fact of power, it assumes that values are necessarily aligned with the political and juridical establishment. Such theories of norms qua justice are incapable of accounting for the aspect of power that accompanies any appeal to the outside of law as it is, or to the disruption of politics as politics is presently conducted.
3. "*Politique*.—Je n'ai pas de convictions, comme l'entendent les gens de mon siècle, parce que je n'ai pas d'ambition. . . . Les brigands seuls sont convaincus,—de quoi?—Qu'il leur faut réussir. Aussi, ils réussissent. On peut fonder des empires glorieux sur le crime, et de nobles religions sur l'imposture. Cependant j'ai quelques convictions, dans un sens plus élevé, et qui ne peut pas être compris par les gens de mon temps" (*Politics*.—I have no convictions as the people of my century understand them, because I have no ambition. . . . The brigands alone are convinced—of what?—that they must succeed. Therefore, they succeed. One can found glorious empires on crime and noble religions on imposture. Nevertheless, I have some convictions, in a higher sense, and which cannot be understood by the people of my time). Baudelaire, "Mon Coeur mis à nu," 680 (§33).
4. Nelson, "Vom Beruf der Philosophie unserer Zeit für die Erneuerung des öffentlichen Lebens," 40.
5. This "history," however, is to be sharply distinguished from manifest history, which "Romanticism," in line with its turn from reflective judgment to mystical authority, made into the "ground of all norms": "Es sollte überall wieder das Positive an Stelle des Natürlichen gesetzt werden; das historisch Gewordene sollte den Grund aller Normen in sich enthalten" (The positive should everywhere be reinstated in the stead of the natural; that which has come into being historically should contain in itself the ground of all norms). Nelson, "Vom Beruf der Philosophie unserer Zeit für die Erneuerung des öffentlichen Lebens," 43.
6. Peschke "Rechtsphilosophie," 56.

7. Much more could be said about the philosophy of right in the age of Expressionism, particularly as it relates to the concept of the "life" corresponding to the "coming generation, or *Geschlecht*" (Peschke, "Rechtsphilosophie," 64). Similarly, more could be said about the left-wing Nietzscheanism on which Peschke draws.
8. Nelson, *Rechtswissenschaft ohne Recht*, 4. In the afterword, Nelson indicates that the manuscript for this book was prepared in 1914–15. The title plays on a double entendre in the phrase *ohne Recht*. The phrase can mean "jurisprudence without consideration of right," or that jurisprudence has "no right" to call itself by the name "jurisprudence," having abdicated (as Nelson argues) a concept of "right" (i.e., "law") whose "validity is independent of social or political opportunism" (3).
9. *Unwert* recalls the way Kant describes justice as a negative viz. regulative condition of human life, as in "Wenn die Gerechtigkeit untergeht, hat es keinen Wert mehr, daß Menschen auf Erden leben." (If justice meets its demise, there is no longer any value to human life on Earth). Kant, "Metaphysik der Sitten," AA 6:332.
10. Benjamin, "Leben der Studenten, 141 (emphasis added).
11. Nietzsche, preface to *On the Genealogy of Morality*, 5 (§6).

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