

Beyond Retribution: Walter Benjamin and the Case for Prospective Justice



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Abstract: The dominant paradigm of justice in Western thought is retributive, framed through an economic logic of debt, guilt, and proportional punishment. Retributive justice promises balance but perpetually postpones its delivery. This article argues that this deferral is not a failure but a structural feature: justice conceived as debt can never be settled in the present. This holds an analogy with Christian eschatological temporality, reproduced in secularized juridical forms. The deferral is actively maintained by what Walter Benjamin identified as “mythical violence,” that is, the foundational and preservative force of law that reduces life to administrable “mere life” and functions as a freezer of political time. Through a Benjaminian lens, the article critiques this apparatus and posits an alternative: prospective justice. Reconceived not as a future ideal but as a messianic intervention in the “now-time” [Jetztzeit], prospective justice involves the collective redistribution of agency to repair harm, the restoration of inviolable human dignity, and the use of a “divine violence” directed not at individuals but at the systemic structures of legal domination. The conclusion asserts that true justice requires a shift from inhabiting the frozen time of debt to seizing the charged possibility of the Jetztzeit.

Keywords: Justice; Benjamin; violence; law; collective agency.

I. Introduction

The ideological foundation of the classical notion of justice consists of a principle of retribution. There is a conceptual structure that sustains justice, and that is deeply rooted in our moral sensibility and our legal imaginary, which is expressed in the language of debt, guilt, and compensation. Many modern juridical intuitions point out that to do justice, where harm has been committed, a kind of payment needs to be demanded from a wrongdoer. Justice consists, it seems, in the administration of positive and negative retributive experiences, following a principle of proportionality. Under this “fair calculation” harmful events become seemingly controllable, as imputable acts tied to culpable subjects. Thus, individuals function as adequate causers that are capable of generating moral debts with each other through their actions, and have the right to either demand what they are owed, or are obligated to pay their debts.

Within the retributive frame, punishment appears as an essential component for

achieving justice, because it is considered a legitimate currency to obtain a cleared balance. If we examine theories that attempt to justify punishment within legal governance systems, this becomes more evident. Even where some approaches have adopted elements of other theories that assign punishment just an instrumental value, subordinated to prevention or reintegration ends, the ultimate moral assessment remains retributive. Citizens' sense of justice is satisfied when they perceive that criminals "pay" for their crime. Any measure considered lenient is attacked for violating this principle. Even the very language of criminal law is retributive: it speaks of "paying a debt to society", of the punishment being "proportional" to the crime, of "guilt" and "merit" of the punishment.

This economic-juridical grammar of guilt and settlement invites a genealogical examination, yet this is not my purpose. My approach is rather a contrastive conceptual analysis that places two paradigms of justice in tension: the retributive logic embedded in modern legal thought and theological temporality on one hand, and the Benjaminian categories of *Jetztzeit*, and divine violence on the other. Walter Benjamin serves as the gravitational center of this article because his thought, nourished by Jewish messianism and a materialist critique of legal ideology, allows us to break with the very assumptions that sustain retributive justice.

This paper contends that the retributive model is constitutively unable to deliver justice in the present. Its promise is perpetually delayed because it is sustained by what Benjamin termed "mythical violence"; a self-perpetuating legal apparatus that stops time, reduces existence to its manageable elements, and prioritizes systemic preservation over concrete reparation. Against this impasse, I develop a Benjaminian notion of prospective justice. This is not a justice for a distant future, but a radically present outbreak: a community-based practice that interrupts the cyclical violence of the law by redistributing agency and following the imperative principle of human dignity.

Although the paper suggests a parallelism between Christian eschatology and modern juridical forms, this does not imply a claim about a direct or linear historical derivation from one to another. The argument rather concerns the persistence of homologous structures of intelligibility: configurations of temporality, debt, guilt, and deferred redemption that continue to shape juridical imagination in secularized forms. In this sense, the article does not reconstruct a genealogy of influences, but identifies paradigmatic constellations whose logic survives across heterogeneous historical formations. Benjamin's own notion of "mythical violence" should be understood in this way. His reference to Greek myth does not suggest that modern law historically originates in archaic religion, but that both share a structural logic of law-founding and law-preserving violence, of guilt administration, border sacralization, and order reproduction. What persists is not a continuous historical lineage, but a recurring configuration through which violence legitimizes itself as juridical order. Such an approach follows Benjamin's method of historical constellations and non-linear correspondences rather than a simple causal history of ideas.

To make this case, I first (II) dissect the retributive logic and its theological-temporal underpinnings. I then (III) analyze Benjamin's concept of mythical violence as the hidden engine of legal order. Finally (IV), I articulate the contours of a prospective justice, linked to Benjamin's "divine violence", as a form of collective healing that operates in the *Jetztzeit* to redeem past and future in a transformative present.

II. Retribution and Time

II.1. Balance and Individual Punishment

To understand the temporal structure of retributive justice, we must begin where it reaches one of its most rigorous formulations: the work of Immanuel Kant. Kant is not merely a theorist of punishment, he is the philosophical voice of legal modernity itself, as he articulates a vision of justice as rational calculation, individual accountability, and submission to universal law. Kant is the philosopher who purges punishment of all utilitarian function – rehabilitation, deterrence, social utility – and reduces it to a pure principle of desert. This drastic purity makes Kant the unavoidable interlocutor for any grounded critique of retributivism, because it is in his system that the logic of debt, individual imputation, and deferred balance appears most clearly, and thus most vulnerably, exposed. Benjamin, that critiques modern legal reasoning disguised as progress, finds in Kant's categorical framework his necessary bull's-eye.

Kant has a retributive sense of justice at heart when he says that individual punishment of criminals must not be used merely as a means to other ends, neither for the wrongdoer's nor for society's greater good. Justice is understood by him as a principle of talionic equality that can be only achieved by penal legislation. An undeserved harm, Kant thinks, is like an imbalance of the justice scale that needs to be straightened back by a tribunal. But there is something important to notice in this line of Kantian thinking: the State must ensure proportional retributive harm as a response to crime not just to provide a social sensation of fairness, but most importantly because, as he writes, "only by the law itself can dishonor (the stain of punishment) be wiped out" (Kant 1996, 142). That Kantian justice is a matter of retaliation is especially evident in the following passage:

Even if a civil society were to dissolve itself by common agreement (for example, if the people inhabiting an island decided to separate and disperse throughout the world), the last murderer remaining in prison would first have to be executed, so that each person receives what his deeds deserve and blood guilt does not cling to the people for not having insisted on this punishment (Kant 1996, 142).

This explains why one of the conditions of possibility for the juridical doing of justice is being able to identify a proper causer for unlawful events. As evident as this premise may sound, we must stress since this point onwards that the notion of retributive justice functions on the individual imputation basis. This individualist lens not only shapes the

response to harm but also its very perception: it directs our gaze towards the singular wrongdoer and away from the general, social net that plays a great part in the equation of the wrongdoing. We have become so familiar with this practice that even if we are inclined to say that some occurrences in our experiences are undeservedly harmful (e.g., the destruction that a hurricane produces), we cannot demand *justice* from a situation that has not an adequate and punishable culpable. The harm needs to be imputed to an agent that, by action or omission, would have generated some liability; someone must pay, and her unpleasantness is somehow a reassuring payment.

This model of retributive justice seems to be apt for guaranteeing the fair collection of debt of wrongdoers, and therefore a sense of order and equilibrium in our societies, but a question about temporality remains. When can this ideal of justice be achieved by our current juridical mechanisms? Experience tells us that our legal systems have not yet attained a balanced and expurgated state of affairs, that justice has not been properly done. This is not only a question of bureaucracy; the issue goes beyond the concrete protocols and institutions. Why does it seem that justice never arrived for many victims in the past, and continues to not be arriving for the present generations? The premise that I would develop next is that this model of retributive justice is not constructed to deliver justice in the present. In no one's present.

II.2. Christian Temporality

We must bring to the surface the theological dimension of this subject, as it will show the tight bonds that our sense of justice maintains with a specific understanding of temporality. From the Christian teleology point of view, the present moment is not occurring in the habitual chronologic sense of time. Temporality would have suffered a major break in its lineal course at the time that Christ incarnated in Earth. This entails a partial stop in the sequence of time. It is like if that moment would have striated itself to an elongated epilogue before the second coming of Christ. This introduces a juridical structure into temporality, as this awaited event is also the Final Judgment of every human being. What follows after is the cessation of linear time and the beginning of eternal punishment or reward.

History, from a Christian point of view, has a clear teleology, within which the stretched present time is the last chance for humanity to follow God's commandments and earn a place in the Kingdom of Heavens. From this perspective justice is but a promise, unachievable here and now, and strongly centered on individual accountability. Although the destiny of humanity is at stake, each one must look after their own salvation. The ultimate righteous balance of accounts can then only be integrally achieved at the end of times and will be somewhat imperfect in the prelude-world.

This Christian-juridical structure of time is not, of course, Benjamin's own position. It is rather the unacknowledged theological blueprint of the retributive logic that his work seeks to dismantle. Against this economy of deferred debt, Benjamin mobilizes a

different inheritance: that of Jewish messianism. Where Christian eschatology postpones redemption to an end of time, the messianic tradition insists that every instant may be the one in which justice irrupts. The “now-time” that Benjamin retrieves from this tradition is not a waiting room but a field of interruption, a moment in which the legal continuum can be shattered without founding a new one. This is not to claim that Benjamin himself would have framed his project as a direct response to the Christian paradigm I have sketched. It is rather to argue that his notion of divine violence, and the prospective justice it enables, becomes intelligible when set against the temporality of deferral that he implicitly rejects. His proposal is a different temporality of justice altogether.

We can, nevertheless, object that our modern notion of retributive justice does not share this Christian background. But the secularization of the issue rearticulates basic Christian assumptions. When we speak about injustice in general terms, about an event, a gesture, an undeserved occurrence, we tacitly allude to a sort of hypothetical transcendental record – or scale, if you wish – that registers offenses and damages *that must be cleared*. This is not a mere reverie, but the fundamental assumption that moral actions are being always assorted through a quasi-providential invisible system. Because of this, we do not need to always share a concrete normative frame or scale to qualify something as unfair. The notion of justice that articulates these assumptions suggests that there will be a future compensation or loss, since everything is being balanced.¹ This is the principle on which we base the order and regulation we assume our moral and juridical systems warrant.

Thus, when we assert a value judgment about something being unjust, we are not just saying that the particular issue is wrong, but that if it does not generate charges, it is unacceptable, that it should not exist as such. Therefore, the violence that a “just” penal collection entails is considered perfectly adequate, but not the unsanctioned type of violence that threatens the very functioning of the systemic record. However, the sole penal calculation is in itself an unfair procedure. In fact, for unlawful events to be registered into such record, a lot of non-quantifiable variables must be compromised in their complexity. Considering such events integrally, with their own weight and value, can prevent offenses being reduced to quantifiable individual faults. Retributive justice functions as an abstraction in that sense; as a mathematical operation that aims to end in zero.

The result has not been the effective reduction of crime, here and now, because

¹ For this reason, the notion of *karma* is also part of our common secular vocabulary; it expresses the intuition that misfortunes are not random or contingent events, but are intimately linked to their author and generate credit. Giorgio Agamben, in *Karman* (2018), traces an etymological and conceptual link between the Buddhist notion of karma and the logic of imputation in archaic Roman law. His point is not to establish a direct historical derivation, but to identify a common conditional structure: “if this exists, then that exists” (Agamben 2018, 27). According to Agamben, both karmic causality and juridical guilt presuppose the existence of imputable actions that generate consequences across time, linking conduct, debt, punishment, and redemption within a shared ethical grammar (Agamben 2018, 28). What matters here is not the validity of a unified “Indo-European ethics,” but the persistence of a model of justice grounded in calculability, deferred balance, and the administration of guilt.

such abstraction permits at best a calculated justification of concrete penalties. It is not meant to address the broader causes that continue to cause strangling living conditions, but only to condemn errors. Focusing on the guilty individual dehistoricizes harm. It excludes from the realm of justice the systemic structures – racism, capitalism, patriarchy – that produce the conditions for delinquency. The abstraction is also political: it reduces a multiform social problem to an individual moral failing. This sense of justice cannot reach the general social, political, and economic conditions to shape dignified human lives. But to think justice beyond individual prosecution may feel incorrect to our basic intuitions. As if there were a quasi-holy status that the principle of authorized punitive reparation held.

The Christian resonance is noticeable not just by the fact that we think of justice in this transcendental and sacred terms, but also because we assume that proper justice takes time. Retributive traditions tend to postulate the fairness of the final balance, so any sense of urgency is neutralized. This echoes Christian conceptions of time and redemption. But if retributive justice is this postponed, abstract, and individualizing blaming machine, what force actively maintains it in the present, preventing any other justice from emerging? The promise of a cleared score as the regulative ideal of justice is, moreover, sustained by a specific mechanism of law, which is called *mythical violence* by Walter Benjamin. This is the apparatus that establishes and maintains the legal “order” by deferring justice from the present moment.

III. Mythical Violence and the Civilizational Iceberg

That law depends on violence is broadly discussed in philosophical debates. A blueprint for a sovereign power that wields force to guarantee social order is referred by Thomas Hobbes when he writes that covenants “without the sword, are but words, and of no strength to secure a man at all” (Hobbes 1994, 106). Max Weber, on his part, articulates a modern definition of the state, which sees its core in the “monopoly of the legitimate use of physical force” (Weber 1946, 78). However, this view often treats violence as a neutral tool; a regrettable but necessary means to the end of legal order and security. Precisely this hypothesis – that law uses violence in a fair, adequate way – is what permits us to differentiate between just punishment and vengeance. We assume that maltreatment can adopt a civilized form if it is a legitimate authority who exercises it in order to guarantee an orderly state of affairs.

Walter Benjamin’s critique begins precisely by challenging this instrumental view. In his *Critique of Violence*, he argues that mythical violence is not secondary but essential to law. And to explain this thesis, Benjamin uses the myth of Niobe, which illustrates the constitutional core of law. The myth tells the story of a proud queen who boasted of her 14 children, claiming she was more blessed than the goddess Leto, mother of Apollo and Artemis. Angered by this hubris, Leto sent her children to slay all of Niobe’s progenies

with their arrows. Overwhelmed by grief, Niobe fled to Mount Sipylus in Asia Minor, where the gods turned her into a weeping rock.

This mythical violence mirrors, Benjamin thinks, the type of violence that produces and preserves modern law as a governance apparatus. Let us analyze it: Niobe challenges the border, the established order where everything has its place – inferior humans and higher gods –. Niobe's pride did not simply break a commandment but defied the cosmic arrangement of things that law protects. Nevertheless, the violence displayed in her punishment was not meant to neutralize her as a threat to harmony and peace, by vanishing her from earth. The aim was to teach a lesson, not just to her, but to everyone, on the inviolability of the borders. By challenging the lawful order, Niobe challenged law itself. And this is why she remained forever as a weeping statue, a crystallized warning, a monument to the scope of legal force.

If we are talking about vengeful gods or perverse dictators, we may be able to see the analogies, but we believe in the legitimacy and fairness of legal systems that operate in contemporary democracies. That belief, nevertheless, is but the tip of an iceberg, which shows only the manifest institutional role that we assign to such systems. The typical philosophical concern about this issue is the question of how they can function better. But if we delve deeper into the anatomy of the iceberg, we can realize the fitness of Benjamin's analogy. In the middle section of the body of ice, we find mythical violence supporting institutional procedure. This sort of violence creates a circular, self-perpetuating system where law posits itself as both the sole means and the ultimate end; this is how its authority is produced. Civil order is not law's greater end, but its position to govern.

In law's own interest most of its mechanisms are concealed, under water. Every offense to the precepts must be reframed as condemnable insurrection to society structure. Law's governance rationality rooted in violence remains unchallenged as a state apparatus because is well-founded by the belief that norm, in its modern institutionalized form, is essential to civilization. Additionally, since we have the power to elect our rulers, the system is considered fair. But if we go even deeper to explore the base of the iceberg, we will encounter Benjamin's indications once more, this time from his book *On the concept of history* (Benjamin 2003). Benjamin reminds us, in a famous formulation, that "there is no document of civilization which is not at the same time a document of barbarism" (Benjamin 2003, 392). That is, that the foundation of the mythical system as we know it – as the only alternative to chaos – consists of terror and a state of exception; it is not its contradiction but its beginning.

This is what we find at the innermost part of the mass of ice: that mythical power arises from a founding act of violence. Its legitimacy is not natural but historical, an achievement of imposition. We can affirm, in line with Benjamin's materialist conception of history, that this founding violence is not an anomaly but the origin of every legal order, including the democratic state. There is somewhat a passive submission to that power in the sense of recognition by default, by acquiescence, by lack of alternative. But it is not

an active and reflexive consent. Once recognized, its violence is legitimate because it is exercised from that recognition. If the imposition that commences lawful power in our democracies (and not simply a certain administration or political orientation), were to exhibit this raw core its legitimate authority would weaken, it would be naked frontal aggression, yearning for domination.

One of the fundamental traits of mythical violence is, thus, its hidden imposition as self-legitimation: by creating and conserving jurisdiction through violence, it articulates itself as a normalized governance system. This is violence's potential to create law that Benjamin specifies: "Lawmaking is power making, assumption of power, and to that extent, an immediate manifestation of violence" (Benjamin 1996, 248). The "power making" is the hidden base of the iceberg; the law is its visible, legitimized tip. And this explains why, if justice is the end that law claims to pursue, it cannot be but a retributive penal kind that is not meant to fix and effectively repair here and now, but to perpetuate the mythical procedure that maintains law's authority.

Law is not immediately perceived as triumphant institutionalized violence, also because it recognizes the right of the opposite party. Indeed, to sustain the fiction of neutrality we are constantly reminded that law is applied to everyone, and that each of us has the same rights. But law can be so surreptitious, Benjamin reminds us, quoting Anatole France, that it will forbid spending the night under the bridge to both the poor and the rich (Benjamin 1996, 249). This irony echoes the saying that we can find in Plato's Republic, by Thrasymachus, about justice being the privilege of the powerful (Plato 1992, I, 338c).

Within these coordinates, individual punishment is deliberately enhanced to protect the position of the system. By fixating on the misuse of causal capacities of agents, it downplays the role of structural factors – whether prescriptive or contextual – in producing harmful or unlawful events. And without attending to structural violence, no true present justice can be done; theft will be the norm where food is scarce. Thus, individual prosecution captures and condemns fallible insubordinate agency to reinforce the belief that the offense – the violation of the untouchable order – generates a sort of credit that needs to be scrapped to repair the harm. But since every individual act from unequal social coordinates, guilt is just a mechanism to perpetuate those very inequalities.

And this also explains, according to Benjamin, why law has produced a *mere life* [*das bloße Leben*] (Benjamin 1996, 250), an individual that has been stripped out of her dignity, and has been reduced to a quantifiable culpable, manageable through mythical violence. But this production does not operate through the overt, literal domination of chattel slavery. Instead, it captures fundamental human capacities and relationships, transforming them into entitlements that it dispenses. For instance, in our neoliberal societies, we became accustomed to speaking the language of "rights": we do not refer to our capacity for movement but to the right to circulate; our creative and cognitive potential is funneled into a right to an education; our ability to shape a habitable world

is reconfigured as a right to work. While we may object that this means that law has the duty to provide the conditions for the rights that it grants, the other side of the coin is the sovereign privilege that it exercises in deciding and administering the type of education, health, food and labor that people ultimately will receive.

The underlying message is that life, under this penal-governance system, lacks the authority to exist outside its regulation; the primary horizon in which human existence unfolds appears to be preceptive. And this strategy of reducing a person into a vulnerable, dispensable organic life that can be used and sacrificed with impunity is what allows the system to function as a freezer. Freezer of the present time – like the Christian epilogue – and of meaningful transformative political action. The circle of self-perpetuating lawful violence spins to make its mythical time to last endlessly. If violence can at all represent the vitalizing power Nietzsche defends, here it is alienated by legal capture. What remains for the governed is submission. This is a political and symbolic gesture.

III.1. The Chronic Injustice

Modern juridical institutions preserve themselves not only through the monopoly of legitimate violence, but through the administration of political temporality itself. The argument developed here is not primarily a critique of the modern state as such, but of a juridical rationality that structures justice through debt, punishment, and temporal adjournment. The modern state appears insofar as it historically administers and preserves this rationality. This is particularly evident if we reflect on bureaucracy as the quotidian administrative correlate of mythical violence. Its endless stream of protocols, procedural delays, and classification grids do not administer justice, but rather actively postpone it, transforming living demands for redress into perpetually pending legal cases. In this sense, bureaucracy should not be understood merely as administrative inefficiency. Within the modern state, it functions as a political technology that translates concrete social antagonisms into manageable procedural categories. Thus, it depoliticizes structural conflict through its dominance protocols disguised as neutrals.

We can better picture this if we imagine society as a body that has a chronic disease: As a governance mechanism, modern law identifies in such body a symptom. And this symptom, that it names crime, is treated individually with a punitive medicine. Without the penal drugs, the system argues, the body will be in an emergency state of sickness and chaos. And so, crime can be “managed” without addressing the root structural causes, if not healing but stable illness is what is sought. And this is precisely what mythical violence seeks. The cure must extend the sickness; the sanction is a palliative that perpetuates the disease. Only if the illness persists, the existence of the practitioner is justified. Ultimately, this kind of retributive treatment does not aim at the termination of all monopolized use of violence. It does not aim at a real state of balance where there will be no more need for a penal apparatus. Its objective is to perpetuate indefinitely the legitimate administration of violence.

In a formulation that anticipates this diagnosis, Marx described the state as an “appalling parasitic body, which enmeshes the body of French society like a net and chokes all its pores” (Marx 1979, 185). Benjamin’s critique of violence can thus be read as a radicalization of this insight, carried from the political economy of class to the metaphysics of law itself.

If the freezer of mythical violence sustains the chronic illness, the project of a prospective justice must begin by imagining what a true healing, a melting of the frozen present, would entail, and what kind of “violence” (or non-violent force) could break this circularity without founding a new myth. Therefore, prospective justice is the attempt to think about this healing protocol, which necessarily involves dismantling the legal fiction that confuses the stability of the disease with health. If we follow, yet again, the ideas of Benjamin, we may be able to outline a particular ensemble that combines prospective justice and what he calls “divine violence.”

IV. Justice in the *Jetztzeit*

“Prospective justice” is a fairly recent notion. The term has been used in political philosophy and constitutional law to discuss institutional designs that prevent future injustices. In ethics and Justice Theory, is posited as a counterpoint to “retrospective justice”, which focuses on correcting past wrongs. There are some thinkers, such as Hans Jonas (Jonas 1984), that have referred to a notion of justice that considers obligations to future generations. And philosophers like Iris Marion Young (Young 1990) have developed a critical concept of non-oppressive justice, which intends to dismantle systemic structures of subjugation, such as domination, exploitation and marginalization, in order to forward-thinking justice beyond retribution.

While these approaches inform the prospective horizon, the Benjaminian inflection I propose is more radical. It is a messianic cessation of the mythical continuum that allows for the redemption of both past and future in the now. Even though the very name may indicate an ideal of justice that belongs to the forthcoming time, the Benjaminian prospective justice that I will develop next denotes instead the present effective rendering of justice.

The temporality proper to historicism is, for Benjamin, a progressive and accumulative conception of history in which events are arranged as moments within a continuous causal sequence. Such temporality is structurally compatible with retributive justice because both depend on deferral. As we have considered, justice is always projected toward a future equilibrium that never fully arrives in the present. The *Jetztzeit*, by contrast, designates an interruption of this continuum. It is not another moment within chronological succession, but a condensation of historical time capable of “blasting open the continuum of history” (Benjamin 2003, 395). Through this interruption, the past appears not as concluded but as something that addresses the present with a “weak

messianic power,” (Benjamin 2003, 390) demanding redemption here and now.

This redemption, however, is not an individual act but a collective one. Prospective justice enhances a strong bond between generations and places collective agency at its center: it conceives political community as a fabric that connects past, present, and future generations, enabling justice to reach the deeper structural layers that have produced harm and continue to do so. Justice thus becomes conceivable not as postponed compensation, but as an interruption of the temporal structure of penitence. This interruption secures access to truth, reparation, and non-repetition not as legal guarantees but as collective achievements. In this sense, prospective justice extends its concern beyond the living to include those whose suffering was never juridically repaired. We are dealing with a sense of justice that inhabits beyond law’s mechanisms and rationality.

Christian temporality that relies on “homogeneous, empty time” (Benjamin 2003, 395) cannot sustain such sense of justice. Benjamin’s distinction between mythical and divine violence becomes decisive at this point. This is the “bloody power over mere life for its own sake” (Benjamin 1996, 250) that characterizes the juridical order, a power that captures life within cycles of culpability to maintain its authority. Divine violence, by contrast, does not administer guilt but expiates it. It is “bloodless” insofar as its force is not directed toward the production of culpable subjects or the preservation of legal order.

Therefore, prospective justice fundamentally reorients the question. It stops asking “How can we dispense better institutionalized violence?” and instead asks, “How can we redistribute the capacity to act – the agency – so that communities can repair harm with autonomy?”. This is a question that seeks its answer outside retributive logic, and that conceives faults in its wider contextual frame. It is not about creating a new administration or a kinder, gentler legal code. It is a meta-juridical or a-juridical practice that seeks to unleash the community’s own creative and restorative force. Thus, prospective justice functions without legal mediation of the individual and collective powers. It is not based on granted “rights”, on authorized capacities. To return to our medical analogy, it is about giving the social body immunological autonomy. The goal is no longer to treat the symptom by punishing the offender, but to strengthen the community’s health so it can generate its own antibodies, its own forms of repair, accountability, and reconciliation.

This shifts the entire paradigm. Justice is no longer an abstract calculation of debt, dependent on finding legitimate means and just ends. It becomes a singular, contingent event: the community’s collective capacity to address a specific harm. It is a practice, not a protocol. By focusing on all the aspects involved in each conflict, especially the structural ones, prospective justice moves these tasks from the legal sphere back to where they belong: in the diverse, autonomous space of collective praxis. Its guiding principle is not to preserve power, but to articulate better conditions for the multiple ways of living. It would therefore be a post-mythical exercise who wants to repair with the living Niobe, not turn her into a stone monument to be a warning to others.

Far from proposing a pacifist ideal about moral and political relationships, Benjamin

will say that to achieve this other type of justice, it is necessary to use divine violence. He writes that:

Since, however, any conceivable solution to human conflicts, 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 what kinds of violences exist other than all those envisaged by legal theory (Benjamin 1996, 247).

It is, then, a matter of thinking a type of violence that is not juridically captured. For instance, something other than the violence that law comprise in its “right to make a strike”; that is, the permission to display violence in some non-threatening way to the system. Benjamin proposes a type of violence that is “lethal without spilling blood” (Benjamin 1996, 249), in the sense that it aims to destroy the very system, and not to punish individual bodies. In his words, “if mythic violence is lawmaking, divine violence is law-destroying” (Benjamin 1996, 249). The latter does not preserve the system by managing symptoms, but shatters the icy continuum itself to restore a flow of unmediated life. In a sense, it is perhaps more violent than the mythical kind, because it will disrupt as well most classic intuitions about order, civilization, and restorative balance. But it will leave untouched what should be sacred: human dignity.

Divine justice redeems the unjust production of mere life in the name of all the living beings. Because despite that we possess, as humans, the biological body that can be managed and controlled, we can’t ever be reduced to that sort of abstract existence; the value of our life cannot be lessened to be administrable. Divine justice, in this sense, restores the status of life that was always beyond the legal categories of guilt and innocence; “for the sake of the living” (Benjamin 1996, 250), he writes. Certainly, unless it is reduced to a life that could bleed, labor, sicken, be confined, or killed, law cannot capture human beings. At their core they are invulnerable. As Benjamin puts it, “man cannot, at any price, be said to coincide with the mere life in him” (Benjamin 1996, 251). Their states, its physical life, this can be the profane. It is individuals reduced to their contingent attributes: their biological body, their health, their property, their legal status. This is indeed vulnerable. But divine violence aims to restore the inexpugnable sacred quality of humankind by destroying first and foremost a system that has instructed individuals out of their worthiness. Only mere life can be punished, but an integral dignified being has the capacity to dialogue, learn and repair.

Benjamin still talks about divine punishment. “God’s judgement strikes privileged Levites” (Benjamin 1996, 250), he says, but as power positions that are to be demolished. Divine punishment does not castigate an internal transgression of transcendental law, but rather the law’s very claim to be the ultimate horizon of life. It is an annihilation of the system of privilege as such. A dissolution of the very social relationship that produces the “criminal” and the “Levit”. The Benjaminian thesis reminds us that there is a horizon of justice beyond the law, and that horizon has a name: the inviolable dignity of the living.

Every practice of justice must ultimately be seized by this higher principle: Does it expand the sacred power of the living or does it subject it to the profane logic of domination? This ethical maxim functions as the guideline to ensure true reparation here and now. Justice can be, in this sense, a matter of the present only if it reaches the core of the system of mythical violence, that has structurally produced unjust bloodshed and it will continue to do so, until the present becomes the messianic moment that Benjamin proposes.

In this sense, justice can be understood as the vindictive incoherence that interrupts the chain of progress of the system. Because progress itself, as Benjamin shows, is nothing but a narrative that accumulates ruin after ruin in the name of an expected greater natural end that could ultimately justify devastation. Prospective justice would, in contrast, aim for a present moment that is not run over by the unstoppable course of history. This sense of justice is the only way, Benjamin argues, to stop the catastrophe now, to think of an otherwise unachievable historical justice to past bloodshed. To illustrate this intuition, he notoriously describes the *Angelus Novus* painting:

A Klee painting named “*Angelus Novus*” shows an angel looking as though he is about to move away from something he is fixedly contemplating. His eyes are staring, his mouth is open, his wings are spread. This is how one pictures the angel of history. His face is turned toward the past. Where we perceive a chain of events, he sees one single catastrophe which keeps piling wreckage upon wreckage and hurls it in front of his feet. The angel would like to stay, awaken the dead, and make whole what has been smashed. But a storm is blowing from Paradise; it has got caught in his wings with such violence that the angel can no longer close them. This storm irresistibly propels him into the future to which his back is turned, while the pile of debris before him grows skyward. This storm is what we call progress (Benjamin 2003, 392).

Only outside the fiction of progress, a moment for the past to be present becomes conceivable. Or as Benjamin put it “only a redeemed mankind receives the fullness of its past” (Benjamin 2003, 390). Not as a debt, that would be in any case beyond price, but as something that is still present, and it urges us to create the conditions so that prior oppression is not perpetuated. The present must be, thus, the radical insubordination to structural lawful violence, the redemption of the possibilities foreclosed by past oppression. This means a clean cut with the accumulation of debt and a deactivation of the record that vertically distributes just harm. What must be suspended is the time of normative alienation of existence.

V. Objections to Justice Without Law

Any attempt to conceive justice beyond the law necessarily provokes a set of concerns rooted in the dominant juridical imagination. The a-juridical account of justice developed here, following Walter Benjamin, is no exception. The objections it faces are not merely pragmatic concerns, but symptoms of a legal paradigm that equates justice with normativity, procedure, and institutional control. Rather than dismissing these concerns,

this section addresses four central objections: (i) objection of arbitrariness / anomie; (ii) objection of the lack of protection for vulnerable people; (iii) objection of apology of violence; and (iv) objection of utopianism or impracticality.

The following objections should not be understood as entirely discrete categories. They frequently overlap and reinforce one another because they emerge from a shared juridical horizon of meaning. Distinguishing them analytically is useful only insofar as it clarifies different dimensions of the same underlying issue: the fear that justice without legal administration collapses into indeterminacy.

i. The first objection can be formulated as follows: If justice is removed from the law, institutional norms, and stable procedures, what prevents it from becoming an arbitrary practice, dominated by local power dynamics, covert revenge, or oppressive forms of consensus? This concern, however, rests on the assumption that normativity is the sole source of constraint. A Benjaminian perspective reverses this assumption. It is precisely the normative fixation of justice – its procedural stabilization – that enables the perpetuation of harm. Prospective justice is constrained not by procedure but by the inviolability of human dignity and by the collective responsibility to repair concrete damage. Justice, in this sense, is not decided from a position of sovereignty, but enacted by a dialogical praxis that emerges from contingent conflict.

ii. A second objection holds that, historically, the most vulnerable have relied on law for protection. Does this critique not imply a withdrawal of such protections, leaving the most exposed at the mercy of unaccountable powers? To this I will respond that said objection presupposes that vulnerability is an external condition requiring juridical management. In fact, it is precisely legal reduction of life to administrable categories that actively produces vulnerability. Ultimately, law does not grant capacities but manages them. Juridical protection is thus conditional and revocable. Law monopolizes protection to preserve its power, not to eliminate vulnerability. To this extent, prospective justice does not withdraw protection; it seeks to return protective capacities to the collective itself.

iii. A third objection concerns the notion of *divine violence*. Even if it is said to be bloodless, does it open the door to justifying destruction or even terror in the name of a higher justice? In fact, Benjamin himself refers to this reply, when he writes:

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, if 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” (...) [*the commandment*] 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 (Benjamin 1996, 250).

Benjamin’s own words show that divine justice is not directed at individuals. As we considered, its targets are the structures. Since it neither administers punishment, nor

found a new legal order, nor functions as an instrument of power, it cannot be compared with terrorism or revolution in the classic sense. Benjamin's notion of divine violence should not be confused with political violence aimed at seizing power; its destructive force is directed exclusively at juridical relations of domination.

iv. Finally, although prospective justice may sound attractive in theory, will it ultimately be an ethical ideal without application criteria or possibility of institutionalization? But this very demand belongs to the mythical narrative of progress. To require such guarantees before acting is to inhabit frozen temporality. Prospective justice is not a program but an event. This is not a rejection of practicality, but of the demand for institutionalizability as such. One of the defining features of prospective justice is its contingent, complex nature; it is not meant to be a general model, but a mode of intervention that becomes possible only when the mythical continuum of law is interrupted.

VI. Conclusions

Prospective justice of the *Jetztzeit* would require to return to the collective the possibilities and capacities that were captured by the mythical violence of law. And therefore, it operates beyond the false opposition between law/chaos. From this elemental demolition, organization can be reclaimed as an autonomous, effective force. Benjamin reminds us that justice is a category of temporality. Although it is assumed to occur in a homogenous time that "progresses," it is necessary to interrupt this dominant sense of linearity of history to show the structural continuity between a past that we do not want to repeat and our present; between democratic "normality" and open fascism. In this sense Benjamin qualifies as "not philosophical" (Benjamin 2003, 392) the amazement that some expressed about dated events still occurring in the 20th century. Time is the first thing to reclaim, in order to do justice.

This is precisely what he recognizes when he writes that the critique of violence is the philosophy of its history. For only the idea of its development, rather than a gaze directed at immediate information, makes possible a "critical, discriminating and decisive approach to its temporal data" (Benjamin 1996, 251). Prospective justice is such an approach: it refuses the myopia of retributive logic and seeks to break the cycle of lawmaking and law-preserving violence. Benjamin is clear about the destination of this rupture. The breaking of the mythical cycle requires nothing less than "the abolition of state power," (Benjamin 1996, 252) for only then can a new historical epoch be founded.

In the end, the choice Benjamin leaves us with is not between systems. It is between two ways of inhabiting time. Do we choose to inhabit the frozen time of debt, where a glacial present can only punish a petrified past? The time of alienated progress? Or do we dare to inhabit the "now-time", the instant charged with possibility, where a community can interrupt the cycle and begin to repair the unfrozen present? Prospective justice is not a future ideal. It is the courage to redeem even a past that insists on remaining present.

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