CHAPTER ONE: The One and Only Law

I. Introduction

In terms of his contribution to legal theory, Benjamin leaves us in a strange position. On the one hand, in his “Critique of Violence,” Benjamin sets out a very comprehensive overview of the law, ranging from natural to positive law. Here, he describes the parameters of law as we understand it, its basis for authority. On the other hand, via his notion of divine violence, also promoted in that essay, he offers a vision of a law destroying deity which upends and subverts all human contrivances. If law is both the foundation of political authority and also, in its divine manifestation, the undoing of the same, what does this say about our actual practices? What kind of law are we permitted in the face of divine interference? Does law end up being completely meaningless in the face of a messianic force that seems purely destructive?  

In this paper, I will argue that for Benjamin divine interference does not completely undermine law as a human practice; instead it leaves us with only one law, the Second Commandment against idolatry. Insofar as the act of divine violence is itself an act explicitly directed against idolatry, it offers a celestial model for law that serves us on earth as well. At the outset, I should say that this argument is an interpretation of Benjamin. He does not come out and say that we must obey the Second Commandment and only this commandment—at least not directly, but I will argue that such a conclusion comes out of an engagement with his writing, especially in terms of his most extensive commentary on law, his well-known essay “Critique of Violence.”
To obey one single law may seem to diminish law to a mere pith, a singularity that cannot address the complexity of human life and experience. In fact however, I will argue that from a Benjaminian perspective, this one law is the only law that we need. This law protects us from the ossification of law as a whole. It prevents law from being “bastardized” by myth (to use Benjamin’s own term). With it we are given just what is required for law to function as a way to safeguard and guide the human polity and no more. Indeed, as I will go on to argue, for Benjamin, by extension, all other laws must not only be superfluous but actually distort and interfere with this one, uniquely anti-fetishistic law.

The origin of law

In “On Language as Such and the Language of Man,” an essay that he wrote in 1917 but which was not published in his lifetime, Benjamin sets out an origin story for law. Typical of his theologically inflected political theory, for Benjamin, the origin of law has a supernatural basis; it comes with the fall of humanity from paradise. More specifically, for Benjamin, the law comes out of a change in language, at least as far as human beings are concerned, that was precipitated by the fall.

Benjamin tells us that in paradise there was already language. When God created the world, it was done through words (“let there be”). Benjamin says further of this that:

Language is therefore both creative and the finished creation; it is word and name. In God, name is creative because it is word, and God’s word is cognizant because it is name. “And he saw that it was good”—that is, he cognized it through name. The absolute relation of name to knowledge exists only in God; only there is name, because it is inwardly identical with the creative word, the pure medium of knowledge.
For Benjamin, human beings have a specific and unique position in terms of God’s unmediated connection to created nature: “of all the beings, man is the only one who names his own kind as he is the only one whom God did not name.” Given his ability to name (including naming Eve), for Benjamin, Adam also gives a spoken name to the things of the world, a name that corresponded perfectly and unmediatedly to the true (but mute) name that God had already given them. In this way, Benjamin tells us that the “name-language of man and the nameless language of things [are] related in God.”

With the coming of the fall, this harmony between human, divine (and material) language changes. Benjamin tells us:

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\text{the knowledge to which the snake seduces, that of good and evil, is nameless. It is vain in the deepest sense...Knowledge of good and evil abandons name; it is a knowledge from outside, the uncreated imitation of the creative word.}
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In this way, by aligning ourselves with such a false, imitation of truth (as initiated by the knowledge of good and evil), human beings abandon their connection to the “mute language” of things. Instead, an “other muteness” becomes manifest in the material world, a silence that reflects human abandonment. As a result of this change, nature displays a “deep sadness” at the loss of human naming. Objects become our tools as far as we are concerned; the world of simulacra, and the phantasmagoria is born (the “uncreated imitation of the creative word”). As a result of such an imitation, human beings “fall into the abyss of the mediateness of all communication, of the word as mean, of the empty word, into the abyss of prattle.” In other words, human beings become idolators one and all.
It is at this point that the law comes into force. Benjamin tells us: “In the Fall, since the eternal purity of names was violated, the sterner purity of the judging word arose.”\(^{14}\) Judgment is God’s response to our idolatry. Benjamin also says of this:

This judging word expels the first human beings from Paradise; they themselves have aroused it in accordance with the immutable law by which this judging word punishes—and expects—its own awakening as the sole and deepest guilt.

Here, judgment itself becomes part of language but in a new guise, one that produces in its wake the guilty subjects that we all are (that is, the complicit, idolatrous beings that constitute the postlapsarian individual).

Although this may be considered the “origin of law,” we see that for Benjamin, in some sense this origin was already predetermined, part of the architecture of paradise. In thinking about the Tree of Knowledge and the role that it plays in fomenting idolatry (as well as the judgment that results from Adam’s disobedience), Benjamin tells us that:

The Tree of Knowledge stood in the garden of God not in order to dispense information on good and evil, but as emblem of judgment over the questioner. This immense irony marks the mythic origin of law.\(^{15}\)

This is, perhaps, the critical point to grasp in terms of Benjamin’s notion of the sources of law. The Tree of Knowledge is, in effect, a tree of judgment. The knowledge of this tree is not new to the occupants of paradise and hence is not in and of itself the point of the tree’s presence in the garden. Earlier in the essay, Benjamin tells us that:

Even the existence of the Tree of Knowledge cannot conceal the fact that the language of Paradise was fully cognizant. Its apples were supposed to impart knowledge of good and evil. But on the seventh day, God had already cognized with the words of creation. And God saw that it was good.\(^{16}\)

Thus the concept of good (and perhaps by extension, evil) is already present in the garden. The tree’s presence attests to a different calculation, one based not on good and evil (which Benjamin calls “nameless” concepts) but on law.\(^{17}\) But it isn’t until the actual
expulsion from paradise that law comes into its own. This, in two critical senses: first, we see the creation of law as mythic. This is the law produced by the subjects of judgment born from our encounter with the Tree of Knowledge. This is the form of law that attempts to assuage its guilt by recourse to truths from which it is henceforth permanently banished (hence a “mythic” origin). Secondly, the law simultaneously becomes in effect divine law, God’s commandments which remain valid even in the face of human disobedience. Although in some sense God’s law has always been present (just as the Tree of Knowledge has always stood as a tree of judgment), from the human perspective, it takes on a new valence, as the source of judgment, as what is now withheld from us as a result of the fall. These two forms—or perhaps appearances—of law delineate the context in which a consideration of how to obey the Second Commandment must operate.

**Divine vs. mythic violence**

In order to connect Benjamin’s theological understanding of the origin of law with questions of actual human practices, it is necessary to turn from an engagement with “On Language as Such and the Language of Man” to two writings of Benjamin’s that directly pertain to the question of law and our relationship to it. These essays are his very well known “Critique of Violence” along with a corresponding (and less well known) essay fragment, “The Right to Use Force,” which offers useful commentary and elaboration on the better-known essay. These essays were written very closely together in time (they were written in 1921 and 1920 respectively, although only the “Critique” was published in Benjamin’s lifetime).
In the “Critique,” Benjamin runs through many distinctions in law, including between the aforementioned natural and positive law and between law making and law preserving violence. The key distinction in this essay however, as I, and many others, read it is that between divine and mythic violence.

As is often the case with one of Benjamin’s essays, as you move along through the work, the ground that the reader has assumed at the beginning becomes upended and subverted by later iterations in the text. Not unlike the usurpation of law that Benjamin attributes to divine violence in the essay, we as readers are left similarly upended, without recourse to those easier answers and assurances that the essay seemed to supply us with at the beginning.

The introduction of the distinction between mythic and divine violence, which comes about two thirds of the way into the essay, calls into question much of the careful work that Benjamin had painstakingly laid out (and without evident foreshadowing) in the earlier portions of the essay. The iterations of law that he has catalogued are revealed to be instances of mythic law, that is, law that is idolatrous, a false, human derived stand in for divine law.

Benjamin introduces the distinction between mythic and divine violence by asking “what kind of violence exist[s] other than all those envisaged by legal theory”? In other words, what force or power of authority exists beyond the confines of the human imagination? He asks this because as he sees it, there is a chronic “insolubility of legal problems.” For Benjamin, despite the various distinctions that we make within contemporary practices of law, no iteration of it can serve as its own ground or foundation; no law that human beings derive on their own can ever actually produce a
true form of justice. Benjamin tells us that: “it is never reason that decides on the justification of means and the justness of ends: fate-imposed violence decides on the former, and God on the latter.” Here, we see that the law—such as we know it—is produced randomly, without recourse to any actually true principles. In this way, the law takes on the character of fate; a random destiny that we cannot resist.

For Benjamin, as we have already seen, there is a true and perfect law—God’s divine law—but as postlapsarian subjects we are fated to never know it even as we remain subject to its judgment. In introducing the distinction between mythic violence and divine violence, Benjamin is distinguishing between the truth of law as we imagine it (i.e. as a myth, a human projection onto God), and what it actually is (as divine, something that lies only in the mind of God).

Benjamin furnishes an archetypical example of mythic violence by considering the punishment of Niobe. In the Greek myth that bears her name, Niobe bragged that while she had fourteen children, Leto, the mother of Apollo and Artemis, only had two. In vengeance, Apollo and Artemis slew her children one by one (in some renditions, they leave one child of each gender alive to achieve parity). Niobe was then turned into a weeping rock, forever mourning the loss of her children. After connecting this kind of mythic violence directly to lawmaking violence, Benjamin notes:

The function of violence in lawmaking is twofold, in the sense that lawmaking pursues as its end, with violence as the means, what is to be established as law, but at the moment of instatement does not dismiss violence; rather, at the very moment of lawmaking, it specifically establishes as law not an end unalloyed by violence but one necessarily and intimately bound to it, under the title of power.

In other words, such an action does not eliminate violence in its manifestation but rather preserves it in the heart of the legal process. Niobe, Benjamin notes, is not killed but lives
As opposed to divine violence, which is based on the principle of justice and which (therefore) definitively settles matters--hence eliminating the need for more violence or new law--for Benjamin, mythic violence is endless, unresolvable. He tells us that: “power [is] the principle of all [mythic] lawmaking.” Mythic law is, in the end, only force or violence (as is often noted by translators, the German term that Benjamin employs, Gewalt, applies to both), it has no other basis for existing than simple self-exertion.

Mythic violence is thus very much a product of the human world; it seems to come out of nowhere and has no source besides humanity’s own conception. It is emblematic of the “prattle” that constitutes myth more generally. The law that is produced therefore remains in an ambivalent limbo, always vulnerable to change and exposure (Benjamin speaks of the “mythic ambiguity” of law). Such ambivalence, as we have already seen, becomes disguised as fate, as undeniable destiny, in order to avoid exposing the vulnerability of law. Thus for Benjamin, “violence …bursts upon Niobe from the uncertain, ambiguous sphere of fate.” Without the authority and finality of an act truly marked by justice (i.e. an act of divine violence), law--the product of mythic violence--is always grasping for as well as presuming a truth that it does not possess (hence it is idolatrous).

Benjamin writes further of this that:

Far from inaugurating a purer sphere, the mythic manifestation of immediate violence shows itself fundamentally identical with all legal violence, and turns suspicion concerning the latter into certainty of the perniciousness of its historical function, the destruction of which thus becomes obligatory.

Benjamin responds to this fundamental ambiguity in law with a call to destroy the law; Or rather, it is not that he calls for its destruction, but notes that it is always in the
process of being destroyed. For Benjamin divine violence, a force that comes from outside of the human realm (and, which, as it turns out, is not really a form of violence at all) is the answer to the problem of mythic law. Benjamin famously tells us that “just as in all spheres God opposes myth, mythic violence is confronted by the divine.”

Benjamin contrasts the story of Niobe to the story of Korah as an example of divine violence, a force which definitively answers the question of justice and which leaves no ambiguity in its wake. In this story, Korah led a group of Levite priests and other followers in a rebellion against God’s authority as instantiated by Moses and Aaron. While Niobe was left alive as a testament to a power that has to reveal itself over and over in order to exist (insofar as its basis for authority is tenuous and unresolved), Korah’s punishment is decisive and leaves no sign: Korah and his followers are simply swallowed up by the earth, decisively settling the question of their idolatrous (i.e. mythic) challenge to God’s authority.

Benjamin says of this (in another passage of the “Critique” that is very well known):

God’s judgment strikes privileged Levites, strikes them without warning, without threat, and does not stop short of annihilation. But in annihilating it also expiates, and a profound connection between the lack of bloodshed and the expiatory character of this violence is unmistakable.

Here, there is no sign (no blood) but there is an end to punishment. Niobe’s punishment cannot end because source for the authority of law that it produces would end along with it. Korah’s punishment brings with it its own expiation; not only is the sin forgiven, it is erased, removed from the world entirely as if it did not exist. Benjamin writes:
The dissolution of legal violence stems...from the guilt of more natural life, which consigns the living, innocent and unhappy, to a retribution that “expiates” the guilt of mere life—and doubtless also purifies the guilty, not of guilt, however, but of law.32

Divine violence thus not only cleanses the subject of guilt, it also cleanses them of law as a human contrivance, even as divine authority (or law) remains intact. What is left in the wake of Korah’s idolatry is a space that has been freed both from sin and from (mythic) law.

Here then is the crucial difference between mythic and divine violence. Mythic violence requires the sign or idol to perpetuate itself whereas divine violence brings nothing new into the world. Instead it merely removes its own idolatry, leaving a blank aporia in its place. Korah’s idolatry was undone in a single moment and in the space that he once occupied, we find a chance for a new beginning (including a new beginning for what human law is or could be).

Such acts of divine violence, Benjamin goes on to tell us are “defined, therefore, not by miracles directly performed by God but by the expiating moment in them that strikes without bloodshed and, finally, by the absence of all lawmaking.”33 The annihilation that divine violence instigates, Benjamin is careful to point out, is not purely and totally destructive. It is annihilating “but it is so only relatively, with regards to goods, right, life and suchlike, never absolutely, with regard to the soul of the living.”34 The destructive power of divine violence is not meted against human beings per se (although of course Korah was a human victim of it) but rather towards the idolatry that we foment.35 As Benjamin tells us:

Mythic violence is bloody power over mere life for its own sake; divine violence is a pure power over all life for the sake of the living. The first demands sacrifice, the second accepts it. 36
We see here the effects of a law that has its origins in the fall. Divine violence is part of the judgment that comes along with our guilt—even as it serves as a possible answer to, or expiation of, that guilt.

The Right to Use Force

The arguments that we find in the “Critique” are both reinforced and expanded upon by Benjamin’s earlier essay, “The Right to Use Force.” Part of this essay echoes the same language as we find in the “Critique.” In “The Right to Use Force,” Benjamin contrasts “the violent rhythm of impatience in which the law exists and has its temporal order” with “the good (?) rhythm of expectation in which messianic events unfold.” [question mark in original]. He goes on to write that although we think that “in a constitutional state, the struggle for existence becomes a struggle for law,” in fact the reverse is the case insofar as “law’s concern with justice is only apparent, whereas in truth the law is concerned with self-preservation.” Once again we see that (mythic) law is not concerned with preserving human life but rather with preserving its own existence over and above the human life it is charged with protecting.

The one principle way in which “The Right to Use Force” differs from or expands upon the “Critique” comes when Benjamin considers our options as legal subjects. One option, that he entitles “ethical anarchism,” denies that either the state or the individual has any right to violence at all. In this vision it appears that we must turn our back on the law (as we know it) entirely, eschewing all forms of mythic violence, all lawmaking, as a solution to the perils that face human beings.
Benjamin tells us that such a response is “fraught with contradiction as a political plan” and further that it is “invalid.”41 Yet he does not condemn this position entirely. He tells us that such a stance can “elevate the morality of the individual or the community to the greatest heights in situations where they are suffering because God does not appear to have commanded them to offer violent resistance.”42 Benjamin offers a concrete example of this approach to law:

When communities of Galician Jews let themselves be cut down in their synagogues without any attempt to defend themselves, this has nothing to do with “ethical anarchism” as a political program; instead the mere resolve “not to resist evil” emerges into the sacred light of day as a form of moral action.43

Here we see an example of the possibility of how to live (or die, in this case) without recourse to mythic law. Without presuming that they could know anything about God’s will, these communities of Galician Jews simply suffered the law of others without responding with any kind of corresponding violence--or law--of their own.

Yet, if this is touted as an option for legal subjects—however partial Benjamin’s support seems to be--this example seems like a formula for perfect passivity. Rather than being a meaningful, political response to the arbitrariness and ultimate instability of law, the notion of refusing to respond to force in any way suggests a recipe for total defeat and the death of political community (in this case, quite literally).

Benjamin himself, as we have seen, offers that this example does not offer a “political program.” He is not offering this example therefore, as a model for resistance to a system of law that is not just. Yet, there is a way in which this example suggests the possibility of resistance in ways that might not normally be recognized as such. The story of the Galician Jews at the very least suggests the possibility of refusing the law even in
the direst of circumstances; it offers that we always have the choice not to engage in mythic law, that we are not in fact truly “fated” to suffer it.

And this refusal of mythic law can actually take a more positive form for Benjamin as well, one that affirms our ability to make many and varied choices in the face of law. Benjamin concludes “The Right to Use Force” by arguing that “a truly subjective decision [in terms of the response to force] is probably conceivable only in the light of specific goals and wishes.” In other words, in the face of mythic law (and without access to true law), Benjamin won’t call for a systematic formula for how to measure our actions; he does not seek to replace one conception of law with another. What he leaves us with instead is a very different way to think about the law, a subjective, local and temporary response.

**Wrestling with the law**

Here, I return to my argument that for Benjamin, we do not need to give up on law entirely despite the fact that we receive it in only in a “bastardized” form. Similarly, in the face of a deity that tells us nothing and serves only to destroy those myths we develop in the absence of clear divine guidance, we do not need to give up on the possibility of justice either. Recall that for Benjamin that there is a law, a perfect and true one and there is justice but we will never know it. Thus, our duty is to both accept the bindingness and judgment of the law and to come to terms with the fact that we don’t have access to what it demands of us.

Such a state of affairs leads to a peculiar attitude vis à vis actual laws, including laws that have been handed down to us from the divine. In the “Critique,” Benjamin
speaks for example of how we must approach the divine commandment: “Thou shalt not Kill.” He writes of this that:

neither divine judgment nor the grounds for this judgment can be known in advance. Those who base a condemnation of all violent killing of one person by another on the commandment are therefore mistaken. It exists not as a criterion of judgment, but as a guideline for the actions of persons or communities who have to wrestle with it in solitude and, in exceptional cases, to take on themselves the responsibility of ignoring it.46

Actually the original German here is even stronger in terms of what it advocates than the English translation that I have used; in German, Benjamin uses the phrase “und in ungeheuren Fällen die Verantwortung von ihm abzusehen auf sich zu nehmen haben,” in which “absuzehn” does not mean ignore so much as to look away from (literally), or, more forcefully, abandon.47 Here, we see quite clearly that we cannot receive this commandment as a knowable, actionable policy (i.e. as an objective truth), one that dictates our behavior in all cases. Divine law is, by definition unknowable to us. Whereas mythic violence “will be recognizable as such,” in part because it is of human derivation, divine violence and its expiatory power “is invisible to men.”48 We must therefore in a sense “abandon” various laws in their particular manifestations, just as moments of divine violence “cleanse” us—if only partially and temporarily-- of mythic law.

Yet to abandon laws does not mean to abandon law itself, taken in its most absolute sense as divine law. Despite the invisibility of such law, we remain ethically “on the hook” (as Alenka Zupančič tells us too) for what law demands of us.49 For Benjamin, were we not responsible at all, we could conclude that “[w]hat pleases is permitted.”50 However this is not the case. He writes that such a conception “excludes reflection on the moral and historical spheres, and thereby on any meaning in action, and beyond this on
any meaning in reality itself, which cannot be constituted if ‘action’ is removed from its sphere.” To avoid either giving up on moral and ethical claims altogether on the one hand, and merely reduplicating the fetishism of law--the basis of mythic violence---on the other, we must struggle against the ossification of all law by treating it “not as a criterion of judgment [since that province belongs to God alone] but as a guideline for action.”

For Benjamin, as noted, in making such decisions, we must “wrestle in solitude,” either as a community or as an individual. The Galician Jews made one such decision. In the “Critique,” Benjamin notes that Jews more generally “expressly reject…the condemnation of killing in self-defense,” thereby modifying the Sixth Commandment (by not taking it literally).

As we have also seen, for Benjamin we can only make truly “subjective decision[s]… in the light of specific goals and wishes.” If divine violence clears the earth --at least temporarily, at least in one place or another--of the fetishism of law that we have received and created, Benjamin is telling us that the rest is entirely and absolutely up to us.

**The only law: the Second Commandment**

Such a proposition may appear at first glance to be truly amoral and quite awful insofar as it suggests that different people and communities can and will make different decisions about law and force for different reasons. Why is this not just a recipe for relativism, and a horrible, endless relativism at that?

My first response to such a concern is that we already do live in a world marked by endless relativism; by turning arbitrary decisions into “laws” (for Benjamin, “all
mythic, lawmaking violence…is pernicious”), we ensure that randomness is enshrined in
the heart of our political community, enforced by the sovereign entity.53 At the same
time, I don’t think that the response to the falsities of law that Benjamin describes in the
two essays under consideration is actually either random or relative. Instead, I would
argue that there is a method at play in Benjamin’s treatment that serves as a critical guide
for us, the method of anti-fetishism. It is true that this method will not always produce the
same results. Unlike as with proscriptive (mythic) laws, we will not make the same
decision in the same context over and over again. Nonetheless this rendition of law still
offers a coherence and ethical substance to our approach to law which does not merely
constitute a surrender to purely negative or nihilistic forces. On the contrary, such an
approach actually permits human decision in a way that is usually completely overridden
by fetishism itself.

It is this “positive” aspect of Benjamin’s approach to law (at the risk of using such
a loaded term in an entirely different context) that, in my view, suggests that we can
speak of a kind of legalism in Benjaminian theory despite the appearance that he is
seemingly opposed to law in all of its guises. In this instance, I would argue, as already
suggested, that the law that Benjamin would have us follow (and the only law he would
have us follow) is not the Sixth Commandment, but the Second.

Although Benjamin does not refer to it all the time or in all of his work, the
commandment against idolatry, I would suggest, is one of the key elements that unites his
work. We see his concern for this commandment in virtually every aspect of his political
and legal theory. We see it in his rejection of commodity fetishism, in his theological
rendering of the fall of Adam and humanity’s removal from paradise (in many ways for
Benjamin these two events are deeply connected). We see it in his admiring claim about Franz Kafka that “No other writer has obeyed the commandment ‘Thou shalt not make unto thee a graven image’ so faithfully.”\textsuperscript{54} Finally, we see the central role that idolatry plays for Benjamin in fomenting the phantasmagoria. For all of these reasons, in his view, our contestation of and struggle with idolatry, whether in its theological, political or aesthetic guises, must be absolute. Although he doesn’t always specify what kind of law he is referring to (mythic or divine), I would argue that the only way to understand how Benjamin can insist that human beings hold onto law, even as they reject virtually every manifestation of law, is through the operation of the Second Commandment.

Benjamin’s concern with the Second Commandment—both directly and indirectly—reflects his background in Judaism but in his hands, I would argue, the commandment takes on a very different valence. In this case, the Second Commandment requires not only that we do not engage in idolatry but also that we actively struggle with all manifestations of the truth (for they must be idols) even if that truth takes on the form of God or the divine itself (because any idea that we have of God or God’s truth must, by definition, be an idol).

In this sense, we emulate God’s own acts of divine violence to overturn and subvert those myths that present themselves to us in God’s name. We do this without the sure knowledge that what we are doing is just but Benjamin’s method of combating idolatry offers us a way, as already mentioned, to link our individual and collective acts of resistance into form some kind of cohesive and enduring form of politics, that is to say, it does amount to a binding law, only one that takes on a radically different form than we generally associate with law.
Agamben and law

In making this claim that Benjamin does not forsake law, I seem to be going against one of Benjamin’s most prominent and celebrated—if controversial—readers, Giorgio Agamben. In his own reading of Benjamin’s “Critique,” Agamben appears to argue that Benjamin ultimately seeks to break with law in a definitive way. In State of Exception, Agamben claims that the “Critique” is a direct response to Schmitt’s arguments that the subject cannot and must not escape the law. Agamben writes that for Benjamin:

Every fiction of a nexus between violence and law disappears here: there is nothing but a zone of anomie, in which a violence without any juridical form acts. The attempt of state power to annex anomie through the state of exception [Schmitt’s attempt on behalf of the state, that is] is unmasked for Benjamin for what it is: a ficto iuris par excellence, which claims to maintain the law in its very suspension as force-of-law [with the word “law” crossed out in the original]. What now takes its place are civil war and revolutionary violence, that is, a human action that has shed [deposto] every relation to law.55

Many scholars read this as a pure rejection of law, a turn towards “life” or the instability that law forever puts off. Simon Critchley for one makes this claim about Agamben’s reading of Benjamin. 56

Yet there is some ambiguity in Agamben’s treatment of law that suggests that my position and his might not be as far apart as initially seems. For one thing, Agamben never makes it clear whether by “law” he is referring to mythic, human law or divine law. Agamben’s lack of precision on this question muddles his argument a bit. Clearly, Benjamin does reject law when it is taken in its human, mythic sense but this, as I have argued, does not mean that Benjamin opposes law per se.
Agamben seems to leave room for this possibility himself toward the end of his chapter “Gigantomachy Concerning a Void,” still in *State of Exception*. There, he focuses, not on Benjamin’s connection to Schmitt, but to Kafka, who, when read in constellation with Benjamin, often serves as a muse that brings out his [i.e. Benjamin’s] best and clearest articulations of his thought. In thinking about this connection (and referencing some of the very language that Critchley, among others draws upon to argue that Agamben rejects law entirely), Agamben writes:

It is from this perspective that we must read Benjamin’s statement in the letter to Scholem on August 11, 1934, that “the Scripture without its key is not Scripture but life”…as well as the one found in his essay on Kafka, according to which “[t]he law which is studied but no longer practiced is the gate to justice” …The Scripture (the Torah) without its key is the cipher of the law in the state of exception, which is in force but is not applied or is applied without being in force (and which Scholem, not at all suspecting that he shares this thesis with Schmitt, believes is still law). According to Benjamin, this law—or rather this force of LAW—is no longer law but life, “lived as it is lived” in Kafka’s novel [*The Castle*] “in the village at the foot of the hill on which the castle is built.”…Kafka’s most proper gesture consists not (as Scholem believes) in having maintained a law that no longer has any meaning but having shown that it ceases to be law and blurs at all points with life.\(^{57}\)

Here, the connection to Kafka’s *The Castle* is telling; that novel depicts a life being lived in a village around the circumference of a phantasm (the phantasm is the castle itself with all its imagined lords and majesty). The denizens of the castle are never seen, or at least hardly ever, and yet the desire for them, the hints of their existence, animates and manages the life of the villagers. To allude to a life lived “in the village at the foot of the hill on which the castle is built” is to refer to life as it is going on even in the presence of (mythic) law. In this instance, Agamben seems to be connecting such a life to a life that exists beyond or instead of law and, to be fair, if one stuck purely to this passage, one
would probably be right in concluding that for Agamben the law is purely and only mythic and must be done away with.

But Agamben goes on to consider what this “life” is, what its relationship to law remains even after a break with law as we know it. He speaks of “the unmasking of mythico-juridical violence effected by pure violence,” that is mythic violence or law, as it is effected by the presence of divine violence. \(^58\) Agamben goes on to argue that:

there is, therefore, still a possible figure of law after its nexus with violence and power has been deposed, but it is a law that no longer has force or application, like the one in which the “new attorney” leafing thorough “our old books,” buries himself in study, or like the one that Foucault may have had in mind when he spoke of a “new law” that has been freed from all discipline and all relation to sovereignty. \(^59\)

Thus, it is possible for law to survive its encounter with divine violence. What results would not look like law as we know it:

The decisive point here is that the law—no longer practiced but studied—is not justice, but only the gate that leads to it. What opens a passage towards justice is not the erasure of law but its deactivation and inactivity \([\text{inoperosità}]\)—that is, another use of law...Kafka’s characters \([\text{in the Castle}]\)—and this is why they interest us—have to do with this spectral figure of the law in the state of exception; they seek, each one following his or her own strategy, to “study” and deactivate it, to “play” with [the law]. \(^60\)

Thus, for all the appearance that Agamben seeks to do away with law entirely, I would argue that instead he simply seeks to do away with mythic law (as does Benjamin himself). Agamben’s failure to make this distinction clear makes it possible for other scholars (like Critchley) to read him as arguing against law entirely. \(^61\) But when we insert this distinction into Agamben’s work, we can see that there is a role for law after all, a deactivated, inactive (inoperable might have been a better translation) form of law.

But, it might be fair to ask, isn’t a deactivated law not a law at all? Doesn’t this suggest a law that is effectively useless, dead and gone? Such a question is posed from
the perspective of a subject of mythic law, one who expects law to have a kind of substance, a promise of truth and justice that is the hallmark of law’s mythic, idolatrous structure. If we give up on that (false) promise, we see that a law that is denuded of its content, a law that is exposed as an idol, substanceless and deflated or deactivated does not cease, in some sense, to be a law. When we think of human law as a remnant, a reminder of the connection it once had to true law, we see that it is, in fact, only as a deactivated, deflated law, a sign that has been stripped of its (idolatrous) significance, that law can be valid, that it can avoid idolatry. Such law is the product of its encounter with the Second Commandment, a law that unmakes (but does not eliminate) other laws.

In this way, the one tether that we keep with law (that is, with divine, rather than mythic law) is the Second Commandment. Even as the rest of law shrinks to a remnant, a ruin of what it was, the one aspect of law that remains robust, heartily “law-like” and absolute is the law against idolatry.

The Second Commandment and the General Strike

To get a clearer sense of what form a life living according to the Second Commandment actually would take, we need to look at a further example that Benjamin provides in the “Critique,” namely that of the revolutionary general strike. By examining a concrete instance of what obeying one single law at the expense of all others (or at least in a way that reduces all others to a deflated remnant) might look like, we get a better idea of the political and legal upshot of such a radically divergent practice.

In looking at this example we can ask ourselves if a “law” of this type actually serves us in ways that we would desire? Would it continue to provide some of the
functions of law that we have come to expect from it such as protection and order? Would it accord with the desires and programs of the “left”?\textsuperscript{62}

The first thing to note is that Benjamin’s discussion of the general strike has its roots in his own lived experience. The “Critique” was written in the aftermath of the failed German Spartacist Revolution and its own mass general strike in March, 1919. This experience helps to anchor the discussion of the general strike in the “Critique;” although not mentioned by name, we see the presence of actual political practices very much being referenced by the theoretical discussion of this essay.\textsuperscript{63}

Benjamin begins his discussion of the general strike by noting that, (not unlike the example of Galician Jews), it appears to be a “non-action” and hence not a real threat to the state. i.e. it is seen as something that leaves the state it’s monopoly on “action” and hence violence, as the terms are generally understood.\textsuperscript{64} In fact, for Benjamin the general strike \textit{is} non-violent insofar as it does not partake of the usual phantasms for which violence--that is to say all forms of law making and mythology--is engaged with.\textsuperscript{65}

Distinguishing between the political strike and the general strike (or rather engaging with Sorel’s distinction between them), Benjamin argues that while the former is merely a change of commanders over the state (and hence, remaining within law), the latter is outside of (mythic) law and violence altogether. He writes:

Whereas the first [political] form of interruption of work is violent, since it causes only an external modification in labor conditions, the second, as a pure means, is nonviolent. 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 that this kind of strike not so much causes as consummates.\textsuperscript{66}
For Benjamin to speak of the general strike as “pure means” suggests turning away from or abandoning ends (which are the province of God alone), just as we sometimes have to abandon (most of) God’s commandments. When we abandon these ends and the mythic laws that promised them, the means that we were engaged in to serve those ends are left bereft of their idolatrous purpose; they become “pure means,” only subjective, and, as such, unrelated to the violence and force that marks our mythic practices.67 Unexpectedly (because we were devoted to these ends and the instrumentalism that they instilled in us), we become unmoored from phantasm. What we have in our hand (i.e. “pure means”) is not what we expected to have; what we are busily doing (striking in this case) is not what we thought we were doing.68 Here, what was once the means for further idolatry now becomes the basis of its undoing or subverting.

In looking at the general strike as consisting of “pure means,” Benjamin is also—and relatedly—recommending that in turning away from the “objective” or the true, we are turning towards the subjective and the local, towards the “truly subjective decision[s]” that we must engage with in the face of divine laws that we cannot know. Here, Benjamin is once again, encouraging us to embrace the subjective as our only possible response to the unknowability of law. This accords with something that Benjamin argues in the *Origin of German Tragic Drama* when he writes: “Subjectivity, like an angel falling into the depths is brought back by allegories, and is held fast in heaven.”69 We see here, as in the case of the general strike (and the example of the Galician Jews as well,) that subjectivity, although itself a product of the fall, is our path back towards truth, not insofar as it shows us truth, but insofar as suggests and dramatizes our failure to know truth. To embrace our subjectivity as such is to acknowledge our failure to know the law
(or, our failure to know anything at all, a realization that is facilitated by a turn to
subjectivity in Benjamin’s schema). In that knowledge, we are freed, however
temporarily or partially, from the idolatry we constantly foment and subscribe to; it
becomes “useless” for our violent (and false) ends, pure means.70 At the same time, the
aporia of law is kept open, unknown and unknowable. In this way too, what appears to be
totally passive, inert and a “non-action” can have a radical and subversive effect in the
world. Here, failure itself becomes the chief weapon, the strongest asset that we can
possess as befits our engagement with the Second Commandment.

This failure is at the heart of what distinguishes the revolutionary general strike,
in Benjamin’s view, from other (compromised) forms of political action. In further
considering the difference between a political and a general strike, Benjamin writes that
“the first of these undertakings [i.e. the political strike] is lawmaking, but the second [the
general strike] anarchistic.”71 In this way we see that anarchism (which links us back to
the previous discussion of “ethical anarchism” as well) can offer a way for human beings
to act that is not itself lawmaking, not mythic, perhaps not even violent at all. To engage
in anarchism means, in effect, to turn our failure to obey the law into a weapon that
annihilates law itself (without producing some new law, new truth, or new idols in its
wake). Anarchism, in this way emerges as that political creed which follows only one
law: the Second Commandment.

As already mentioned, in this way too, we see a way for it to be possible for
human beings to act in the world in ways that are not inherently and automatically
idolatrous. The general strike is coordinated with and enabled by an act of divine
violence (once again without becoming one and the same which would mean to reduce
the general strike, and our anarchist tendencies more broadly, to another form of idolatry). The discussion of divine violence follows almost immediately after Benjamin’s discussion of the general strike in the “Critique.” While partial or political strikes are essentially acts of extortion for Benjamin, seeking to intimidate the state into sharing its goods with one class or another, the general strike is, like God’s elimination of Korah, both the annihilation and expiation of the crime of state capitalism. There is no deal to be cut or compromise to be reached but simply a great sweeping undermining of the lawmaking violence that the workers oppose. This also accords with Benjamin’s view that the coming of the messiah and the act of human revolution are simultaneous, overlapping (but not identical) moments.

The fact that it is possible for human beings to engage in non-violent and law subverting behavior means that we are not condemned either to idolatry or to (true) passivity. As already suggested, when we think of the model of the Galician Jews and the general strike as being in the same mode, we can see that our own definitions of what constitutes a passive or active response is itself largely determined by our context. Both of these examples show that it is possible to not participate in law, as we understand it. At the same time, such non-participation does not constitute a total abandonment of law either. We see in these examples a sense that obeying just one law does not constitute capitulating to a free for all, or giving up on law entirely; there is a consistency, even a substance to this engagement with the Second Commandment, a kind of “law-like” remnant that survives the law’s exposure and undoing as idolatry. These examples offer that is possible for human beings, and not just God to undermine mythic law and leave nothing at all in its wake.
Anarchism and community

Or rather, something is left in the wake of acts both of divine violence and the human response (let’s call it acts of anarchism), something besides the ruins and remnants of law that has been exposed as mythic and arbitrary. What is left is simply the human communities that already existed, those that may have been formed through mythic violence but which have an existence that is distinct from—which is to say not entirely or only produced by—that mythology. These communities are, like Kafka’s Castle, formed around a hollow center: the center itself is the phantasm. These communities are built in expectation of delivery and truth by that phantasm, by mythic violence, but in actuality they have built themselves. The removal or interference with the central phantasm does not annihilate the idolatrous communities that surround them but rather leaves such communities to their own devices, allowing them to realize the extent to which they have always been self-forming, self-actualizing even while under the thrall of the phantasm.

This view harkens to what could be called (however problematically) Benjamin’s “positive” legal theory, those aspects that are not entirely bound up with the pure, destructive force that comes from acts of divine violence, as well as corresponding human acts of “non-violence” (i.e. the revolutionary general strike). What is “positive” here is something that has always existed but not, until now, been recognized. It is the non-phantasmic, ordinary, local and subjective acts that are recuperated by an engagement with the Second Commandment. Such a view also recalls Benjamin’s claim, already noted, that “[m]ythic violence is bloody power over mere life for its own sake;
divine violence is a pure power over all life for the sake of the living.”  

It is the living, the human beings that are not totalized by their own idolatry, that remain left over in the space where idolatry and mythic law have been overcome.

Benjamin offers a bit more insight on this community and the nature of its political practices when, in “The Right to Use Force” he discusses how:

the term ‘anarchism’ may very well be used to describe a theory that denies a moral right not to force as such but to every human institution, community, or individuality that either claims a monopoly over it or in any way claims that right for itself from any point of view, even if only a general principle, instead of respecting it in specific cases as a gift bestowed by a divine power, an absolute power.  

Here we see more clearly how force (or Gewalt) is not legitimate as a thing that is owned (or thought to be owned) by an individual or a community. To engage in this kind of violence is to remain bound by mythic law or violence. The wielder(s) of such violence remain instrumentalist, using what might be called “impure” means devoted to some idolatrous end. Other human beings are merely means to an end as well (or as a result); those who engage in violence seek to extort or carve out a place at the table for a particular constituency at the expense of everyone else (as the example of the political strike suggests). Finally, and perhaps most critically, such an actionpresumes a power or authority that belongs to God alone.

A violence or force that is recognized as “a gift bestowed by a divine power, an absolute power” on the other hand, becomes something altogether different, perhaps not a force or violence at all. This divine and absolute power is not ours but when we act in accordance with it, that is to say when we cooperate with its interference with the idolatrous projections we associate with it, then a different political relationship—one that Benjamin here gives the label of anarchism—becomes possible. As opposed to
“general principles,” of Kantian style categorical imperatives and other systems of legal and more philosophy that seeks to avoid or turn away from the subjective, as we have already seen, Benjamin turns toward the subjective as a way to avoid the idols that pose as objective truth. He does this by allying the subject with the one objective truth that really is objective, the “absolute power” that has nothing to do with terrestrial affairs or human intentionality. Rather than look up, towards heaven, for divine truth (as Kant would suggest—or at least a particular reading of Kant), Benjamin looks down, into ourselves. But such a looking down is also, in a sense looking toward God insofar as it is looking away from or abandoning (abszuzehen) the idols that pass for God in our world.

It is thus in our existence as entirely subjective beings, in our material practices, and those side relationships that occur in the shadow of the laws that we make and hold to that we find anarchist practices that can be recuperated or recognized. Such relationships are not innocent of law insofar as they have been formed in the expectation of true law and justice; they remain a product of the idolatry that we all obey whether we realize it or not. But the removal of law by acts of divine violence and revolutionary action allows these communities to emerge in the space emptied of mythic law’s domination, in a terrain I’m tempted to call “post-legal,” although a fidelity to Benjaminian conceptions of time discourages such easy and progress oriented terms. Also, it is not the case that this community has no law at all, for as we have seen, it does have and obey law, but only one.

A community without (much) law
By way of reaching towards a conclusion, I will speculate further about following the Second Commandment in expressly political terms. Here, I return to a question that I already began to raise at the end of the earlier section about law: What would a community do or look like if it only obeyed this one law? What would it be like in practice? Perhaps more accurately, what would a community look like where engagement with the Second Commandment was not just accidental or episodic but sustained and widespread, the actualized basis for the community in question?

In thinking about this community and its relationship to law and crime (or sin), we must be careful not fall back into the unredeemed aspects of the phantasmagoria. An idealist reading of Benjamin’s law is perilously easy to make. One could argue, for example, that if a community only obeyed the Second Commandment then, without idolatry, there would be no “crime.” Insofar as God’s punishment expiates sin, it seems that a community without (much) law would also be a community without (any) sin (a reflection, it would seem of Augustine’s vision of the City of God in which even the desire to sin is finally removed from us). Such a vision is tempting insofar as it seems to finally resolve the “problem” of law, but it is important to note that such an outcome is actually highly unlikely—even undesirable—in Benjamin’s schema. For Benjamin, the lure of fetishism is strong and we will never be free of it. Furthermore, we must suspect any permanent leftist paradise as just another reiteration of the promises of future salvation that are the hallmark of the phantasmagoria. For Benjamin, we will never again live in a paradise where we have no crime or sin to worry about. The very notion of obeying one law that fights against idolatry suggests that idolatry itself will be a factor in our existence for as long as human beings exist.
It might help to think further about Benjamin’s vision of lawfulness by referencing a story that Agamben cites from Benjamin (among others). Agamben writes:

There is a well-known parable about the Kingdom of the Messiah that Walter Benjamin (who heard it from Gershom Scholem) recounted one evening to Ernst Bloch…”A rabbi, a real cabalist, once said that in order to establish the reign of peace it is not necessary to destroy everything nor to begin a completely new world. It is sufficient to displace this cup or this bush or this stone just a little, and thus everything”….Benjamin’s version of the story goes like this: “The Hassidim tell a story about the world to come that says everything there will be just as it is here. Just as our room is now, so it will be in the world to come; where our baby sleeps now, there too it will sleep in the other world. And the clothes we wear in this world, those too we will wear there. Everything will be as it is now, just a little different.”

In this way we can see that the world that Benjamin seeks is in most ways identical to the world that we already live in. For Benjamin it is useful to think of two perspectives, that of God and that of human beings. Although Benjamin references the divine perspective, his work is oriented towards the human experience. Accordingly, instead of offering us a full guide to moral, ethical and legal behavior (such as we already have now in myriad—and mythical—forms,) Benjamin’s version of law forces us to face a world without such firm (and fetishistic) guidance. As we have already seen, we would be forced to “wrestle in solitude,” (both individually and collectively) with our own judgments as well as with what appears to us as divinely sanctioned judgments that we must follow. The distance between law and politics, firmly separated under conditions of phantasmagoria would largely vanish if we followed only one law; all of our legal decisions would, perforce be political ones (and, by the same token, all of our political decisions would also be legal ones). Only one law would remain separate and distinct from our political practices: the Second Commandment itself.
Thus, Benjamin’s understanding of law does not deliver us to a happy paradise where we know what to do and ethics are easy to apply. We would still have all the problems and impulses (and clothes and babies) that we do now but what we would also have—what would be different—would be the ability to avoid being completely determined by phantasms. In fact, we always have had this ability—for Benjamin the material world we no longer name (but seek to represent) is in a constant state of rebellion against our fetishism of it. This rebellion includes the signs and symbols by which we seek to control and master representation. It even includes our own bodies, perhaps even our selves on some level. For Benjamin, we must ally ourselves—or conspire with—this rebellion. In legal terms, a greater, more regular engagement with the Second Commandment would help us evade phantasm in a more widespread and systematic manner, bringing us more firmly into such an alliance or conspiracy.

Such an action does not give us any assurance that what we would do under such circumstances would be good or just; true justice, for Benjamin is the province of God alone. But it would mean that we could have the chance to gesture at justice, to decide, collectively what justice would mean for us. Furthermore, we would engage in such questions, without the certainty of delusion, without the phantasms of law and sovereignty that override and render into the background the kinds of daily acts of anti-fetishism, subversion and resistance that already mark our life in the world. We would have options besides mythic laws and its resultant and inevitable (fated) violence.

Rumors and folly
If we return to Benjamin’s conviction about Franz Kafka that “No other writer has obeyed the commandment ‘Thou shalt not make unto thee a graven image’ so faithfully,” we can see what it means to live a life—even a life in the midst of the phantasmagoria—that obeys the one and only law. As already noted, in his writings on Kafka, Benjamin admires the way that Kafka follows this law by allowing himself to fail. In a letter that he wrote to Gershom Scholem about Franz Kafka, Benjamin writes:

To do justice to the figure of Kafka in its purity, and in its peculiar beauty, one should never lose sight of one thing: it is the figure of a failure. The circumstances of this failure are manifold. Perhaps one might say that once he was sure of ultimate failure, than everything on the way to it succeeded for him as if in a dream. Nothing is more remarkable than the fervor with which Kafka insists on his failure.76

Whereas failure is normally (that is to say, phantasmically) seen as something to avoid at all costs, for Benjamin, by failing to successfully produce the kinds of answers that he sought, Kafka thwarted the fetishism that he himself subscribed to.77 We see here how Kafka himself achieves a form of what Benjamin would call “pure means” in his writing. Benjamin notes that once Kafka was assured of failure, that is to say, once he knew for sure that his idolatrous ends were thwarted (and so he was safely obeying the Second Commandment), “everything on the way to [failure] succeeded for him as if in a dream.”

His own idolatry, his own instrumentalism, becomes transformed, becomes something other than it was originally meant to be. It is for this reason that Kafka “insists on his failure;” it is his way of being loyal to the commandment against idolatry.

In his comments on Kafka, Benjamin also writes:

In Kafka, there is no longer any talk of wisdom. Only the products of its decomposition are left. There are two of these. First is rumor of the true things (a kind of whispered theological newspaper about the disreputable and the obsolete). The other produce of this diathesis is folly, which, though it has entirely
What is left in the wake of his failure is, as Benjamin tells us, rumor and folly. Rumor is a “whispered theological newspaper,” a remnant or vague memory of the lost fount of wisdom that was once Adam’s (one is reminded here too of Derrida’s “immense rumor” about the subversive possibility inherent in western political thought). As for folly it too plays its unexpected but vital part. Folly, he tells us, “has entirely squandered the content of wisdom” but it serves nonetheless as a source of “unruffled complaisance,” a basis to reorient our actions towards what they have always striven for on some level but never received from phantasm.

Benjamin concludes this passage by arguing that:

Of this much, Kafka was sure: first, that to help, one must be a fool; and, second, that only a fool’s help is real help. The only uncertainty is whether such help can still work for human beings. Perhaps it works only for angels…and they could do without it anyway. So, as Kafka, says, there is an infinite amount of hope—only not for us. This statement truly contains Kafka’s hope. It is the source of his radiant serenity.

We see here that once again, Benjamin is employing a double perspective. There is hope, as we have already seen, but “not for us.” Hope is only for “the angels…and they could do without it anyway.” Human beings, such as we are, seem beyond the scope of hope.

Yet, when we once again take on the perspective of the divine as pertaining, not to the phantasmic world that we think we occupy, but the material world that is actual, we can see things differently. In this perspective, both the idea of failure itself and the idea of a “hope [that is] not for us” do not doom us to passivity and gloom but rather serve as a reminder that the world that we are looking for is, in fact, already here. From the perspective of the phantasmagoria, Kafka is a failure, guided only by rumor and folly.
But from the perspective of the actual world, Kafka is uniquely successful at subverting the phantasms we all subscribe to (Kafka very much included). From the perspective of the phantasmagoria, there is “no hope” for us but as soon as we begin to engage with the Second Commandment, as Kafka does, we begin to discern the kind of hope that offered him “radiant serenity,” a path of “pure means.” In the same way that divine violence somehow connects both the dramatic actions of God burying a group of idolators into the ground and quieter moments of resistance and subversion on each of our parts, we see here too that we always have the power to follow the Second Commandment; such a power could be read as the necessary corollary to the ongoing fact of divine violence. The hope that comes with following this one law is the same hope that enabled the Galician Jews to go to their deaths without a struggle rather than break the one commandment that must never be abandoned. This is the hope of the general strike, the desire that it will be carried out without merely replacing one false regime with another. Such a hope is not for “us” i.e. not for those who remain ensconced in idolatry, but any of us could, with a switch of perspective—a switch also in our understanding of the applications of law, how it is actualized and produced--partake in it at any time. In other words, we only need to make a “slight adjustment.” To make such a change, we must be willing to fail (in the Benjaminian sense), willing to defy the definitions of success and power that are the hallmark of our ensconce ment in the phantasmagoria.

Antonia Birnbaum, Bonheur Justice Walter Benjamin: Le détour Grec (Paris: Éditions Payot & Rivages, 2008);

2 As Leora Batnitzky tells us, the question of how to combat idolatry, what idolatry entails, is fraught. She compares Franz Rosenzweig’s opposition to idolatry to that of Hermann Cohen (and, before him, Maimonides). While Cohen sees idolatry as inhering in any engagement with imagery (and, correspondingly, sees philosophy as the solution to idolatrous thought) for Rosenzweig, not all images are idolatrous. For Rosenzweig, images are only potentially idolatrous insofar as they claim to capture and render constant what she calls—citing Rosenzweig—the “ever-new will of God’s revelation.” Batnitzky, p.225. She puts the distinction Rosenzweig makes this way: “Rosenzweig argues that the second commandment is as unpagan as the first because both commandments concern the recognition of God’s freedom to reveal God’s self to the human being. Here, he defines “religion”—in opposition to revelation (which is anti-religious)—as a kind of “projective” symbolism that fixes an image of God. To fixate on any one natural experience that has a spontaneously divine character is to worship not only a spatially, but a temporally fixed image of God. This sort of worship is a denial of God’s freedom to reveal himself to the human in any form and at any time that God likes. Idolatry denies God’s infinite freedom—and hence God’s ability to affect the human being—for the sake of a fixed image of God.” Ibid., p. 23. Thus, Batnitzky alerts us to what is for Rosenzweig the critical aspect of fighting idolatry; the requirement to remain within time, subject to change, to a future. In her opposition between Cohen and Rosenzweig, I would definitely put Benjamin in Rosenzweig’s camp but I would argue that Benjamin’s own suspicion of the future itself as a potential source of idolatry would put them at odds over this question. Blatnitzky intriguingly tells us that we must always “risk” idolatry in our quest for a future. Ibid., p. 188. For Benjamin, on the other hand, I think it’s not so much the risk as the certainty of idolatry that he sees as constituting a basic aspect of political life. See also Moshe Halbertal, Avishai Margalit (Naomi Goldblum trans). Idolatry, (Cambridge MA: Harvard University Press, 1994); Hermann Cohen, Religion of Reason: Out of the Sources of Judaism, (New York: Oxford University Press, 1995); Franz Rosenzweig, The Star of Redemption (Madison, WI: University of Wisconsin Press, 2005).

3 “Critique,” p. 252.
4 Although Benjamin discusses the fall many times, this essay is one of the few in which he specifically mentions Eve (although only once and in a way that does not have a lot of significance for the overall essay).
"On Language as Such and the Language of Man," p. 68.

Ibid., p. 69.

The things of the world retain their own "nameless language" for Benjamin even after the fall. He speaks of the "communication of matter in magic communion."

Ibid., p. 70.

Ibid.

Ibid., p. 72.

Ibid.

Ibid.

Ibid., p. 71.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.


Ibid.


Ibid., p. 248.

Ibid.

Ibid.

Ibid., p. 249

Ibid., p. 248.

Ibid., p. 249.

Ibid.

Tom McCall makes the interesting point that even the story of Korah is, in some sense, necessarily a myth: “The (Hebraic) Korah story can really only allegorize a pure violence purged of (Greek) mythic manifestations while remaining itself a convenient and striking—yet no less mythical—means to phenomenalize and perform as mythic text Benjamin’s own philosopheme of the pure.” Tom McCall, "Momentary Violence" in David S. Ferris, ed., *Walter Benjamin: Theoretical Questions*, (Stanford, CA: Stanford University Press, 1996), p. 93.


Ibid.

Ibid.

Ibid.

When I presented this argument to a class that Bonnie Honig was then teaching at Northwestern, she pointed out that Korah himself may be exactly in the spirt of radical rebellion against authority that I am attributing to Benjamin himself. Korah was after all, as Honig pointed out, fighting for the right for each person to interpret God’s authority as she saw fit. God answered that rebellion by burying Korah and his
followers. Why then should we follow Benjamin in reading this of all stories as the prime instance of divine violence? This, I would say, is the price we pay for following Benjamin into this explicitly theological territory. Although God generally plays no role at all in Benjamin’s politics except as a negative force, in the story of Korah, God is actually present. An all knowing deity will by definition be authoritative, absolute and unquestionable; that comes with the territory. But despite the fact that this gives us, in the case of Korah a troubling reading of that story, I would argue that the use of this story otherwise points us in the opposite direction, wherein we are given the means to defy the kinds of authorities that similarly bury and otherwise overwhelm such forms of rebellion.

This essay, which exists only as a fragment was a commentary on an essay by Herbert Vorwerk by the same name. Herbert Vorwerk “Das Recht zur Gewaltanwendung, Blätter fur religiösen Sozialismus, ed. Carl Mennicke (Berlin, 1920), vol. 1, no. 4. Notice in the German title the same use of “Gewalt” as in “Kritik zur Gewalt” (the “Critique of Violence”)


Unfortunately, Benjamin tells us that his clear rejection of this vision comes in an essay he wrote called “Life and Force” which was published in the early 1920s and is now lost. Ibid., 234.

Ibid., p. 233.

Ibid.

Ibid., p. 234

“Icritique,” p. 252.

Ibid., p. 250.

Walter Benjamin, “Zur Kritik der Gewalt” in Gesammelte Schriften Band II.1 (Frankfort: Surkamp Verlag, 1980), p.201. I am grateful to Marc de Wilde for pointing this out to me. I think this other translation not only strengthens the concept of moving away from mythic law but also shows the tortured, complex relationship we have with such law. We do not “ignore” the law, nor are we indifferent to it; the law retains a great hold on us and so we struggle with it, we turn, painfully, away.

“Icritique,” p. 252.


Ibid.

Ibid., p. 250.

Ibid., p. 252.

57 *State of Exception*, p. 63.
58 *State of Exception*, p. 63.
59 Ibid.
60 Ibid., p. 64.
61 To be fair, as already noted, Benjamin doesn’t always make this distinction clear either.
62 This excellent question was put to me by Austin Sarat. For Benjamin the answer must be “yes” but the Second Commandment does not serve the current left which is, as Jodi Dean shows, mired in a fascination with its own defeat (albeit challenged and excited by new activism, by Occupy Wall Street and the Maple Spring in North America, by even more recent events in Turkey and so forth). Rather it serves—and produces—a left that has battled and subverted its own myriad forms of, and relationship to, idolatry. And this form of “leftism” would not necessarily be nice or kind, and certainly not “true.” It could easily revert to fascism, to the “right wing” tilt that comes along with the phantasmagoria. See Jodi Dean, *The Communist Horizon*, (New York: Verso, 2012).
63 I am once again indebted to Marc de Wilde for this insight.
64 “Critique,” p. 239.
65 I think that in many crucial ways, Benjamin’s treatment of the non-violent general strike in the “Critique” is aligned with (although crucially not an example of) divine violence. In both instances, as noted, an action serves, not to produce new truths, but simply to remove false truths from the scene. In this way, both the general strike and acts of divine violence are instances of anti-idolatry (even as only the general strike is an example of following the Second Commandment which is, of course, only directed towards human beings) and hence “non-violent.” I recognize that Benjamin muddies the waters by calling it divine “violence” in the first place. This may be an example of the problem of using language, with all its inherent potential for fetishism to describe an anti-fetishist agenda (and the word “anti-fetishist” itself performs this problem as well). Or perhaps it was just an unfortunate word choice on Benjamin’s part.
66 Ibid., p. 246.
67 This is an operation which Benjamin performs that I will return to at various points in this book.
68 Perhaps more accurately, we knew we were striking, but we didn’t know—couldn’t really know—how the strike would transform us, take us out of the economy of violence into another political and anarchic realm of action.
69 *Origin*, p. 235.
70 “Unknowledge” might be a better word; a knowledge that unmakes (false) knowledges.
71 “Critique,” p. 246.
Ibid.


A similar kind of failure can be spotted in the way that the general strike Benjamin describes in the “Critique” “fails” to be recognized as a normal political activity.

Ibid., pp. 326-7.
