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Critique of Violence

The task of a critique of violence can be summarized as that of expounding its relation to law and justice. For a cause, however effective, becomes violent, in the precise sense of the word, only when it bears on moral issues. The sphere of these issues is defined by the concepts of law and justice. With regard to the first of these, it is clear that the most elementary relationship within any legal system is that of ends to means, and, further, that violence can first be sought only in the realm of means, not of ends. These observations provide a critique of violence with more—and certainly different—premises than perhaps appears. For if violence is a means, a criterion for criticizing it might seem immediately available. It imposes itself in the question whether violence, in a given case, is a means to a just or an unjust end. A critique of it would then be implied in a system of just ends. This, however, is not so. For what such a system, assuming it to be secure against all doubt, would contain is not a criterion for violence itself as a principle, but, rather, the criterion for cases of its use. The question would remain open whether violence, as a principle, could be a moral means even to just ends. To resolve this question a more exact criterion is needed, which would discriminate within the sphere of means themselves, without regard for the ends they serve.

The exclusion of this more precise critical approach is perhaps the predominant feature of a main current of legal philosophy: natural law. It perceives in the use of violent means to just ends no greater problem than a man sees in his "right" to move his body in the direction of a desired goal. According to this view (for which the terrorism in the French Revolu-

tion provided an ideological foundation), violence is a product of nature, as it were a raw material, the use of which is in no way problematical, unless force is misused for unjust ends. If, according to the theory of state of natural law, people give up all their violence for the sake of the state, this is done on the assumption (which Spinoza, for example, states explicitly in his *Tractatus Theologico-Politicus*) that the individual, before the conclusion of this rational contract, has *de jure* the right to use at will the violence that is *de facto* at his disposal. Perhaps these views have been recently rekindled by Darwin's biology, which, in a thoroughly dogmatic manner, regards violence as the only original means, besides natural selection, appropriate to all the vital ends of nature. Popular Darwinistic philosophy has often shown how short a step it is from this dogma of natural history to the still cruder one of legal philosophy, which holds that the violence that is, almost alone, appropriate to natural ends is thereby also legal.

This thesis of natural law that regards violence as a natural datum is diametrically opposed to that of positive law, which sees violence as a product of history. If natural law can judge all existing law only in criticizing its ends, so positive law can judge all evolving law only in criticizing its means. If justice is the criterion of ends, legality is that of means. Notwithstanding this antithesis, however, both schools meet in their common basic dogma: just ends can be attained by justified means, justified means used for just ends. 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. This antinomy would prove insoluble if the common dogmatic assumption were false, if justified means on the one hand and just ends on the other were in irreconcilable conflict. No insight into this problem could be gained, however, until the circular argument had been broken, and mutually independent criteria both of just ends and of justified means were established.

The realm of ends, and therefore also the question of a

criterion of justness, is excluded for the time being from this study. Instead, the central place is given to the question of the justification of certain means that constitute violence. Principles of natural law cannot decide this question, but can only lead to bottomless casuistry. For if positive law is blind to the absoluteness of ends, natural law is equally so to the contingency of means. On the other hand, the positive theory of law is acceptable as a hypothetical basis at the outset of this study, because it undertakes a fundamental distinction between kinds of violence independently of cases of their application. This distinction is between historically acknowledged, so-called sanctioned violence, and unsanctioned violence. If the following considerations proceed from this it cannot, of course, mean that given forms of violence are classified in terms of whether they are sanctioned or not. For in a critique of violence, a criterion for the latter in positive law cannot concern its uses but only its evaluation. The question that concerns us is, what light is thrown on the nature of violence by the fact that such a criterion or distinction can be applied to it at all, or, in other words, what is the meaning of this distinction? That this distinction supplied by positive law is meaningful, based on the nature of violence, and irreplaceable by any other, will soon enough be shown, but at the same time light will be shed on the sphere in which alone such a distinction can be made. To sum up: if the criterion established by positive law to assess the legality of violence can be analyzed with regard to its meaning, then the sphere of its application must be criticized with regard to its value. For this critique a standpoint outside positive legal philosophy but also outside natural law must be found. The extent to which it can only be furnished by a historico-philosophical view of law will emerge.

The meaning of the distinction between legitimate and illegitimate violence is not immediately obvious. The misunderstanding in natural law by which a distinction is drawn between violence used for just and unjust ends must be emphatically rejected. Rather, it has already been indicated that

positive law demands of all violence a proof of its historical origin, which under certain conditions is declared legal, sanctioned. Since the acknowledgment of legal violence is most tangibly evident in a deliberate submission to its ends, a hypothetical distinction between kinds of violence must be based on the presence or absence of a general historical acknowledgment of its ends. Ends that lack such acknowledgment may be called natural ends, the other legal ends. The differing function of violence, depending on whether it serves natural or legal ends, can be most clearly traced against a background of specific legal conditions. For the sake of simplicity, the following discussion will relate to contemporary European conditions.

Characteristic of these, as far as the individual as legal subject is concerned, is the tendency not to admit the natural ends of such individuals in all those cases in which such ends could, in a given situation, be usefully pursued by violence. This means: this legal system tries to erect, in all areas where individual ends could be usefully pursued by violence, legal ends that can only be realized by legal power. Indeed, it strives to limit by legal ends even those areas in which natural ends are admitted in principle within wide boundaries, like that of education, as soon as these natural ends are pursued with an excessive measure of violence, as in the laws relating to the limits of educational authority to punish. It can be formulated as a general maxim of present-day European legislation that all the natural ends of individuals must collide with legal ends if pursued with a greater or lesser degree of violence. (The contradiction between this and the right of self-defense will be resolved in what follows.) From this maxim it follows that law sees violence in the hands of individuals as a danger undermining the legal system. As a danger nullifying legal ends and the legal executive? Certainly not; for then violence as such would not be condemned, but only that directed to illegal ends. It will be argued that a system of legal ends cannot be maintained if natural ends are anywhere still pursued violently. In the first place, however, this is a mere dogma. To counter it

one might perhaps consider the surprising possibility that the law's interest in a monopoly of violence vis-à-vis individuals is not explained by the intention of preserving legal ends but, rather, by that of preserving the law itself; that violence, when not in the hands of the law, threatens it not by the ends that it may pursue but by its mere existence outside the law. The same may be more drastically suggested if one reflects how often the figure of the "great" criminal, however repellent his ends may have been, has aroused the secret admiration of the public. This cannot result from his deed, but only from the violence to which it bears witness. In this case, therefore, the violence of which present-day law is seeking in all areas of activity to deprive the individual appears really threatening, and arouses even in defeat the sympathy of the mass against law. By what function violence can with reason seem so threatening to law, and be so feared by it, must be especially evident where its application, even in the present legal system, is still permissible.

This is above all the case in the class struggle, in the form of the workers' guaranteed right to strike. Organized labor is, apart from the state, probably today the only legal subject entitled to exercise violence. Against this view there is certainly the objection that an omission of actions, a nonaction, which a strike really is, cannot be described as violence. Such a consideration doubtless made it easier for a state power to conceive the right to strike, once this was no longer avoidable. But its truth is not unconditional, and therefore not unrestricted. It is true that the omission of an action, or service, where it amounts simply to a "severing of relations," can be an entirely nonviolent, pure means. And as in the view of the state, or the law, the right to strike conceded to labor is certainly not a right to exercise violence but, rather, to escape from a violence indirectly exercised by the employer, strikes conforming to this may undoubtedly occur from time to time and involve only a "withdrawal" or "estrangement" from the employer. The moment of violence, however, is necessarily introduced, in the

form of extortion, into such an omission, if it takes place in the context of a conscious readiness to resume the suspended action under certain circumstances that either have nothing whatever to do with this action or only superficially modify it. Understood in this way, the right to strike constitutes in the view of labor, which is opposed to that of the state, the right to use force in attaining certain ends. The antithesis between the two conceptions emerges in all its bitterness in face of a revolutionary general strike. In this, labor will always appeal to its right to strike, and the state will call this appeal an abuse, since the right to strike was not "so intended," and take emergency measures. For the state retains the right to declare that a simultaneous use of strike in all industries is illegal, since the specific reasons for strike admitted by legislation cannot be prevalent in every workshop. In this difference of interpretation is expressed the objective contradiction in the legal situation, whereby the state acknowledges a violence whose ends, as natural ends, it sometimes regards with indifference, but in a crisis (the revolutionary general strike) confronts inimically. For, however paradoxical this may appear at first sight, even conduct involving the exercise of a right can nevertheless, under certain circumstances, be described as violent. More specifically, such conduct, when active, may be called violent if it exercises a right in order to overthrow the legal system that has conferred it; when passive, it is nevertheless to be so described if it constitutes extortion in the sense explained above. It therefore reveals an objective contradiction in the legal situation, but not a logical contradiction in the law, if under certain circumstances the law meets the strikers, as perpetrators of violence, with violence. For in a strike the state fears above all else that function of violence which it is the object of this study to identify as the only secure foundation of its critique. For if violence were, as first appears, merely the means to secure directly whatever happens to be sought, it could fulfill its end as predatory violence. It would be entirely unsuitable as a basis for, or a modification to, relatively stable conditions. The

strike shows, however, that it can be so, that it is able to found and modify legal conditions, however offended the sense of justice may find itself thereby. It will be objected that such a function of violence is fortuitous and isolated. This can be rebutted by a consideration of military violence.

The possibility of military law rests on exactly the same objective contradiction in the legal situation as does that of strike law, that is to say, on the fact that legal subjects sanction violence whose ends remain for the sanctioners natural ends, and can therefore in a crisis come into conflict with their own legal or natural ends. Admittedly, military violence is in the first place used quite directly, as predatory violence, toward its ends. Yet it is very striking that even—or, rather, precisely—in primitive conditions that know hardly the beginnings of constitutional relations, and even in cases where the victor has established himself in invulnerable possession, a peace ceremony is entirely necessary. Indeed, the word "peace," in the sense in which it is the correlative to the word "war" (for there is also a quite different meaning, similarly unmetaphorical and political, the one used by Kant in talking of "Eternal Peace"), denotes this a priori, necessary sanctioning, regardless of all other legal conditions, of every victory. This sanction consists precisely in recognizing the new conditions as a new "law," quite regardless of whether they need *de facto* any guarantee of their continuation. If, therefore, conclusions can be drawn from military violence, as being primordial and paradigmatic of all violence used for natural ends, there is inherent in all such violence a lawmaking character. We shall return later to the implications of this insight. It explains the above-mentioned tendency of modern law to divest the individual, at least as a legal subject, of all violence, even that directed only to natural ends. In the great criminal this violence confronts the law with the threat of declaring a new law, a threat that even today, despite its impotence, in important instances horrifies the public as it did in primeval times. The state, however, fears this violence simply for its lawmaking character,

being obliged to acknowledge it as lawmaking whenever external powers force it to concede them the right to conduct warfare, and classes the right to strike.

If in the last war the critique of military violence was the starting point for a passionate critique of violence in general—which taught at least one thing, that violence is no longer exercised and tolerated naïvely—nevertheless, violence was not only subject to criticism for its lawmaking character, but was also judged, perhaps more annihilatingly, for another of its functions. For a duality in the function of violence is characteristic of militarism, which could only come into being through general conscription. Militarism is the compulsory, universal use of violence as a means to the ends of the state. This compulsory use of violence has recently been scrutinized as closely as, or still more closely than, the use of violence itself. In it violence shows itself in a function quite different from its simple application for natural ends. It consists in the use of violence as a means of legal ends. For the subordination of citizens to laws—in the present case, to the law of general conscription—is a legal end. If that first function of violence is called the lawmaking function, this second will be called the law-preserving function. Since conscription is a case of law-preserving violence that is not in principle distinguished from others, a really effective critique of it is far less easy than the declamations of pacifists and activists suggest. Rather, such a critique coincides with the critique of all legal violence—that is, with the critique of legal or executive force—and cannot be performed by any lesser program. Nor, of course—unless one is prepared to proclaim a quite childish anarchism—is it achieved by refusing to acknowledge any constraint toward persons and declaring “What pleases is permitted.” Such a maxim merely 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. More important is the fact that even the appeal, so frequently attempted, to

the categorical imperative, with its doubtless incontestable *minimum* program—act in such a way that at all times you use humanity both in your person and in the person of all others as an end, and never merely as a means—is in itself inadequate for such a critique.* For positive law, if conscious of its roots, will certainly claim to acknowledge and promote the interest of mankind in the person of each individual. It sees this interest in the representation and preservation of an order imposed by fate. While this view, which claims to preserve law in its very basis, cannot escape criticism, nevertheless all attacks that are made merely in the name of a formless “freedom” without being able to specify this higher order of freedom, remain impotent against it. And most impotent of all when, instead of attacking the legal system root and branch, they impugn particular laws or legal practices that the law, of course, takes under the protection of its power, which resides in the fact that there is only one fate and that what exists, and in particular what threatens, belongs inviolably to its order. For law-preserving violence is a threatening violence. And its threat is not intended as the deterrent that uninformed liberal theorists interpret it to be. A deterrent in the exact sense would require a certainty that contradicts the nature of a threat and is not attained by any law, since there is always hope of eluding its arm. This makes it all the more threatening, like fate, on which depends whether the criminal is apprehended. The deepest purpose of the uncertainty of the legal threat will emerge from the later consideration of the sphere of fate in which it originates. There is a useful pointer to it in the sphere of punishments. Among them, since the validity of positive law has been called into question, capital punishment has provoked more criticism than all others. However superficial the arguments may in most cases have been, their motives were and are rooted in principle. The opponents of these critics

* One might, rather, doubt whether this famous demand does not contain too little, that is, whether it is permissible to use, or allow to be used, oneself or another in any respect as a means. Very good grounds for such doubt could be adduced.

felt, perhaps without knowing why and probably involuntarily, that an attack on capital punishment assails, not legal measure, not laws, but law itself in its origin. For if violence, violence crowned by fate, is the origin of law, then it may be readily supposed that where the highest violence, that over life and death, occurs in the legal system, the origins of law jut manifestly and fearsomely into existence. In agreement with this is the fact that the death penalty in primitive legal systems is imposed even for such crimes as offenses against property, to which it seems quite out of "proportion." Its purpose is not to punish the infringement of law but to establish new law. For in the exercise of violence over life and death more than in any other legal act, law reaffirms itself. But in this very violence something rotten in law is revealed, above all to a finer sensibility, because the latter knows itself to be infinitely remote from conditions in which fate might imperiously have shown itself in such a sentence. Reason must, however, attempt to approach such conditions all the more resolutely, if it is to bring to a conclusion its critique of both lawmaking and law-preserving violence.

In a far more unnatural combination than in the death penalty, in a kind of spectral mixture, these two forms of violence are present in another institution of the modern state, the police. True, this is violence for legal ends (in the right of disposition), but with the simultaneous authority to decide these ends itself within wide limits (in the right of decree). The ignominy of such an authority, which is felt by few simply because its ordinances suffice only seldom for the crudest acts, but are therefore allowed to rampage all the more blindly in the most vulnerable areas and against thinkers, from whom the state is not protected by law—this ignominy lies in the fact that in this authority the separation of lawmaking and law-preserving violence is suspended. If the first is required to prove its worth in victory, the second is subject to the restriction that it may not set itself new ends. Police violence is emancipated from both conditions. It is lawmaking, for its

characteristic function is not the promulgation of laws but the assertion of legal claims for any decree, and law-preserving, because it is at the disposal of these ends. The assertion that the ends of police violence are always identical or even connected to those of general law is entirely untrue. Rather, the "law" of the police really marks the point at which the state, whether from impotence or because of the immanent connections within any legal system, can no longer guarantee through the legal system the empirical ends that it desires at any price to attain. Therefore the police intervene "for security reasons" in countless cases where no clear legal situation exists, when they are not merely, without the slightest relation to legal ends, accompanying the citizen as a brutal encumbrance through a life regulated by ordinances, or simply supervising him. Unlike law, which acknowledges in the "decision" determined by place and time a metaphysical category that gives it a claim to critical evaluation, a consideration of the police institution encounters nothing essential at all. Its power is formless, like its nowhere tangible, all-pervasive, ghostly presence in the life of civilized states. And though the police may, in particulars, everywhere appear the same, it cannot finally be denied that their spirit is less devastating where they represent, in absolute monarchy, the power of a ruler in which legislative and executive supremacy are united, than in democracies where their existence, elevated by no such relation, bears witness to the greatest conceivable degeneration of violence.

All violence as a means is either lawmaking or law-preserving. If it lays claim to neither of these predicates, it forfeits all validity. It follows, however, that all violence as a means, even in the most favorable case, is implicated in the problematic nature of law itself. And if the importance of these problems cannot be assessed with certainty at this stage of the investigation, law nevertheless appears, from what has been said, in so ambiguous a moral light that the question poses itself whether there are no other than violent means for regulating conflicting human interests. We are above all obligated to note

that a totally nonviolent resolution of conflicts can never lead to a legal contract. For the latter, however peacefully it may have been entered into by the parties, leads finally to possible violence. It confers on both parties the right to take recourse to violence in some form against the other, should he break the agreement. Not only that; like the outcome, the origin of every contract also points toward violence. It need not be directly present in it as lawmaking violence, but is represented in it insofar as the power that guarantees a legal contract is in turn of violent origin even if violence is not introduced into the contract itself. When the consciousness of the latent presence of violence in a legal institution disappears, the institution falls into decay. In our time, parliaments provide an example of this. They offer the familiar, woeful spectacle because they have not remained conscious of the revolutionary forces to which they owe their existence. Accordingly, in Germany in particular, the last manifestation of such forces bore no fruit for parliaments. They lack the sense that a lawmaking violence is represented by themselves; no wonder that they cannot achieve decrees worthy of this violence, but cultivate in compromise a supposedly nonviolent manner of dealing with political affairs. This remains, however, a "product situated within the mentality of violence, no matter how it may disdain all open violence, because the effort toward compromise is motivated not internally but from outside, by the opposing effort, because no compromise, however freely accepted, is conceivable without a compulsive character. 'It would be better otherwise' is the underlying feeling in every compromise."*

Significantly, the decay of parliaments has perhaps alienated as many minds from the ideal of a nonviolent resolution of political conflicts as were attracted to it by the war. The pacifists are confronted by the Bolsheviks and Syndicalists. These have effected an annihilating and on the whole apt critique of present-day parliaments. Nevertheless, however desirable and gratifying a flourishing parliament might be by compari-

* Unger, *Politik und Metaphysik*, Berlin, 1921, p. 8.

son, a discussion of means of political agreement that are in principle nonviolent cannot be concerned with parliamentarianism. For what parliament achieves in vital affairs can only be those legal decrees that in their origin and outcome are attended by violence.

Is any nonviolent resolution of conflict possible? Without doubt. The relationships of private persons are full of examples of this. Nonviolent agreement is possible wherever a civilized outlook allows the use of unalloyed means of agreement. Legal and illegal means of every kind that are all the same violent may be confronted with nonviolent ones as unalloyed means. Courtesy, sympathy, peaceableness, trust, and whatever else might here be mentioned, are their subjective preconditions. Their objective manifestation, however, is determined by the law (the enormous scope of which cannot be discussed here) that unalloyed means are never those of direct, but always those of indirect solutions. They therefore never apply directly to the resolution of conflict between man and man, but only to matters concerning objects. The sphere of nonviolent means opens up in the realm of human conflicts relating to goods. For this reason technique in the broadest sense of the word is their most particular area. Its profoundest example is perhaps the conference, considered as a technique of civil agreement. For in it not only is nonviolent agreement possible, but also the exclusion of violence in principle is quite explicitly demonstrable by one significant factor: there is no sanction for lying. Probably no legislation on earth originally stipulated such a sanction. This makes clear that there is a sphere of human agreement that is nonviolent to the extent that it is wholly inaccessible to violence: the proper sphere of "understanding," language. Only late and in a peculiar process of decay has it been penetrated by legal violence in the penalty placed on fraud. For whereas the legal system at its origin, trusting to its victorious power, is content to defeat lawbreaking wherever it happens to show itself, and deception, having itself no trace of power about it, was, on the principle *ius civile*

vigilantibus scriptum est, exempt from punishment in Roman and ancient Germanic law, the law of a later period, lacking confidence in its own violence, no longer felt itself a match for that of all others. Rather, fear of the latter and mistrust of itself indicate its declining vitality. It begins to set itself ends, with the intention of sparing law-preserving violence more taxing manifestations. It turns to fraud, therefore, not out of moral considerations, but for fear of the violence that it might unleash in the defrauded party. Since such fear conflicts with the violent nature of law derived from its origins, such ends are inappropriate to the justified means of law. They reflect not only the decay of its own sphere, but also a diminution of pure means. For, in prohibiting fraud, law restricts the use of wholly nonviolent means because they could produce reactive violence. This tendency of law has also played a part in the concession of the right to strike, which contradicts the interests of the state. It grants this right because it forestalls violent actions the state is afraid to oppose. Did not workers previously resort at once to sabotage and set fire to factories? To induce men to reconcile their interests peacefully without involving the legal system, there is, in the end, apart from all virtues, one effective motive that often enough puts into the most reluctant hands pure instead of violent means; it is the fear of mutual disadvantages that threaten to arise from violent confrontation, whatever the outcome might be. Such motives are clearly visible in countless cases of conflict of interests between private persons. It is different when classes and nations are in conflict, since the higher orders that threaten to overwhelm equally victor and vanquished are hidden from the feelings of most, and from the intelligence of almost all. Space does not here permit me to trace such higher orders and the common interests corresponding to them, which constitute the most enduring motive for a policy of pure means.* We can therefore only point to pure means in politics as analogous

* But see Unger, pp. 18 ff.

to those which govern peaceful intercourse between private persons.

As regards class struggles, in them strike must under certain conditions be seen as a pure means. Two essentially different kinds of strike, the possibilities of which have already been considered, must now be more fully characterized. Sorel has the credit—from political, rather than purely theoretical, considerations—of having first distinguished them. He contrasts them as the political and the proletarian general strike. They are also antithetical in their relation to violence. Of the partisans of the former he says: “The strengthening of state power is the basis of their conceptions; in their present organizations the politicians (viz. the moderate socialists) are already preparing the ground for a strong centralized and disciplined power that will be impervious to criticism from the opposition, capable of imposing silence, and of issuing its mendacious decrees.”* “The political general strike demonstrates how the state will lose none of its strength, how power is transferred from the privileged to the privileged, how the mass of producers will change their masters.” In contrast to this political general strike (which incidentally seems to have been summed up by the abortive German revolution), the proletarian general strike sets itself the sole task of destroying state power. It “nullifies all the ideological consequences of every possible social policy; its partisans see even the most popular reforms as bourgeois.” “This general strike clearly announces its indifference toward material gain through conquest by declaring its intention to abolish the state; the state was really . . . the basis of the existence of the ruling group, who in all their enterprises benefit from the burdens borne by the public.” While the first form of interruption of work is violent since it causes only an external modification of 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

* Sorel, *Réflexions sur la violence*, 5th ed., Paris, 1919, p. 250.

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. For this reason, the first of these undertakings is lawmaking but the second anarchistic. Taking up occasional statements by Marx, Sorel rejects every kind of program, of utopia—in a word, of lawmaking—for the revolutionary movement: “With the general strike all these fine things disappear; the revolution appears as a clear, simple revolt, and no place is reserved either for the sociologists or for the elegant amateurs of social reforms or for the intellectuals who have made it their profession to think for the proletariat.” Against this deep, moral, and genuinely revolutionary conception, no objection can stand that seeks, on grounds of its possibly catastrophic consequences, to brand such a general strike as violent. Even if it can rightly be said that the modern economy, seen as a whole, resembles much less a machine that stands idle when abandoned by its stoker than a beast that goes berserk as soon as its tamer turns his back, nevertheless the violence of an action can be assessed no more from its effects than from its ends, but only from the law of its means. State power, of course, which has eyes only for effects, opposes precisely this kind of strike for its alleged violence, as distinct from partial strikes which are for the most part actually extortionate. The extent to which such a rigorous conception of the general strike as such is capable of diminishing the incidence of actual violence in revolutions, Sorel has explained with highly ingenious arguments. By contrast, an outstanding example of violent omission, more immoral and cruder than the political general strike, akin to a blockade, is the strike by doctors, such as several German cities have seen. In this is revealed at its most repellent an unscrupulous use of violence that is positively depraved in a professional class that for years, without the slightest attempts at resistance, “secured death its prey,” and then at the first opportunity abandoned life of its own

free will. More clearly than in recent class struggles, the means of nonviolent agreement have developed in thousands of years of the history of states. Only occasionally does the task of diplomats in their transactions consist of modifications to legal systems. Fundamentally they have, entirely on the analogy of agreement between private persons, to resolve conflicts case by case, in the names of their states, peacefully and without contracts. A delicate task that is more robustly performed by referees, but a method of solution that in principle is above that of the referee because it is beyond all legal systems, and therefore beyond violence. Accordingly, like the intercourse of private persons, that of diplomats has engendered its own forms and virtues, which were not always mere formalities, even though they have become so.

Among all the forms of violence permitted by both natural law and positive law there is not one that is free of the gravely problematic nature, already indicated, of all legal violence. Since, however, every conceivable solution to human problems, not to speak of deliverance from the confines of all the world-historical conditions of existence obtaining hitherto, remains impossible if violence is totally excluded in principle, the question necessarily arises as to other kinds of violence than all those envisaged by legal theory. It is at the same time the question of the truth of the basic dogma common to both theories: just ends can be attained by justified means, justified means used for just ends. How would it be, therefore, if all the violence imposed by fate, using justified means, were of itself in irreconcilable conflict with just ends, and if at the same time a different kind of violence came into view that certainly could be either the justified or the unjustified means to those ends, but was not related to them as means at all but in some different way? This would throw light on the curious and at first discouraging discovery of the ultimate insolubility of all legal problems (which in its hopelessness is perhaps comparable only to the possibility of conclusive pronouncements on “right” and “wrong” in evolving lan-

guages). For it is never reason that decides on the justification of means and the justness of ends, but fate-imposed violence on the former and God on the latter. And insight that is uncommon only because of the stubborn prevailing habit of conceiving those just ends as ends of a possible law, that is, not only as generally valid (which follows analytically from the nature of justice), but also as capable of generalization, which, as could be shown, contradicts the nature of justice. For ends that for one situation are just, universally acceptable, and valid, are so for no other situation, no matter how similar it may be in other respects. The nonmediate function of violence at issue here is illustrated by everyday experience. 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. Moreover, this violence has thoroughly objective manifestations in which it can be subjected to criticism. These are to be found, most significantly, above all in myth.

Mythical violence in its archetypal form is a mere manifestation of the gods. Not a means to their ends, scarcely a manifestation of their will, but first of all a manifestation of their existence. The legend of Niobe contains an outstanding example of this. True, it might appear that the action of Apollo and Artemis is only a punishment. But their violence establishes a law far more than it punishes for the infringement of one already existing. Niobe's arrogance calls down fate upon itself not because her arrogance offends against the law but because it challenges fate—to a fight in which fate must triumph, and can bring to light a law only in its triumph. How little such divine violence was to the ancients the law-preserving violence of punishment is shown by the heroic legends in which the hero—for example, Prometheus—challenges fate with dignified courage, fights it with varying fortunes, and is not left by the legend without hope of one day bringing a new law to men. It is really this hero and the legal violence of the myth native to him that the public tries

to picture even now in admiring the miscreant. Violence therefore bursts upon Niobe from the uncertain, ambiguous sphere of fate. It is not actually destructive. Although it brings a cruel death to Niobe's children, it stops short of the life of their mother, whom it leaves behind, more guilty than before through the death of the children, both as an eternally mute bearer of guilt and as a boundary stone on the frontier between men and gods. If this immediate violence in mythical manifestations proves closely related, indeed identical to lawmaking violence, it reflects a problematic light on lawmaking violence, insofar as the latter was characterized above, in the account of military violence, as merely a mediate violence. At the same time this connection promises further to illuminate fate, which in all cases underlies legal violence, and to conclude in broad outline the critique of the latter. For 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 this 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. Lawmaking is power making, and, to that extent, an immediate manifestation of violence. Justice is the principle of all divine end making, power the principle of all mythical lawmaking.

An application of the latter that has immense consequences is to be found in constitutional law. For in this sphere the establishing of frontiers, the task of "peace" after all the wars of the mythical age, is the primal phenomenon of all lawmaking violence. Here we see most clearly that power, more than the most extravagant gain in property, is what is guaranteed by all lawmaking violence. Where frontiers are decided the adversary is not simply annihilated; indeed, he is accorded rights even when the victor's superiority in power is complete. And these are, in a demonically ambiguous way, "equal" rights: for both parties to the treaty it is the same line that

may not be crossed. Here appears, in a terribly primitive form, the same mythical ambiguity of laws that may not be "infringed" to which Anatole France refers satirically when he says, "Poor and rich are equally forbidden to spend the night under the bridges." It also appears that Sorel touches not merely on a cultural-historical but also on a metaphysical truth in surmising that in the beginning all right was the prerogative of the kings or the nobles—in short, of the mighty; and that, *mutatis mutandis*, it will remain so as long as it exists. For from the point of view of violence, which alone can guarantee law, there is no equality, but at the most equally great violence. The act of fixing frontiers, however, is also significant for an understanding of law in another respect. Laws and unmarked frontiers remain, at least in primeval times, unwritten laws. A man can unwittingly infringe upon them and thus incur retribution. For each intervention of law that is provoked by an offense against the unwritten and unknown law is called, in contradistinction to punishment, retribution. But however unluckily it may befall its unsuspecting victim, its occurrence is, in the understanding of the law, not chance, but fate showing itself once again in its deliberate ambiguity. Hermann Cohen, in a brief reflection on the ancients' conception of fate, has spoken of the "inescapable realization" that it is "fate's orders themselves that seem to cause and bring about this infringement, this offense."* To this spirit of law even the modern principle that ignorance of a law is not protection against punishment testifies, just as the struggle over written law in the early period of the ancient Greek communities is to be understood as a rebellion against the spirit of mythical statutes.

Far from inaugurating a purer sphere, the mythical 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

* Hermann Cohen, *Ethik des reinen Willens*, 2nd ed., Berlin, 1907, p. 362.

obligatory. This very task of destruction poses again, in the last resort, the question of a pure immediate violence that might be able to call a halt to mythical violence. Just as in all spheres God opposes myth, mythical violence is confronted by the divine. And the latter constitutes its antithesis in all respects. If mythical violence is lawmaking, divine violence is law-destroying; if the former sets boundaries, the latter boundlessly destroys them; if mythical violence brings at once guilt and retribution, divine power only expiates; if the former threatens, the latter strikes; if the former is bloody, the latter is lethal without spilling blood. The legend of Niobe may be confronted, as an example of this violence, with God's judgment on the company of Korah. It strikes privileged Levites, strikes them without warning, without threat, and does not stop short of annihilation. But in annihilating it also expiates, and a deep connection between the lack of bloodshed and the expiatory character of this violence is unmistakable. For blood is the symbol of mere life. The dissolution of legal violence stems, as cannot be shown in detail here, from the guilt of mere 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. For with mere life the rule of law over the living ceases. Mythical violence is bloody power over mere life for its own sake, divine violence pure power over all life for the sake of the living. The first demands sacrifice, the second accepts it.

This divine power is attested not only by religious tradition but is also found in present-day life in at least one sanctioned manifestation. The educative power, which in its perfected form stands outside the law, is one of its manifestations. These 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. To this extent it is justifiable to call this violence, too, annihilating; but it is so only relatively, with regard to

goods, right, life, and suchlike, never absolutely, with regard to the soul of the living. The premise of such an extension of pure or divine power is sure to provoke, particularly today, the most violent reactions, and to be countered by the argument that taken to its logical conclusion it confers on men even lethal power against one another. This, however, cannot be conceded. For the question "May I kill?" meets its irreducible answer in the commandment "Thou shalt not kill." This commandment 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. 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. Thus it was understood by Judaism, which expressly rejected the condemnation of killing in self-defense. But those thinkers who take the opposed view refer to a more distant theorem, on which they possibly propose to base even the commandment itself. This is the doctrine of the sanctity of life, which they either apply to all animal or even vegetable life, or limit to human life. Their argumentation, exemplified in an extreme case by the revolutionary killing of the oppressor, runs as follows: "If I do not kill I shall never establish the world dominion of justice . . . that is the argument of the intelligent terrorist. . . . We, however, profess that higher even than the happiness and justice of existence stands existence itself."* As certainly as this last proposition is false, indeed ignoble, it shows the necessity of seeking the reason for the commandment no longer

* Kurt Hiller in a yearbook of *Das Ziel*.

in what the deed does to the victim, but in what it does to God and the doer. The proposition that existence stands higher than a just existence is false and ignominious, if existence is to mean nothing other than mere life—and it has this meaning in the argument referred to. It contains a mighty truth, however, if existence, or, better, life (words whose ambiguity is readily dispelled, analogously to that of freedom, when they are referred to two distinct spheres), means the irreducible, total condition that is "man"; if the proposition is intended to mean that the nonexistence of man is something more terrible than the (admittedly subordinate) not-yet-attained condition of the just man. To this ambiguity the proposition quoted above owes its plausibility. Man cannot, at any price, be said to coincide with the mere life in him, no more than with any other of his conditions and qualities, not even with the uniqueness of his bodily person. However sacred man is (or that life in him that is identically present in earthly life, death, and afterlife), there is no sacredness in his condition, in his bodily life vulnerable to injury by his fellow men. What, then, distinguishes it essentially from the life of animals and plants? And even if these were sacred, they could not be so by virtue only of being alive, of being in life. It might be well worth while to track down the origin of the dogma of the sacredness of life. Perhaps, indeed probably, it is relatively recent, the last mistaken attempt of the weakened Western tradition to seek the saint it has lost in cosmological impenetrability. (The antiquity of all religious commandments against murder is no counterargument, because these are based on other ideas than the modern theorem.) Finally, this idea of man's sacredness gives grounds for reflection that what is here pronounced sacred was according to ancient mythical thought the marked bearer of guilt: life itself.

The critique of violence is the philosophy of its history—the "philosophy" of this history, because only the idea of its development makes possible a critical, discriminating, and

decisive approach to its temporal data. A gaze directed only at what is close at hand can at most perceive a dialectical rising and falling in the lawmaking and law-preserving formations of violence. The law governing their oscillation rests on the circumstance that all law-preserving violence, in its duration, indirectly weakens the lawmaking violence represented by it, through the suppression of hostile counter-violence. (Various symptoms of this have been referred to in the course of this study.) 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. On the breaking of this cycle maintained by mythical forms of law, on the suspension of law with all the forces on which it depends as they depend on it, finally therefore on the abolition of state power, a new historical epoch is founded. If the rule of myth is broken occasionally in the present age, the coming age is not so unimaginably remote that an attack on law is altogether futile. But if the existence of violence outside the law, as pure immediate violence, is assured, this furnishes the proof that revolutionary violence, the highest manifestation of unalloyed violence by man, is possible, and by what means. Less possible and also less urgent for humankind, however, is to decide when unalloyed violence has been realized in particular cases. For only mythical violence, not divine, will be recognizable as such with certainty, unless it be in incomparable effects, because the expiatory power of violence is not visible to men. Once again all the eternal forms are open to pure divine violence, which myth bastardized with law. It may manifest itself in a true war exactly as in the divine judgment of the multitude on a criminal. But all mythical, lawmaking violence, which we may call executive, is pernicious. Pernicious, too, is the law-preserving, administrative violence that serves it. Divine violence, which is the sign and seal but never the means of sacred execution, may be called sovereign violence.