

Undoing Legal Violence: Walter Benjamin's and Giorgio Agamben's Aesthetics of Pure Means

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Giorgio Agamben calls for a 'playful' relation to law as a way to counteract its inherent violence. Such a relation would prevent law from functioning as a means to an end, instead treating it as a 'pure means.' This article evaluates the significance of Agamben's proposal and of the concept of pure means, arguing that both implicitly draw on a Kantian model of aesthetic experience.

Giorgio Agamben's *State of Exception* paints an ominous picture. Agamben asks whether law can regulate its own suspension not because this is an interesting, if abstract, legal problem, but because the state of exception has become a worldwide 'paradigm of government'.¹ According to Agamben, a global state of exception is the only way to explain our current state of affairs, in which:

law can ... be obliterated and contradicted with impunity by a governmental violence that – while ignoring international law externally and producing a permanent state of exception internally – nevertheless still claims to be applying the law.²

The state of exception enables this contradiction since it is neither inside nor outside law. On the one hand, it is not a 'special kind of law' since it is 'a suspension of the juridical order itself';³ on the other, it is not merely the absence of law, since law contains provisions for its suspension. This topographical paradox means that law functions unusually within the state of exception. The state of exception doesn't create chaos or anarchy; it separates the law's force from its application. Law's purely formal applicability comes loose from its direct impact on life. As a result, acts that are not

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1 G. Agamben, *State of Exception* (2005) 1.

2 *id.*, p. 87.

3 *id.*, p. 4.

authorized by any law can employ the force of legal action:

in extreme situations ‘force of law’ floats as an indeterminate element that can be claimed by both the state authority . . . and by a revolutionary organization.⁴

Agamben argues that this ultimately makes law and life indistinguishable: every action is potentially a legal action. Unfortunately, however, we can’t simply return to a situation prior to the state of exception:

from the real state of exception in which we live, it is not possible to return to the state of law, for at issue now are the very concepts of ‘state’ and ‘law’.⁵

If we take Agamben’s claims about the reach of the state of exception seriously, we are left to grapple with the odd solution that Agamben suggests. This solution is what I would like to interrogate here. Agamben argues that to get beyond the state of exception we must do something more radical than modify the law, since the exception has revealed that the normal functioning of law depends on violent force. As a consequence, we must pursue ‘the only truly political action . . . which severs the nexus between violence and law’.⁶ But it is difficult to imagine how we might actually take this ‘truly political’ action, which Agamben calls ‘play’:

One day, humanity will play with law just as children play with disused objects, not in order to restore them to their canonical use but to free them from it for good. . . . [T]his studious play is the passage that allows us to arrive at . . . justice.⁷

‘Play’ is a surprising answer to the problems that Agamben has dramatically sketched: it seems simultaneously too abstract and not serious enough. But can we take play seriously? Play might be able to counteract the law’s violent application to life *because* of its lack of seriousness: play suspends both instrumentality and normativity. In this sense, play deinstrumentalizes what Agamben frequently calls the ‘machine’ or ‘apparatus’ of the state of exception.

This attempt to think beyond the instrumentality of law is as a continuation of Walter Benjamin’s project in ‘Critique of Violence’, which Beatrice Hanssen describes as the creation of a ‘politics of pure means’:

Benjamin hoped once and for all to break the vicious circle of violence by radically rethinking a long-standing philosophico-political tradition according to which violence was to be conceived as *instrumental* in nature, that is, as a means or implement to be put to the service of (political) ends.⁸

What makes this rethinking radical is its fundamental challenge to the way we think not only about violence, but about means themselves. Against our normal

4 *id.*, pp. 38–9.

5 *id.*, p. 87.

6 *id.*, p. 88.

7 *id.*, p. 64.

8 B. Hanssen, ‘On the Politics of Pure Means: Benjamin, Arendt, Foucault’ in *Violence, Identity, and Self-Determination*, eds. H. de Vries and S. Weber (1997) 239.

understanding of means as always being ‘for’ something – a hammer as a means for nailing; an automobile as a means for travelling – Benjamin tries to imagine a sphere of pure means, where means would not be related to their ends in any conventional way, and could even appear to be means *without* ends. I will argue that Benjamin’s and Agamben’s attempts to undo the link between law and violence by deinstrumentalizing politics are informed by Kant’s theory of aesthetic judgement. To the politics of pure means corresponds a less manifest but no less significant aesthetics of pure means.

This argument depends on a passage in Kant’s third critique where he claims that an aesthetic judgement does not take into account how well an object functions as a means to an end – whether that end be some sort of subjective gratification (as in the case of good food or a warm bath) or some sort of conceptual good (political harmony, our definition of what a rose ought to look like). The former is a judgement about what is agreeable and the latter about what is useful or correct; neither is a disinterested aesthetic judgement. But objects we judge to be beautiful *do* produce pleasure, even though this is not what they are for. As such, they have no end in the context of our aesthetic judgement and yet still function as a means:

nothing other than the subjective purposiveness in the representation of an object without any end . . . consequently the mere form of purposiveness . . . can constitute the satisfaction that we judge [as] the determining ground of the judgment of taste.⁹

In so far as the object functions as a means, it does so only subjectively (in that it causes the ‘play of the cognitive powers of the subject’¹⁰), and not as the fulfilment of an objective end (since the real purpose of the object is not to cause this play). The aesthetic object is neither instrumental nor normative: it cannot be judged in its capacity as a means to an end or in its agreement with a preconceived concept of what it ought to be. A careful reading of Benjamin and Agamben reveals that they work with and around Kant’s definition in their constructions of theories of pure means.

The possibility that the theory of the state of exception is related to enlightenment aesthetic philosophy has been explored by those writing on Carl Schmitt – mostly (as Victoria Kahn points out) to expose contradictions within Schmitt’s thought.¹¹ Peter Bürger writes that Schmitt’s theory of the state of exception describes a non-normative realm that invokes Kantian aesthetic judgement:

That which Kant concedes to art, with manifold restrictions, Carl Schmitt will transfer to the realm of the political. The decision that constitutes the sovereign is the irreducible originary act. The decision is a sphere free of norms.¹²

9 I. Kant, *Critique of the Power of Judgment* (2000) ed. P. Guyer, 106.

10 *id.*, p. 107.

11 V. Kahn, ‘Hamlet or Hecuba: Carl Schmitt’s Decision’ (2003) 83 *Representations* 42.

12 P. Bürger, ‘Carl Schmitt oder die Fundierung der Politik auf Ästhetik’ in *Zerstörung, Rettung des Mythos durch Licht*, ed. C. Bürger (1986) 173 (my translation).

This suspension of normativity is also the grounds on which Habermas, in an almost offhand remark, alludes to an aesthetics in Benjamin's 'Critique of Violence':

above all it is the aesthetics of violence that fascinates [Schmitt]. Interpreted on the model of the *creatio ex nihilo*, sovereignty acquires a halo of surrealistic meanings through its relationship to the violent destruction of the normative as such. That ... explains why at this time Carl Schmitt felt impelled to congratulate the young Walter Benjamin on his essay on Sorel [that is, 'Critique of Violence'].¹³

Habermas intends to expose a possible political affinity with Schmitt, but we might read his comment more charitably. Benjamin and the Frankfurt School, after all, found productive political possibilities in the idea of an autonomous aesthetic realm that could critique a dominating instrumental logic by refusing to be instrumental. Such a reading, however, would require that we ask whether the non-instrumentality that Agamben proposes as the way out of the state of exception refers back to the same notion of aesthetic autonomy.

BENJAMIN'S THEORY OF PURE MEANS IN 'CRITIQUE OF VIOLENCE'

Benjamin's 'Critique of Violence' produces its theory of a 'sphere of pure means' through an attempt to respond to a familiar question: what criteria can we use to decide whether or not violence is justifiable? Benjamin immediately closes down the easiest way of answering that question, which would be to examine the purposes for which violence is used. Benjamin is unsatisfied with any solution that relies on a consideration of the justness of the purpose of violence to evaluate the justness of violence itself. Such an approach doesn't offer a 'criterion for violence itself as a principle, but, rather, the criterion for cases of its use'.¹⁴ In other words, critiquing violence retroactively, in light of our ethical judgements regarding its effects, bases an evaluation of violence on something other than violence. What we judge is not really violence, but rather what it achieves. Benjamin, however, wants to examine violence 'as a principle'. This raises the question of how we are to determine whether violence in and of itself, independent of its relation to just or unjust ends, could be a 'moral means'. Might it be possible for violence itself to be unethical, even if it were used so judiciously as to never produce effects in conflict with an ethical framework? Or, conversely, might it be possible for violence itself to be ethical, even if it is generally at odds with

13 J. Habermas, 'The Horrors of Autonomy' in *The New Conservatism: Cultural Criticism and the Historians' Debate*, ed. S.W. Nichol森 (1989) 137.

14 W. Benjamin, 'Critique of Violence' in *Selected Writings, Vol. 1*, eds. M. Bullock and M.W. Jennings (1996) 236.

ethical ends? Both questions demand a language for describing the very principle of violence as a means without considering, in particular cases, the purposes for which it is used or the effects that it has.

Legal and philosophical questions are inextricable here. By structuring his inquiry into the ethics of violence in terms that distinguish the event of violence from its effects, Benjamin indicates that it is possible to consider a means independent from its ends. If the legal question is ‘what criterion is capable of judging the justness of violence itself?’ the philosophical question is ‘how do we think about a sphere of means separate from a sphere of ends?’ Benjamin makes this distinction explicit when he determines to find a ‘more exact criterion’ for violence that would be located within ‘the sphere of means themselves, without regard for the ends they serve’.¹⁵ In looking for this criterion, Benjamin’s critique will challenge the ‘most elementary relationship within any legal system’, that between means and ends. This challenge is necessary since means-ends-based analyses of violence arrive at an impasse. Namely, ‘natural law attempts, by the justness of the ends, to “justify” the means, positive law to “guarantee” the justness of the ends through the justification of the means’.¹⁶ Neither natural nor positive law is capable of considering means alone since both are engaged in a project of justifying means with respect to their results. Natural law justifies violence ‘as a natural datum’¹⁷ by assuming that it is the ‘only original means’; this original status within nature renders it ‘appropriate’ and ‘legal’. Positive law takes what looks like a ‘diametrically opposed’ stance but employs the same logic of means and ends: adequately ensuring that only just means are used necessarily entails the arrival at just ends. Both schools of thought assume a direct progression from means to ends. This is what Benjamin calls their ‘common basic dogma: just ends can be attained by justified means, justified means used for just ends’.¹⁸ It is this assumption about the nature of means and ends, and the circularity that it entails, that Benjamin wants to think beyond – and only by doing so will it be possible to establish a space from which we can inquire into violence as a principle, separate from its ends.

Benjamin complicates the problem by arguing that any time we consider law as a means to an end we are taking for granted the violence that law is capable of inflicting. Law cannot serve as a framework for determining whether or not violence is inherently just or unjust, since law itself depends upon violence both in its origin and in its continued existence. Revolutions and wars highlight the ‘lawmaking’ character of violence: in their wake, conflicting parties sanction new conditions as ‘new “law”’.¹⁹ In this sense, law is a product of violence and violence is the origin of law. But violence

15 *id.*

16 *id.*, p. 237.

17 *id.*

18 *id.*

19 *id.*, p. 240.

remains crucial for maintaining law – Benjamin here identifies the ‘law-preserving’ character of violence. We experience law-preserving violence not only when we break the law and are threatened with punishment, but any time that we make a contract. For Benjamin, even the apparently most peaceful contractual agreements are underwritten by this violence: he argues that a legal contract, ‘however peacefully it may have been entered into by the parties, leads to a possible violence. It confers on each party the right to resort to violence in some form against the other, should he break the agreement.’²⁰ Benjamin suggests that the error of liberal parliamentarianism is that it forgets that its peaceful discussion, deliberation, and agreement are not nonviolent, and that the institution of the parliament is the product of historical violence. In fact, violence undergirds parliamentary actions even at those moments when it least appears to: ‘what a parliament achieves in vital affairs can be only those legal decrees that in their origin and outcome are attended by violence’.²¹ These two types of violence – law-making and law-preserving – aren’t, however, compatible with each other. Law-preserving violence maintains itself only by continually suppressing counter-violence and revolution – the precise form of violence that created the present legal situation. Benjamin writes that ‘this lasts until either new forces or those earlier suppressed triumph over the hitherto lawmaking violence and thus found a new law, destined in its turn to decay’.²² The movement from law-making to law-preserving violence is temporal, but its temporality is circular and dialectical rather than linear and teleological.

Benjamin’s essay thus proposes two related problems: first, in evaluating the ethics of violence, is there a measure we can use that doesn’t rely upon the means-end rationality of natural and positive law?; second, how can we overcome the cycle of law-preserving and law-creating violence that so far has determined historical progress? Benjamin responds to both of these questions through his inquiry into a ‘sphere of pure means’ where law and violence would shed their instrumental quality. Rather than describing a law without violence, however, Benjamin describes a form of violence that would be absolutely unrelated to any familiar notion of law and, that would ultimately destroy law’s normative character. This would be among ‘other kinds of violence than all those envisaged by legal theory’.²³ Such violence would no longer be a means to an end; Benjamin inquires whether there might be a ‘different kind of violence . . . that certainly could be either the justified or the unjustified means to [an] ends, but was not related to them as means at all but in some different way?’²⁴

20 *id.*, p. 243.

21 *id.*, p. 244.

22 *id.*, p. 251.

23 *id.*, p. 247.

24 *id.*

Benjamin describes two ‘different ways’, which correspond to what he describes as ‘mythic’ and ‘divine’ violence. The former posits an identity between the means and ends of violence; the later disconnects violent means from ends by placing the latter in an unknowable, divine sphere. An outburst of anger is an example of mythic violence, which is not directed toward any specific end. It is a ‘nonmediate violence’:

as regards man, he is impelled by anger, for example, to the most visible outbursts of a violence that is not related as a means to a preconceived end. It is not a means but a manifestation.²⁵

Distinct from violence that punishes or destroys, an outburst of anger isn’t a strategy for achieving something. Its only aim is to manifest itself. This example moves violence from a realm of calculation to a realm of appearance, where what distinguishes ‘nonmediate violence’ from mediate violence is that the former is a performance (rather than a performative).

But these mythic manifestations of violence appear to operate independently of their ends only momentarily, reducing, upon analysis, to a special kind of law-making violence. The manifestations of the gods, it turns out, ultimately produce new law. Arriving at this conclusion, Benjamin asks ‘the question of a pure immediate violence that might be able to call a halt to mythic violence’.²⁶ Benjamin names this pure immediate violence ‘divine’, defining it as violence whose expiatory ends are impossible for humans to see: ‘only mythic violence, not divine, will be recognizable as such with certainty, unless it be in incomparable effects, because the expiatory power of violence is invisible to men’.²⁷ Where the recursive visibility of mythic violence offers a criterion for understanding it as its own end, the *invisibility* of the ends of divine violence allows it to appear as pure means. Hence the different ways in which mythic and divine violence might appear to us as nonmediate: the former for having an end in itself, the latter for having an end in the realm of the unknowable. Because its ends are invisible, it is impossible to analyse divine violence within our frameworks of law or morality, frameworks which are based on systems of just ends.

Divine violence thus answers the question with which Benjamin begins in a surprising manner. Benjamin’s critique doesn’t arrive at a criterion for judging which violence is just and which is not; it arrives at an aporia where the very possibility of human judgement is no longer secure. The very attempt to consider violence as a means apart from its ends produces a second-order violence that not only eliminates the possibility of elaborating its relation to law and justice, but which destroys the very boundaries which it is law’s project to create:

25 *id.*, p. 248.

26 *id.*, p. 249.

27 *id.*, p. 252.

if mythic violence is lawmaking, divine violence is law-destroying; if the former sets boundaries, the latter boundlessly destroys them; if mythic violence brings at once guilt and retribution, divine power only expiates.²⁸

Destructive of the categories useful to law, divine violence refuses to become a useful yardstick for action:

This commandment ['thou shalt not kill'] precedes the deed, just as God was 'preventing' the deed. But just as it may not be fear of punishment that enforces obedience, the injunction becomes inapplicable, incommensurable, once the deed is accomplished. No judgment of the deed can be derived from the commandment. And so neither the divine judgment nor the grounds for this judgment can be known in advance.²⁹

As 'pure immediate violence', divine violence can never be used as an instrument for legally controlling action; its commandments precede the deeds they proscribe but refuse to be generally applied.

POETIC LANGUAGE AND DIVINE VIOLENCE

This concept of a sphere of pure means integrates Benjamin's early linguistic and political concerns. Werner Hamacher and Agamben both identify 'pure language' in Benjamin's earlier essay 'On Language as Such and on the Language of Man' as the origin of the concept of 'pure violence'.³⁰ Hamacher argues that both essays are 'based on the same fundamental conception' of the relation between means and ends; in 'On Language as Such':

in opposition to what he terms 'the bourgeois conception of language',³¹ Benjamin insists on the immediacy of a mediality, which constitutes all isolated instances of the linguistic process and which is therefore not reducible to them.³²

Hamacher uses this similarity between the essays to argue that Benjamin's category of divine violence can be the starting point for a theory of a linguistic performative without an end, an 'afformative'. I would like to suggest that there is another way to connect Benjamin's linguistic and political concerns. If we look to 'The Task of the Translator' (which Benjamin worked on at the same time as the violence essay) rather than 'On Language as Such', we find Benjamin addressing a similar set of concerns about the relation between means and ends, but in a way that pays particular attention to the poetic rather than the epistemological quality of language.

28 *id.*, p. 249.

29 *id.*, p. 250.

30 Agamben, *op. cit.*, n. 1, p. 62.

31 W. Benjamin, 'On Language and Such and on the Language of Man' in Bullock and Jennings, *op. cit.*, n. 14, p. 63.

32 W. Hamacher, 'Afformative, Strike' in *Walter Benjamin's Philosophy: Destruction and Experience*, eds. A. Benjamin and P. Osborne (1994) 129.

An analysis of the two essays together will allow us to give depth to Habermas's suggestion that 'Critique of Violence' contains within it an aesthetics of violence.

Like 'Critique of Violence', 'The Task of the Translator' is an extended reflection on the relation between means and ends. In the essay, Benjamin challenges the view that translation is simply a way to convey the same meaning in a different language. According to Benjamin, this assumption produces an inferior translation that conflates 'the sense of a linguistic creation' with 'that of the information it conveys'.³³ Translation then treats language homogeneously as a communicative tool. Against this understanding of language, Benjamin argues first, that there is something incommunicable in poetic language, and second, that successful translation does not translate the incommunicable aspect of language but instead allows us to recognize its existence. The incommunicable is what makes language poetic; Benjamin begins the essay by directing our attention to the fact that in literary works we recognize that something is 'beyond communication . . . the unfathomable, the mysterious, the "poetic"'.³⁴

Benjamin's concept of 'pure language' plays a crucial role in challenging the theory that language is always a means of communication. Pure language resists transmission: translation can testify to its existence, but cannot reconstruct it. Benjamin writes that 'pure language . . . no longer means or expresses anything but is, as expressionless and creative Word, that which is meant in all languages'.³⁵ 'Pure language' thus names the non-instrumentality of language: it is language that continues to be language but ceases to communicate. Its 'purity' is a product of this suspension of meaning. Meaning is not seamlessly transmitted from language to reader, because pure language does not aim at expression. It thus interrupts the mediality of language itself. For Benjamin, the literary work has a privileged relation to pure language because it manifests the difference between literal and uncommunicated meaning: in a poem, a calculation of the former does not yield the latter. Benjamin asks, 'what does a literary work "say"? What does it communicate? It tells very little to those who understand it. Its essential quality is not communication'.³⁶ Literature unhinges the communication of information from an arrival at understanding. The work's resistance to immediate apprehension characterizes what Benjamin calls 'the realm of art' itself:

in the appreciation of a work of art or an art form, consideration of the receiver never proves fruitful. . . . No poem is intended for the reader, no picture for the beholder, no symphony for the audience.³⁷

33 W. Benjamin, 'The Task of the Translator' in Bullock and Jennings, op. cit., n. 14, pp. 260–1.

34 id., p. 253.

35 id., p. 261.

36 id., p. 253.

37 id.

We can read the translation essay as Benjamin's articulation of the idea of pure means within his aesthetic (rather than legal) philosophy. This makes it clear why pure language does to meaning what pure violence does to normativity: both are manifestations of the resistance to a means-ends logic that a theory of pure means is capable of mounting. Where divine violence destroys law's forceful application to life, pure language 'extinguishes' the capacity of language to signify, to apply to the world. Benjamin writes that 'in this pure language . . . all information, all sense, and all intention finally encounter a stratum in which they are destined to be extinguished'.³⁸ As in the violence essay, this destruction creates the possibility for a higher justice; Benjamin writes that 'this very stratum furnishes a new and higher justification for free translation'.³⁹ It is at this level that Benjamin's aesthetic interest in pure language connects definitively with his political interest in pure violence. In both essays Benjamin makes the same move, relocating the ends of a means (violence, language) to a 'higher' sphere, thus showing how the means can appear pure, unrelated to an end. But where the violence essay depends on a messianic realm of justice to effect this dislocation, the translation essay depends upon 'the realm of art,' where we can find meaning in a poem beyond the content that it communicates.

The translation essay is significant not merely because it illustrates yet another way in which Benjamin reworks the philosophical relationship between means and ends, but because it uses the figure of pure means as the grounds for identifying the difference between the quotidian and literary uses of language, between the everyday and the aesthetic. In other words, it is through pure means that language becomes susceptible to aesthetic appreciation – becomes something that, in Kant's terms, we approach not for what it does or how well it does it, but in the absence of its functional or normative aspects. Indeed, it is at Kant's terms that Benjamin himself arrives. Benjamin writes that the process of translation:

is governed by a special high purposiveness [*Zweckmässigkeit*]. The relationship between life and purposiveness . . . reveals itself only if the ultimate purpose [*Zweck*] toward which all the individual purposiveness of life tends is sought not in its own sphere but in a higher one. All purposeful manifestations of life . . . have their end not in life but in the expression of its nature, in the representation of its significance.⁴⁰

'Representation' and 'expression' thus serve the same structural function in the translation essay that divinity serves in 'Critique of Violence', naming a realm capable of separating an end from its means. As such, the translation essay makes it clear that pure means need not be formulated in messianic terms: it is equally possible to describe means without ends as a Kantian purposiveness without purpose. Doing so calls upon aesthetic rather than

38 id.

39 id., p. 261.

40 id., p. 255.

religious experience as a model for understanding a means without ends. In 'Critique of Violence,' the experience of pure means depends on a divinity to whom alone the ends of violence are known; in 'The Task of the Translator', however, this same experience depends on the work of art, which manifests itself as an purposive object without purpose.

GESTURE AS AN UNENDED MODE OF ACTION

This figure of means without end, of 'pure means', is central to Agamben's theorization of sovereignty and the political because it enables a kind of thinking about political action that doesn't evaluate it only in terms of what it achieves. Agamben highlights the ethical possibilities of a sphere of pure means in *Means Without End*, a collection of essays written during his work on *Homo Sacer*. Throughout the collection, Agamben argues that domains which have traditionally been understood as political have lost their political significance; it is thus necessary to find politics in 'experiences and phenomena that usually are not considered political (or are so only marginally)'.⁴¹ Agamben proposes a constellation of concepts that stakes out a new territory for the political: natural life, the state of exception, the concentration camp, the refugee, language itself, and 'the sphere of pure means or of gestures (that is, of means that even while remaining such, emancipate themselves from their relation to an end)'.⁴² The last is particularly important as it is 'the proper sphere of the political'.⁴³ Where Benjamin uses a theory of pure means in 'Critique of Violence' to define a kind of violence that would destroy the normative as such, Agamben uses it in an attempt to reclaim authentic political experience.

The concept of pure means is dealt with most explicitly in the essay 'Notes on Gesture', which imports the major concepts of 'Critique of Violence' without directly referencing Benjamin. Agamben asks what kinds of phenomena allow us to experience 'pure mediality', and is interested, as Benjamin is, in the possibility of 'breaking the false alternative between ends and means that paralyzes morality'.⁴⁴ Gesture – of the kind we see in miming, the cinema, even pornography – is capable of breaking this alternative because it allows us to see 'the sphere ... of a mediality that is pure and without end'.⁴⁵ The essay thus follows the same logic as 'Critique of Violence', dissolving an impasse of means-ends logic by positing a kind of action that is unrelated – or related unusually – to its end. Although gesture sounds as though it would be the same thing as Benjamin's expressionless

41 G. Agamben, *Mezzi senza fine* (1996) 9 (all translations are my own).

42 id., p. 10.

43 id.

44 id., p. 51.

45 id., p. 52.

language, Agamben's version of gesture doubles its mediality rather than suspends it: 'Gesture is the exhibition of a mediality, the rendering visible of a means as such.'⁴⁶ Much like mythic violence, gesture's recursivity allows means to appear for their own sake and not in order to achieve something else. In contrast to actions that are directed toward an end – Agamben gives the example of marching 'as a means for moving the body from point A to point B'⁴⁷ – gesture calls attention to action itself. Agamben asks us to think of a mime whose movements don't accomplish the tasks they perform, but rather exhibit the performance. For the mime, 'gestures directed towards the most familiar ends are exhibited as such'.⁴⁸ When we watch a mime, we don't interpret his or her action by observing what it achieves, but rather see only the action. Such unendedness is the hallmark of what Agamben wants to call authentic political action, which (unlike economic calculation) is started without a predetermined end: 'The political is the sphere of pure means, that is of the absolute and complete gesturality of humanity.'⁴⁹

If this reminds us of Benjamin's politics of pure means, then 'Notes on Gesture' is particularly interesting for what it leaves out. It does not, for example, connect the sphere of pure means to violence or law, the phenomena that motivate Benjamin's development of the concept originally. Nor does Agamben describe the breaking of the continuity between means and ends as a violent event. But perhaps most significant is Agamben's conscious exclusion of aesthetic experience from the sphere of pure means: unlike Benjamin's expressionless word, the expressionlessness of gesture carries no relation to a theory of the work of art. Agamben knows that his description of pure means comes close to Kant's definition of the aesthetic object as something that has a subjective purposiveness without an objective purpose – in fact, he writes that only through the figure of pure mediality does 'the obscure Kantian expression "purposiveness without purpose" [*finalità senza scopo*] acquire a concrete significance'.⁵⁰ But Agamben's examples of pure mediality reveal his attempt to avoid equating 'pure means' and 'purposiveness without purpose'. Using dance as the model of a situation in which action appears to have no end, Agamben brackets an understanding of dance as aestheticized movement and treats it instead as a series of gestures. This perhaps unusual way of thinking about dance is necessary for the larger claim that aesthetic experience does not have the structure of pure mediality. Only as long as we experience dance as movement that, like miming, renders means visible in themselves, can dance function as an example of pure means. This is not because otherwise dance is a means for producing aesthetic pleasure in an audience but, rather, because

46 id.

47 id., p. 51.

48 id., p. 52.

49 id., p. 53.

50 id., p. 52.

dance as an artistic performance, for Agamben, is its own end. It is what it is for. This reasoning clarifies Agamben's definition of the aesthetic within the essay: aesthetics is the realm of pure ends, not pure means. Dance shows 'an endedness without means [*finalità senza mezzi*]', a sphere where gesture 'is a movement that has in itself its own end [*fine*]'.⁵¹ Agamben makes explicit the connection between Kantian purposiveness and pure means which Benjamin only implies, but does so in order to cordon it off.

If dance only works as a qualified example of pure means, because it seems to display at once pure mediality and pure endedness, then it would seem that miming itself might work better. But here, too, Agamben must cover over the possibility that watching a mime could be an aesthetic experience. Miming, Agamben writes, holds gestures:

in suspense, '*entre le désir et l'accomplissement, la perpétration et son souvenir*' [between desire and fulfilment, perpetration and remembrance], in that which Mallarmé calls a *milieu pur* [pure medium].⁵²

Agamben's quotation of Mallarmé's 'Mimique' provides an elegant instance of the relation between miming and pure means. In his empty action, Mallarmé's mime allows an audience to witness means alone; Mallarmé writes that the mime's 'act is confined to a perpetual allusion without breaking the ice or the mirror'.⁵³ But this appeal to Mallarmé is problematic for Agamben's argument in ways that remain unaddressed. As a whole, Mallarmé's text is paratactic and polyvalent, and, as Barbara Johnson points out, plays with syntax in a way that obscures meaning.⁵⁴ In so far as this signifies that 'its essential quality is not communication or the imparting of information',⁵⁵ 'Mimique' may tell us more about the kind of poetic language that characterizes Benjamin's work of art than about miming itself. Agamben's essay thus formally reintroduces the Benjaminian continuity between the literary work and pure means in the very moment that it tries to subtract the aesthetic from the gestural, speaking more to 'that which lies beyond communication'⁵⁶ than to 'the communication of a communicability'.⁵⁷ Mallarmé's mime doesn't offer the corrective to the example of dance that we might expect, but raises the question once again of whether it is possible to think of a sphere of pure means separate from the aesthetic object. This question is exacerbated by what Agamben leaves out of his quotation of Mallarmé: that the viewer of the mime is trying to articulate 'the aesthetics of the genre' of miming.⁵⁸ For this viewer, it is fictionality as

51 id., p. 51.

52 id., p. 52.

53 S. Mallarmé, 'Mimique'. Quoted in B. Johnson's introduction to the English translation of J. Derrida, *Dissemination* (1981) xxii.

54 id., p. xviii.

55 Benjamin, op. cit., n. 14, p. 253.

56 id.

57 Agamben, op. cit., n. 41, p. 52.

58 Mallarmé, op. cit., n. 53.

much as purity that defines the means of miming: 'he thus sets up a medium, a pure medium, *of fiction* [*il installe, ainsi, un milieu, pur, de fiction*]'.⁵⁹ Agamben's use of Mallarmé's prose poem is not only strange, as he has just asserted that the aesthetic dimension can be 'just as alienating'⁶⁰ as pure instrumentality; it is also selective in a way that attempts to prevent the infiltration of Mallarmé's aesthetics of miming into Agamben's politics of pure means.

Why might Agamben, unlike Benjamin, resist using literary language as a manifestation of pure means? The answer has to do with the difference between what Benjamin and Agamben mean by the term 'aesthetic'. Though both draw upon Kant's formulation that 'beauty is the form of the purposiveness [*Zweckmässigkeit*] of an object, insofar as it is perceived in it without representation of an end',⁶¹ the two interpret 'purposiveness' differently. For Agamben, unlike Benjamin, Kantian purposiveness represents pure endedness, not pure mediality. This is clear from the way in which Agamben plays on the relation between the words *fine* ('end') and *finalità* (the standard Italian translation of Kant's *Zweckmässigkeit*).⁶² Agamben writes that if we experience dance aesthetically, we see it as movement that 'has in itself its own end'.⁶³ This endedness closes the aesthetic off from the realm of pure means: 'a purposiveness without means [*una finalità senza mezzi*] is just as alienating as a mediality that makes sense only with respect to a purpose.'⁶⁴ As '*finalità senza mezzi*', the aesthetic aspect of dance is perfectly opposed to means without ends, '*mezzi senza fine*'. (Hence, as we have seen, Agamben's distinction between the aesthetic and the gestural.) For Benjamin, this is not the case; in 'The Task of the Translator', *Zweckmässigkeit* alludes to a sphere of means rather than a sphere of ends. Benjamin views translation as related to 'purposeful manifestations of life' whose ends are located in the higher realm of expression or representation, manifestations which thus appear to us as means without end. Thus, where Agamben's essay excludes aesthetic endedness from an authentic politics of pure means, Benjamin connects pure means to the incommunicable in the work of art.

59 *id.*, pp. xxii and xx (my emphasis).

60 Agamben, *op. cit.*, n. 41, p. 51.

61 Kant, *op. cit.*, n. 9, p. 120.

62 It is worth noting that in Vincenzo Binetti and Cesare Casarino's translation of *Means Without End*, '*finalità*' is translated as 'finality', which loses, for English speakers, the allusion to Kantian purposiveness.

63 Agamben, *op. cit.*, n. 41, p. 51.

64 *id.*

PLAYING WITH THE LAW

This philosophical effort to describe noninstrumental means is the basis for Agamben's political response to our 'global state of exception'. A theory of pure means can counteract a central problem of the state of exception: its exacerbation of the 'nexus between violence and law'.⁶⁵ Benjamin, as we have seen, views law as inherently violent in both its creation and preservation in so far as it is conceived as instrumental. Agamben argues that the state of exception extends this legal violence beyond its own boundaries by making it possible for extra-legal actions to acquire legal status. Tracing the legal history of the term 'force of law' (the title Derrida gave to an essay in which he analyses 'Critique of Violence'), Agamben describes those actions that, though not legally authorized, nonetheless draw upon the violence that guarantees law's dictates: 'decrees, provisions, and measures that are not formally laws nevertheless acquire their "force"'.⁶⁶ What is peculiar – and dangerous – about the state of exception is that its suspension of legal norms allows *any* action to potentially acquire legal force.⁶⁷ As such, in suspending the law, the state of exception does not also suspend the violence that creates and maintains law, but rather makes it available for appropriation by revolutionary groups, dictators, the police, and so forth: 'It is as if the suspension of law freed a force . . . that both the ruling power and its adversaries, the constituted power as well as the constituent power, seek to appropriate.'⁶⁸ Agamben terms this potential coincidence of every human action and legal force the inseparability of law and life.

Given that suspending law only increases its violent activity, Agamben proposes that 'deactivating' law, rather erasing it, is the only way to undermine its unleashed force.⁶⁹ It is in this context that Agamben offers the apparently strange solution of 'play' with which I began:

One day humanity will play with law just as children play with disused objects, not in order to restore them to their canonical use but to free them from it for good. What is found after the law is not a more proper and original

65 Agamben, *op. cit.*, n. 1, p. 88.

66 *id.*, p. 38.

67 In both *State of Exception* and *Homo Sacer*, Kafka is the theorist par excellence of such a situation: his characters live in a state where 'a distracted knock on the door can mark the start of uncontrollable trials'. G. Agamben, *Homo Sacer* (1998) 52.

68 *id.*, p. 51.

69 This 'deactivation' of law tempers Benjamin's 'destruction' of law. Through his reading of Paul, Agamben is able to, in effect, use the figure of weak messianic force from Benjamin's 'Theses on the Philosophy of History' to soften the conclusions of 'Critique of Violence':

Just as messianic power is realized and acts in the form of weakness, so too in this way does it have an effect on the sphere of law and its works, not simply by negating or annihilating them, but by de-activating them, rendering them inoperative, no-longer-at-work.

G. Agamben, *The Time That Remains* (2005) 97.

use value that precedes the law, but a new use that is born only after it. And use, which has been contaminated by law, must also be freed from its own value. This liberation is the task of study, or of play.⁷⁰

In proposing this playful relation Agamben makes the move that Benjamin avoids: explicitly describing what would remain after the violent destruction of normativity itself. ‘Play’ names the unknowable end of ‘divine violence’. Agamben himself may not be entirely comfortable with this moment; in the final paragraph of *State of Exception*, he replaces this prediction with a question and a possibility:

only beginning from the space thus opened [that is, by law’s deposition] will it be possible to pose the question of a possible use of law after the deactivation of the device that, in the state of exception, tied it to life.⁷¹

Playfulness disappears completely in *The Time That Remains*, where Christian love instead designates our relation to the fulfilled law: ‘once he divides the law into a law of works and a law of faith . . . and thus renders it inoperative and unobservable . . . Paul can then fulfil and recapitulate the law in the figure of love.’⁷² Despite Agamben’s apparent hesitation, this idea of play is instructive because of its resonance with Agamben’s own articulations of aesthetic experience.

In an essay arguing that play derives from ritual, Agamben claims that ‘everything pertaining to play once pertained to the realm of the sacred’.⁷³ Play is the participation in a ritual whose meaning has been forgotten: it converts sacred objects into mere toys. This is what gives it its (literally) revolutionary force: Agamben notes that play ‘overturns’ the sacred ‘to the point where it can plausibly be defined as “topsy-turvy sacred”’.⁷⁴ This mediation between the sacred and the secular is the function that Agamben would like play to perform on the law: overturning it without destroying it. Play would do this by retaining law’s form while forgetting its meaning; Agamben writes that ‘Playland is a country whose inhabitants are busy celebrating rituals, and manipulating objects and sacred words, whose sense and purpose they have, however forgotten.’⁷⁵ This ritual with a forgotten purpose articulates a means without end in so far as the end has become unknowable through its forgetting. This account also amounts to a

70 Agamben, op. cit., n. 1, p. 64.

71 id., p. 88.

72 Agamben, op. cit., n. 69, p. 108. The book on Paul offers a more developed account of a deactivated law, but it notably does not make the polemical claims for political relevance that *State of Exception* does. Although it may be possible to discover a connection between Paul’s fulfilling of the law as Christian love and the proposed deactivation of the law through play, the former is not immediately applicable to the problems articulated in Agamben’s more political work.

73 G. Agamben, ‘In Playland: Reflections on History and Play’ in *Infancy and History: The Destruction of Experience* (1993) 71.

74 id., p. 69.

75 id., p. 70.

transposition of Benjamin's often-cited account of the relation between the sacred and the profane in 'The Work of Art in the Age of its Technological Reproducibility':

*the unique value of the 'authentic' work of art always has its basis in ritual. This ritualistic basis, however mediated it may be, is still recognizable as secularized ritual in even the most profane forms of the cult of beauty.*⁷⁶

Agamben's toy is thus not opposed to, but the counterpart of Benjamin's 'authentic' work of art.

Furthermore, Agamben's claim that law that has opened itself to play 'no longer has force or application'⁷⁷ depends upon the logic that, for Agamben, characterizes Kantian aesthetics. This negative definition of the figure of law – as law minus force and application – removes law's functionality and normativity while maintaining that something called law still exists. Defining 'pure law' as what it is not repeats a rhetorical move for which Agamben criticizes Kant, namely that in the third critique, 'judgment identifies the determinations of beauty only in a purely negative fashion'⁷⁸ and consequently 'our appreciation of art begins necessarily with the forgetting of art'.⁷⁹ Agamben thus glosses Kant's fourth definition of the beautiful (that 'which is cognized without a concept as the object of a necessary satisfaction'⁸⁰) to emphasize its constitutive negativity: the beautiful, he says, is 'normality without a norm'.⁸¹ In *State of Exception*, it may not be problematic that our appreciation of law would begin with the forgetting of law; indeed this forgetting may be the difficult work that the book proposes. But it is not only the negative structure of the argument but also the *kind* of negativity that is continuous between Agamben's analyses of aesthetic and legal judgement. In other words, 'normality without a norm', which paradoxically articulates the subtraction of normativity from the normal, is simply another way of saying 'law without force or application'.⁸² To the degree that this is true, Kantian aesthetic judgement hasn't disappeared in our experience of pure mediality; in fact, its name has barely changed.

But perhaps most interesting is the similarity between Agamben's description of the disused law and a much less famous passage in Kant's

76 W. Benjamin, 'The Work of Art in the Age of Its Technological Reproducibility' (Second Version), *Selected Writings, Vol. 3*, eds. H. Eiland and M.W. Jennings (2002) 105.

77 Agamben, op. cit., n. 1, p. 63.

78 G. Agamben, *The Man Without Content* (1999) 41.

79 id., p. 43.

80 Kant, op. cit., n. 9, p. 124.

81 Agamben, op. cit., n. 78, p. 42.

82 This sort of negative formulation characterizes the fulfilled or extra-legal law almost every time Agamben describes it; in *The Time That Remains*, Agamben writes that the 'paradoxical figure of the law in the state of messianic exception' is 'a manifestation of "justice without law" . . . This amounts, more or less, to "observing the law without law".' Agamben, op. cit., n. 69, p. 107.

third critique. In a footnote to his definition of the beautiful as ‘an object’s form of purposiveness insofar as it is perceived in the object *without the presentation of a purpose*’,⁸³ Kant describes an object much like Agamben’s disused law. Anticipating a possible quarrel with his explication, Kant imagines someone who would point out that there are all sorts of objects whose use we don’t know, but which still aren’t considered beautiful:

It might be adduced as a counterexample to this definition that there are things in which one can see a purposive form without cognizing an end in them, e.g., the stone utensils often excavated from ancient burial mounds, which are equipped with a hole, as if for a handle, which, although they clearly betray by their shape a purposiveness the end of which one does not know, are nevertheless not declared to be beautiful on that account.⁸⁴

These stone utensils whose ends are unknown and unknowable give us an idea of what the law would look like to the humanity that Agamben hopes will play with it. Where Agamben imagines a future in which the law will still exist but will have lost its purpose, Kant describes a present in which we discover instrumental objects whose purpose is unknown. These objects offer us yet another figure of ‘means without end’: things which ‘betray by their shape a purposiveness’, but whose end has been erased by historical time. Kant argues that these objects are not actually susceptible to aesthetic reflection on the grounds that the counter-argument assumes. But they are significant because their obscured ends allow them to raise a question about their status as aesthetic objects. This is the precise question raised by Agamben’s figure of a law to be played with after its use value has been superseded.

To say, however, that Agamben’s theory of a deactivated law returns to a theory of aesthetic judgement is not to say that Agamben aestheticizes law – at least in the sense of this term that makes it an accusation. In *The Time That Remains*, Agamben argues that a certain way of thinking about messianism runs the risk of aestheticization: reducing ‘ethics and religion to acting *as if* God, the kingdom, truth, and so on existed’ amounts to ‘an aestheticization of the messianic in the form of the *as if*’.⁸⁵ But I am not suggesting that the infiltration of aesthetic experience into Agamben’s messianic law amounts to a substitution of fictional for real redemption. It is not some fictionality in our relation to the deposed law that renders our experience of it aesthetic but, rather, its suspension of the relation between means and ends. As such, Agamben’s argument against the aestheticization of the messianic – that ‘the messianic is the simultaneous abolition and realization of the *as if*’ – does not address the aesthetic trace that remains in the messianic law as formulated in *State of Exception*. This trace, I think, may testify more to the productive political possibilities of Kantian aesthetic judgement itself than to some falsity of Agamben’s solution.

83 Kant, op. cit., n. 9, p. 120.

84 id.

85 Agamben, op. cit., n. 69, p. 35.

Even so, this still amounts to a reading of Agamben against Agamben's own intention. Agamben ends *State of Exception* by suggesting that our experience of the law as a pure means is capable of reclaiming the political space that he believes has been eclipsed:

a space between [life and law] for human action, which once claimed for itself the name of 'politics'. . . . To a word that does not bind, that neither commands nor prohibits anything, but says only itself would correspond an action as pure means, which shows only itself without any relation to an end.⁸⁶

If it is as difficult to separate the figure of pure means from aesthetic purposiveness as Benjamin's and Agamben's own writings suggest, then one can easily see the beauty inherent in 'action as pure means, which shows only itself'.⁸⁷ This leaves us with a different answer to the question with which Agamben opens his book – 'What does it mean to act politically?'⁸⁸ – than Agamben gives. We might say that what it means to act politically is to act aesthetically. To enlist the figure of pure means in a call for the return of an authentic politics is to partially ground the political on that moment in aesthetic judgement when we appreciate something not because it is useful or because it fits with our conceptual understanding of the world, but simply because we have a relation to it, independent of its purpose.

86 Agamben, op. cit., n. 1, p. 88.

87 id.

88 id., p. 2.

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