

Law and the Utopian Imagination: An Introduction

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In 1922, toward the conclusion of his first book, *Story of Utopias*, the American sociologist Lewis Mumford wrote, “Our most important task at the present moment is to build castles in the sky.”¹ In 1929, in his classic work *Ideology and Utopia*, the German sociologist Karl Mannheim offered a similarly emphatic defense of the importance of utopian thinking: “The complete elimination of reality-transcending elements from our world,” Mannheim wrote, “ultimately would mean the decay of the human will The disappearance of utopia brings about a static state of affairs in which man himself becomes no more than a thing.”² A scant two decades later, a very different tone sounded in the pages of three of the most influential social thinkers of the midcentury. Writing independently, Karl Popper, Lionel Trilling, and Isaiah Berlin essayed critiques of utopianism that, taken together, delivered a broad indictment of utopian thinking. Far from locating in the utopian imagination a vital force for human betterment and social progress, these midcentury thinkers powerfully argued that utopianism paves the way to totalitarianism and that its logical endpoint is not the peaceful community of equals but the death camp. In particular, these thinkers laid bare the particular antagonisms between utopianism and liberal legality—finding in the former a dire threat to the salutary commitments of the latter.

Who, then, writes seriously on the idea of utopia today? The answer would seem to be: almost no one, and least of all scholars of the law. The midcentury critique appears to have carried the day, and a belief in the very possibility of utopian achievements—bracketing for a moment the question of their desirability—appears to have flagged in the face of a world marked by political instability, social upheaval, and dreary market realities. True, one can find in the

manifestos of exuberant dot-commers elements or vestiges of utopian thinking—fervent expressions of belief in the Internet’s promise of radical equality and unfettered self-expression.³ One can likewise locate aspects of utopianism in statements of the loose affiliation of groups associated with the “occupy Wall Street” movement.⁴ Still, it seems fair to say that utopianism finds itself in a generally moribund state—discredited by a series of critiques penned in the middle of the last century, and marginalized by the dislocations of current political and market processes.

This volume can be seen, then, as a project of exploration and resuscitation. Instead of mapping out the contours of a familiar terrain, our contributors seek to explore the possibilities of a productive engagement between the utopian and the legal imagination. Is it possible to reimagine or revitalize the concept of utopia such that it can survive the terms of the midcentury liberal critique? Alternatively, is it possible to reframe the concept of utopia and the theory of liberal legality so as to dissolve the apparent antagonism between the two? In charting possible answers to these questions, the present volume hopes to revive interest in a vital topic of inquiry too long neglected by both social thinkers and legal scholars.



The term “utopia” first appeared in Sir Thomas More’s eponymous novel of 1516, but the concept predated More by two millennia, finding its first and most influential elaboration in the pages of Plato’s *Republic*. Over the centuries the utopian imagination has produced a rich and varied literature, including such classics as Samuel Butler’s *Erewhon*, Edward Bellamy’s *Looking Backward*, and B. F. Skinner’s *Walden Two*. Some of these works were no doubt meant to serve as criticism of existing social and political structures; to this day, scholars cannot agree on whether More intended utopia—Latin for “no where,” a place the reader is guided through by a character named Raphael Hythloday, or “dispenser of nonsense”—as a bona fide vision or an ironic critique of Elizabethan institutions. Yet whatever the answer to this question, there is no denying that countless real-world social experiments have been launched under the capacious rubric of utopianism.

Our purpose here is not to inventory such experiments; our concern is with the nature of the utopian imagination that has endorsed and stimulated such ventures. In imagining an ideal or perfect community, the utopian imagina-

tion has typically eschewed nostalgia. It finds its ideal not in a prelapsarian, Edenic state of innocence; instead, the utopian imagination has tended to fix its gaze on the future, finding its realization not in the dissolution of social arrangements and institutions but in their dialectical transcendence or radical improvement. Certainly one can find aspects of prelapsarian thinking in the utopian imagination—More’s vision of the abolition of private property harks back to Plato, just as Plato locates one model of utopia in the lost island of Atlantis—but still the larger fact remains that utopias are not points of return: they are destinations that must be fashioned and engineered. In More’s novel, for example, Utopia is an island, but an artificial, not a natural one. Originally a peninsula, the island was created through an ambitious and arduous project of land removal, meant to insulate the community from threats—military and otherwise—from the mainland.

Such engineered communities assume a wide variety of forms in the utopian imagination; still, it is possible to speak of certain commonalities and shared features. Utopias are, first and foremost, communities of harmony and order. In *Utopia and Its Enemies*, political theorist George Kateb described utopias as sharing conditions of “perpetual peace, guaranteed abundance, and conditioned virtue.”⁵ Work is rewarding and leisure is stimulating. There is no want, strife, or dissension. Virtuous behavior guarantees conditions of peace and plenty for all, while conditions of peace and plenty make possible the cultivation of virtue.

Perhaps the most remarkable example of utopian harmony is found in the pages of *The Republic*, where Plato famously defines justice as “minding . . . one’s own business” and performing “the one function in the community for which his nature has best suited him.”⁶ Justice, in this account, is no more than the harmonious performance of tasks, as Plato posits an affinity between the structural harmony of the parts of the state and the internal equipoise of the well-balanced individual soul. Just as justice “in the state meant that each of the three orders . . . was doing its proper work . . . we may henceforth bear in mind that each one of us likewise will be a just person, fulfilling his proper function, only if the several parts of our nature fulfill theirs.”⁷ As this passage suggests, it is not the tripartite soul that delivers a template for the state in *The Republic*; rather, it is the harmonious stasis of the well-balanced tripartite state that provides a model of the soul—a fact that emphasizes the *conditioned* nature of

virtue in a utopian state. For although Plato speaks of persons fulfilling their nature, he recognizes that the inhabitants of his utopia will need to be “induced to make themselves perfect masters each of his [sic] own craft.”⁸

We likewise find a link between peace, plenty, and conditioned virtue in More’s *Utopia*.⁹ More’s community provides little in the way of privacy; members of the community work under the watchful eye of omnipresent magistrates; absent are places for social gathering. Taverns, brothels—any place that might make for “secret meeting” are banned.¹⁰ Here, then, Utopia appears as a “no where” in a second sense—as a place where there is nowhere to hide, nowhere for a member of the community to escape the benevolent yet sweeping gaze of the magistrates.

Perhaps the most extreme example of a utopia in which harmonious living amid circumstances of material plenty is achieved through conditioned virtue is to be found in B. F. Skinner’s *Walden Two*. As the spokesman for the community simply puts it, “We want a government based upon a science of human behavior”:

We have no truck with philosophies of innate goodness—or evil, for that matter. But we do have faith in our power to change human behavior. We can *make* men adequate for group living—to the satisfaction of everybody.¹¹

In *Walden Two*, harmonious and commodious living can be achieved and maintained through a science of behavioral conditioning and engineering.

Given the exceptional lever of order needed to achieve and maintain communities of perpetual peace, guaranteed abundance, and conditioned virtue, we might be tempted to assume that law would play a particularly robust role in the utopian state. As perhaps the most potent tool by which social order is imposed and vouchsafed, law would seem to play an important if not necessary role in the completion of any utopian project. And yet if anything, the utopian imagination has typically displayed hostility toward legal forms and processes.

Some utopias, certainly, contemplate an active role for law in the promotion of a life of peace and plenty. More’s *Utopia* envisions a community without private property that, in order to sustain itself, must eliminate “everything that causes, promotes, and fosters intrigue, luxury, [and] jealousy.”¹² Here law plays a crucial role: the banning of taverns is but one example of social regulation achieved through and enforced by law. More important, the system of assem-

bly, councils, and magistrates that promulgate and enforce the law are themselves crucially subject to it. In the words of one commentator, More's island utopia is very much a "law state."¹³

Not so Plato's *Republic*. The guardians of Plato's utopia are philosopher kings, true "lovers of knowledge" who refuse to "linger among the multiplicity of things which men believe to be real" and instead strive "with a passion" to lay hold "upon the nature of each thing."¹⁴ Indifferent to self-aggrandizement or the acquisition of material goods, the philosopher king selflessly dedicates himself to promoting the commonweal. It would be absurd to tie the hands of a ruler whose only ambition is to shape a better and more perfect order. The rule of law has no place in a world ruled by philosopher kings. At best law would be irrelevant, a redundant summary of the guardians' own designs of governance. At worst it would be an encumbrance, a regrettable fetter on the guardians' ability to creatively steer the ship of state on its ideal course. Law is a system born of imperfection, a device needed to restrain rulers who cannot be trusted to restrain themselves. "Genuine guardians" pose no such threat of abuse of power; they "will be the last to bring harm upon the commonwealth."¹⁵

Of course, in *The Laws*, Plato tells a very different story. Here Plato defends a community ruled by magistrates who, like the ordinary citizens of the community, are ruled by and subject to an elaborate system of laws. As the "Athenian Stranger" who stands in for Socrates in the dialogue asserts, "Mankind must either give themselves [sic] a law and regulate their lives by it, or live no better than wild beasts."¹⁶ However, as this statement suggests, here we have ceased talking about the creation of an ideal community. Plato quite clearly sees the state described in *The Laws* as second best. We accept the law *faute de mieux*—a necessary tool in a world in which the philosophical truth that anchors *The Republic* is "nowhere to be met with, except in faint vestiges."¹⁷ The true utopia dispenses with regulation by law.

Skinner's *Walden Two* likewise essays a vision of utopia free from legal control. For Skinner, law is nothing more than a primitive form of behavioral engineering. Based as it is on the "use of force or the threat of force," law is a system of coercion "incompatible with permanent happiness."¹⁸ *Walden Two*, by contrast, is based on an "effective science of behavior" that largely replaces law's reliance on negative reinforcement (namely, "handcuffs, iron bars, and forcible coercion") with techniques of "positive reinforcement."¹⁹ As the spokesman for

the community explains, when a person “behaves as we want him to behave, we simply create a situation he likes or remove one that he doesn’t like. As a result, the likelihood that he will behave that way again goes up, which is what we want.”²⁰ In *Walden Two*, people behave in a sociable manner not because they are threatened with force if they fail to do so, but because they have been conditioned so as to make such behavior feel voluntary. The science of human behavior has rendered law—an outmoded and inefficient form of behavioral conditioning—obsolete.



If the utopian imagination has displayed hostility to legal forms and processes, the liberal imagination has answered in kind, fervently rejecting utopian thinking. Liberals are not alone in taking issue with utopian thought; Schopenhauer’s philosophy of suffering and Nietzsche’s philosophy of power sternly call into question the attractions of a world of mindlessly happy people enjoying conditions of peace and plenty. Nor have liberal critics of utopia necessarily concerned themselves with law or with norms and procedures of liberal legality. Precious few legal philosophers or theorists have explicitly written on the subject of utopianism. And yet some of the most influential liberal thinkers of the last century—Karl Popper, Lionel Trilling, and Isaiah Berlin—essayed sweeping critiques of utopianism, critiques that implicitly offer a robust defense of liberal legal forms. Put another way, if utopian thinkers find law an obstacle to the creation of the perfect community, liberal thinkers locate in law a necessary bulwark against the inevitable excesses of utopia.

At first blush, it might seem odd that anyone should see utopian thinking as sinister. One might, pace Nietzsche, view a community of harmony, peace, plenty, and virtue, as dull—but dangerous? Yet Popper, Trilling, and Berlin found dangers aplenty. In both his famous work of 1945, *The Open Society and Its Enemies*, and in a shorter lecture of 1947, “Utopia and Violence,” Popper laid bare the perceived connections between utopianism and totalitarianism. While acknowledging the lure of utopianism (“indeed, an all too attractive theory”²¹), Popper insisted that a belief in the perfectibility of society endorses all possible methods toward its achievement, for no means—even the most violent—can be abjured when perfection is the goal. Given the purity of the imagined endpoint, the utopian must be “very thorough in eliminating and stamping out all heretical competing views”²²—a thoroughness that endorses all manner of

force toward the end of the radical transformation of society. Democracy can be smashed, rights suppressed, and enemies ruthlessly eliminated in order to “execute the Utopian blueprint.”²³

Democratic societies, while also committed to social engineering, aim at incremental, piecemeal change. Channeled through legal norms of due process and regulated by the rule of law, democratic social engineering is devoted to the more modest project of improving institutions rather than fundamentally reshaping the very fabric of society. The proper goals of politics and law, for Popper, find elaboration in simple maxims: “Work for the elimination of concrete evils rather than for the realization of abstract goals. Do not aim at establishing happiness by political means. Rather aim at the elimination of concrete miseries.”²⁴ In the final analysis, the difference between the liberal and the utopian ethos finds elaboration in “the difference between a reasonable method of improving the lot of man, and a method which . . . may easily lead to an intolerable increase in human suffering.”²⁵

Lionel Trilling’s 1950 work *The Liberal Imagination* extended Popper’s critique.²⁶ In this book of essays, Trilling did not in the first instance concern himself with the differences between liberal and utopian thought. Rather, Trilling addressed a strand of utopianism that he located within liberalism itself. For Trilling, liberalism represented a singular achievement in the history of political thought, with its greatest contribution the creation of the idea of universal human rights. For Trilling, the liberal notion of human rights constituted, to borrow language more recently used by Samuel Moyn, a “minimalist” ideal—it was dedicated to securing basic principles of justice and protecting the life and dignity of persons.²⁷

Within liberalism, however, Trilling detected maximalist strains, impulses that sought to move beyond securing basic rights and that strove instead to transform and perfect institutions in the name of more robust substantive entitlements. This liberal perfectionism or utopianism was, Trilling argued, dangerous, as it sacrificed liberalism’s original “lively sense of contingency and responsibility” to the aggressive impulse to organize. “The job of criticism,” he argued, was “to recall liberalism to its first essential imagination of variousness and possibility, which implies the awareness of complexity and difficulty.”²⁸ Trilling found this imaginative awareness in nineteenth-century novelists such as Nathaniel Hawthorne and Henry James, literary masters attentive to the

moral complexity of human action, the multifariousness of human emotion, and the irreducible range of human character.

That Trilling should locate a challenge to the over-reaching ambitions of liberal perfectionism and utopianism in the novels of literary masters is telling. The utopian imagination has, after all, found expression as often in novelistic form as it has in the political manifesto. All the same, it is hard to ignore that qua novel, the utopian novel invariably fails. The characters perform lack depth, complexity, and interest. If happy, they display the suspiciously flat happiness of an automaton. Here we need but recall the famous passage in *Walden Two* in which the observers of the community encounter a group of children on their way to a picnic. One observer asks the nursery school teacher whether the children who weren't included on the picnic feel jealousy or envy. The teacher doesn't merely deny this; she responds as if the question were unintelligible, spoken in a foreign tongue, leading the observer to exclaim, "Don't the children . . . ever feel unhappy . . .?" The teacher's "puzzlement" only grows, prompting the guide to observe, "As to emotions—we aren't free of all of them, nor should we like to be. But the meaner and more annoying—the emotions which breed unhappiness—are almost unknown here, like unhappiness itself."²⁹ It's hard to imagine a more lifeless or terrifying encounter in all of literature.

For Trilling, however, more is at stake than proving afresh the literary proposition made famous by the opening sentence of *Anna Karenina*—that happy communities make for lousy novels. Rather, the fact that one cannot write a substantial novel about a utopian community suggests a defect with the community itself—that conditioned virtue suppresses the energies, ambitions, desires, interests and longings that make humans worthy of artistic and moral attention. It is perhaps no surprise that the strongest utopian novels take the form of dystopias. Dystopias should not be confused with anti-utopias; they follow a logic and impulse altogether different from, say, Cormac McCarthy's *The Road*, a postapocalyptic vision of lone survivors charting their desperate way through the charred and chaotic ruins of civilization. Dystopic novels depict not the collapse of the utopian project but its ultimate nightmarish completion. In the pages of Aldous Huxley's *Brave New World* or Yevgeny Zamyatin's *We*, we encounter the bleak and terrifying sterility that issues from complete stasis, the spiritual morbidity that comes from suffocating harmony maintained through the tireless suppression of individuality. And precisely because they depict the

struggle of the lone individual, the isolated resister, against nightmarish mass blandness, dystopian novels, at their best, possess an aesthetic and moral vitality lacking in their earnest, didactic utopian counterparts.

Isaiah Berlin's essay "The Decline of Utopian Ideals in the West" delivers a final influential critique of the utopian imagination.³⁰ In contrast to Popper and Trilling, Berlin appears, at first blush, to be less interested in presenting a normative argument against utopianism than in charting its intellectual history. In his examination of utopian thought as a "central strand in the whole of western thought,"³¹ Berlin claims to detect three basic axioms or propositions to which all such thinking is committed: first, that all "genuine" questions have "only one correct answer, all other answers being incorrect"; second, that a "method exists for the discovery of these correct answers"; and third, that the correct answers "must, at the very least, be compatible with one another." Berlin argues that all utopian thought has been committed to these beliefs—from Plato, through More's "wonderful fantasy," down to and including Marxian perfectionism.

These assumptions, however, have been challenged in the works of other political theorists—most originally, argues Berlin, in the writings of Machiavelli, who first explored the irreducible incompatibility of basic political values and ideals. The German romantic-nationalist Johann Gottfried Herder went one step further, insisting that to judge "one culture by the standards of another" signals a "failure of imagination and understanding."³² And in the work of liberals such as John Stuart Mill, the challenge to utopianism finds articulate expression in the argument that "men can live full lives only in societies with an open texture, in which variety is not merely tolerated but is approved and encouraged."³³

Having charted this collision of values—between those who hold on to the promise of the "ultimate salvation of all men," and those who believe "this doctrine to be an illusion," and a dangerous one at that—Berlin stakes out his defense of liberalism in the closing paragraphs of his essay. Invoking Kant's famous observation, "Out of the crooked timber of humanity no straight thing was ever made," Berlin acknowledges that the liberal project, devoted as it is to the promotion of "some kind of equilibrium, necessarily unstable, between the different aspirations of different groups of human beings," is not a "wildly exciting programme"—not the kind of thing to inspire people toward sacrifice and martyrdom. And yet Berlin concludes that this liberal vision, for all its

lack of flash and color, just “might yet prevent mutual destruction, and, in the end, preserve the world.”³⁴ If forced to choose between a vision that holds the promise of world preservation and one that risks world annihilation, we need not tarry in our deliberation. At stake in the clash between the liberal and the utopian world view is not simply a competition between irreconcilable political visions—it is ultimately a choice between a politics of tolerance and incrementalism, and one of terror, violence, and possible mass destruction.

Indeed, if we read Berlin through the filter of Popper’s earlier work, we can go one step further and say that utopianism is less an alternative political vision to liberalism than a program that contemplates the very elimination of politics. By adopting an agnostic position relative to visions of the good, liberalism defends basic rights, deliberative processes, and legal procedures that enable a vigorous politics of contestation, coalition, and compromise. Utopianism, with its blueprint of social perfection, eschews politics and legislation as proper means of radical societal transformation. And once its blueprint has been engineered into place, utopianism dispenses with politics altogether as vestigial and superfluous.

Can we, however, imagine a vision of utopianism that can survive the liberal critique and entertain a more constructive relationship between law and utopia? This is a challenge recently taken up by Michael Walzer in “Reclaiming Political Enthusiasm.” Here Walzer argues that liberalism stripped of utopian longings courts more than mere dullness.³⁵ “Without the steady pressure,” Walzer insists, to create a “new and nobler society,” liberalism will “give us only oligarchs and plutocrats.”³⁶ Walzer does not deny the dangers of unfettered utopianism described by Berlin, but he believes that liberalism’s commitment to legal procedures—in particular, those subsumed under the concept of due process—establish a necessary bulwark against utopian excess. Thus, while acknowledging the tension between liberalism and utopianism, Walzer appeals to the legal and procedural commitments of the former as a check against the dangers of the latter. If channeled through the deliberative processes of liberal legality, utopian thinking—though anathema to these very processes—can be rendered a useful, and perhaps even necessary, means of invigorating liberal discourse, of guarding against liberalism’s tendency to slide into plutocracy.

Russell Jacoby’s *Picture Imperfect: Utopian Thought for an Anti-Utopian Age* offers a second valuable attempt to reconcile liberalism and utopianism.³⁷ Ja-

coby, a prominent historian and cultural critic, resists the impulse to blame all genocides on utopian perfectionism.³⁸ As Jacoby notes, “It is, for the most part, nationalist, ethnic, and sectarian passions—not utopian ideals—that drive global violence.”³⁹ At the same time, he recognizes the authoritarian, and even totalitarian, streak in what he calls “blueprint utopianism.” Blueprint utopians, Jacoby writes, “map out the future in inches and minutes”;⁴⁰ they “give the size of rooms, the number of seats at tables, the exact hours at which to arise and retire.”⁴¹ And yet the blueprint tradition, Jacoby argues, does not exhaust the field of utopian thinking. Jacoby locates a rival tradition of utopian thinking, “less noticed and well defined,” that eschews the drawing of blueprints. He calls these thinkers “iconoclastic utopians”:

Rather than elaborate the future in precise detail, they longed, waited, or worked for utopia but did not visualize it. The iconoclastic utopians tapped ideas traditionally associated with utopia—harmony, leisure, peace, and pleasure—but rather than spelling out what could be, they kept, as it were, their ears open toward it They did not privilege the eye, but the ear Against the dominant tradition of blueprints, they offered an imageless utopianism laced with passion and spirit.⁴²

Jacoby identifies the origins of iconoclastic utopianism in the Second Commandment’s prohibition on graven images and its more mature elaboration in the works of Walter Benjamin, Gershom Scholem, Theodor Adorno and Ernst Bloch, thinkers who imaginatively reinterpreted the “refusal to name the absolute” as a way of preserving “the possibility of redemption.”⁴³ In contrast to blueprint utopians, the iconoclasts did not demand a “renunciation of life” as presently lived; rather, “their pictorial reserve about the future coexisted with attentiveness to the present.”⁴⁴ If not liberals themselves, the iconoclasts staked a position that could accommodate liberal values and institutional practices. In resisting the impulse to provide “precise dimensions for the future,” the iconoclasts offered a vision of utopianism for today’s world, a vision that quiets the concerns of Popper, Trilling, and Berlin, but which answers Walzer’s disillusionment with liberalism’s tendency to slide into soulless proceduralism.⁴⁵



The contributors to the present volume can all be read as vigorously participating in the debate between utopianism and liberalism. Their arguments have different points of departure and trace different trajectories but share two important commonalities. First, they all attempt to move utopian thinking

beyond the blueprint model described and critiqued by Jacoby. Second, they strive to reimagine the relationship between utopia and law in a manner that overcomes the somewhat familiar and ossified terms of the liberal critique. In pursuing these dual ambitions, our contributors are dedicated to rescuing utopianism from its association with the great state-sponsored atrocities of the twentieth century, and in so doing, to articulating a fresh vision of the relationship between utopia and law.

Our first chapter, James Martel's "The One and Only Law: Walter Benjamin, Utopianism, and the Second Commandment," squarely addresses Jacoby's challenge. Writing in the wake of World War I and against the looming threat of World War II, Benjamin avoided any vision of utopia based on blueprint. Indeed, Jacoby, in developing the topos of "iconoclastic utopianism," invoked Benjamin as a prime expositor. In uncovering the connections between Benjamin's utopianism and his thinking on law, Martel powerfully extends and enriches Jacoby's discussion.

As we've seen, Jacoby located the spirit of iconoclastic utopianism in Judaism's prohibition of graven images of the Godhead. This prohibition, as inscribed in the Second Mosaic Commandment, provides a powerful trope for a form of speculative utopianism that dares to imagine a more perfect future without arrogantly insisting on the details of its picture. The Second Commandment also holds the key, Martel insists, to Benjamin's understanding of law.

Benjamin was not in the first instance a jurisprudential thinker, but Martel argues that he nonetheless adumbrated a complex and subtle legal theory. As Martel notes, Benjamin insisted that "there *is* a law," one that is "perfect and true"—only "we will never know it."⁴⁶ The accents of Kafka are all too clear in this formulation, and it comes as no surprise that Benjamin was deeply moved and influenced by Kafka's writing. For Benjamin, our duty is to "both accept the reality of the law and to come to terms with the fact that we don't have access to it."⁴⁷ This creates an acute challenge, as we must avoid surrendering all moral or ethical claims at the same time that we must resist merely "reduplicating the fetishism of law"—that is, the practices of conventional human law-making.⁴⁸

The Second Commandment's prohibition against graven images and forms of idolatry supplies, for Benjamin, an answer to this challenge. The Second Commandment delivers a law against laws; it dictates the removal of "false truths from the scene," without claiming to produce or create "new truths" in

their stead, and so safeguards the essential unknowability of the law.⁴⁹ Benjamin's entire legal theory, Martel argues, finds expression in the Second Commandment, which defines and exhausts the universe of legal obligation. The Second Commandment is, for Benjamin, the only law, and by implication the only one to which obedience is due.

This radical claim is closely tied with Benjamin's utopianism and, in fact, is an expression and distillation of it. To understand Benjamin's utopian commitments, it is necessary, Martel notes, to first understand his very understanding of reality. For Benjamin, reality must be seen as something of a dream—a product of fetishistic projections and reifications. To contrast the “utopian” with the “real,” is, from this perspective, something of a false contrast that belies the irreality of reality itself. Utopianism represents a form of resistance to commodity fetishism, a subversion of existing phantasms of the real. And yet Benjamin likewise rejects the blueprint utopianism of a Fourier as the replacement of one set of fetishistic images and practices with another. Such blueprints of perfection represent for Benjamin nothing more than another practice of idolatry, a simple exchange of fetishisms.

Benjamin's “recuperative approach to utopia” seeks to counter fetishism. The antifetishist, as Martel makes clear, “acknowledges the failures of representation Rather than seeking for representation to succeed in giving us the object . . . , the anti-fetishist looks for a marker of representation's failures, an aporia that does not overwrite the real of the world with false symbols.”⁵⁰ The affinity between Benjamin's antifetishistic utopianism and his theory of law now emerges clearly. Indeed, the key to recuperating utopia lies in the attempt to obey the Second Commandment. By submitting to this commandment, we become subjects of a law whose “only goal is the unmasking of the false laws that prevent us from being a subject at all.”⁵¹

Benjamin seeks, then, to radically recast and dissolve the opposition between law and utopianism posited by the liberal critics. At the same time, Benjamin sweeps past the positions of Mather and Kant, the subjects of two later chapters, who understood law—of an international and cosmopolitan character—as a necessary tool toward the realization of their utopian visions. Ultimately Benjamin insists that law and utopianism are inextricably bound—that an anti-idolatrous law does more than merely serve as a means toward realizing an antifetishistic utopia; it authorizes and constitutes such a utopian imagining.