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Myth and authority: Forum on the Actuality of Benjamin's 'Critique of Violence' at Its Centenary, Part I – The Mythical Authority of Foundation: towards a critique of justice

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Abstract: This essay proposes an interpretation of the relationship between law, violence, and justice based on Walter Benjamin's work 'Critique of Violence.' I argue that, in the essay, the three terms are sustained by an underlying notion of authority, which, according to Benjamin, has a mythical character. This is shown by an interpretation of how law's authority is linked to its mythical foundation. Then, by analysing Western mythology and how the notion of authority in our tradition is linked to the Roman figures of Romulus and Numa, I propose a new interpretation of the relationship between law and myth in Benjamin's text, showing how law also depends on a mythical justice and how the critique of violence must also involve a critique of justice. I end the paper by tracing a parallel between Benjamin's divine violence and what could be termed divine justice.

Keywords: Benjamin; Critique of Violence; justice; authority; myth.

Introduction

Walter Benjamin's 'Critique of Violence [*Zur Kritik der Gewalt*]' is a classically enigmatic text. Its dazzling argument, crunched in such a short space, is marked by a series of oppositions that successively shift the terms of the discussion: means and ends, natural and positive law, sanctioned and unsanctioned violence, natural and legal ends, law-making and law-preserving violence, political and proletarian general strike, mythical and divine violence. What this sequence of dislocations produces, however, is not a progressive development of the argument, but a perpetual restatement of the fundamental problem of the essay, stated quite explicitly in its opening line: 'the task of a critique of violence can

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be summarized as that of expounding its relation to law and justice' (Benjamin 1978: 277). Law, violence, and justice: this is the holy trinity that any reflection daring to think radically about legal issues must deal with, and Benjamin's text in its entirety revolves around this triangular problem.

Moreover, I believe that underlying Benjamin's essay is a fourth term, also fundamental for his thesis, even though not explicitly stated: *authority*, or more precisely, how the legal entanglement between violence and justice produced by law can be effective beyond brute force (violence) and moral judgement (justice). In fact, it is by putting authority at the centre that we can assess how Benjamin rearranges those three terms so that violence is no longer identified with State power, and justice no longer reduced to morality. What I want to argue is that justice and violence are both equally structural to law's authority, and that this appears in the mythical articulation of the three terms in Western mythology. In opposition, Benjamin's 'divine violence' can be understood as a different articulation of the three terms, one that does not reproduce this same structure.

Benjamin starts his essays by establishing a symmetrical opposition between natural law and positive law, presenting how both distribute the problem of justice and violence in terms of means and ends, law's 'most elementary relationship' (Benjamin 1978: 277). As Peter Fenves argues, this is the core of Benjamin's 'critique': like Kant's three critiques,[1] Benjamin's critique of violence attempts to reveal the 'transcendental illusion' sustaining the conflict between juridical naturalism and positivism, namely that just ends can be achieved by the justification of means, and that justified means entail just ends (Fenves 2010: 209; see Benjamin 1978: 278). In bringing forth the violent aspect of law, Benjamin is showing how juridical naturalism, in fact, justifies violent means by just ends, whereas juridical positivism justifies violent ends by the supposed justice of means. But this is something that can only be perceived by changing the terms of the discussion, thereby properly framing the antinomy between the two strands.

This might explain an odd aspect of Benjamin's characterization, since for juridical naturalism, the 'ends' are not necessarily just, while for positivism, means are never properly 'violent'. What is most puzzling is his choice of Spinoza to represent the natural law tradition (Benjamin 1978: 278). He probably had in mind the famous thesis proposed in the *Theological-Political Treatise* that each person's 'natural right is determined only by his power [*potentia*]' (Spinoza 2016: 287 [XVI.24]). However, for Spinoza, this natural right does not disappear after the 'conclusion of the rational contract,' as Benjamin claims, but continues to exist within any kind of civil state—precisely what makes Spinoza's thesis distinct from other natural right theories. But more importantly, for Spinoza, in this supposed 'state' of nature, force cannot be 'misused for unjust ends,' as Benjamin also states, precisely because the distinction between just and unjust is not 'given,' but always instituted (see, for instance, Spinoza 1985: 566–8 [IV p37s2]).[2] On the other hand, positive law is directly and necessarily opposed to violence as its condition for being law in the first place. This, of course, does not mean that law is not violent. It means that the violence committed in the name of law — say, taking someone forcefully to prison — must not be recognized *as* violence. Violence, from the standpoint of the law, can only be what goes against the law itself. This is what is at stake in the legal sanction separating violence proper from

legitimate coercion depending on the ends pursued in action (whether 'natural' or 'legal') (Benjamin 1978: 279–80). Therefore, natural law in fact excludes the problem of justice in relation to law, whereas positive law excludes the problem of violence in relation to law. But it is precisely by perceiving this symmetry in their antinomy that we can start to understand the articulation between law, justice, and violence.

Violent Law

Benjamin attacks the triangular problem by focusing on the question of violence in relation to juridical positivism. What he shows is that the line separating illegal violence from legal coercion is completely arbitrary, and only serves to perpetuate established law. The prohibition for individuals to pursue natural ends — even if these ends are just — is necessary not due to a supposed conflict with legal ends, but because it threatens the whole juridical order (Benjamin 1978: 281). States do not only have a monopoly on legitimate violence, they also must have a monopoly on justice. But differently from justice, which the State identifies with the law, violence must be necessarily excluded from it. The issue, however, is that law itself depends on violence to be 'enforced,' for as Benjamin claims, 'the power [*Macht*] that guarantees a legal contract is itself of violent origin even if violence is not introduced into the contract itself' (Benjamin 1978: 288, trans. mod.). As Christoph Menke well notes, this constitutes a paradoxical relationship between law and violence:

> Every attempt at defining the relationship between law and violence must start with two tensely related, if not blatantly contradictory, premises. The first states: Law is the opposite of violence; legal forms of decision-making are introduced to interrupt the endless sequence of violence and counterviolence and counter-counterviolence, so as to exorcise the spell of violence generating more violence. The second premise states: Law is itself a kind of violence; even legal forms of decision-making exert violence—external violence that attacks physically, as well as inner violence that hurts the convict's soul, his being. […] In these two statements, the law's hostility toward violence and its own violent character confront each other: law's claim to put an end to the 'savage violence' of the state of nature of 'externally lawless freedom' and the violence by means of which law enforces this claim (Menke 2010: 1).

As Menke claims, Benjamin's greatest contribution in his essay is to introduce the problem of 'justified violence' as precisely this: a problem (Menke 2010: 10).[3] As it is known, Benjamin articulates the issue of legal violence by introducing an opposition between 'law-preserving violence' and 'lawmaking violence' (Benjamin 1978: 283–8). Violence threatens established law because it can create new law; law violently represses violence to preserve itself. This tale of two violences, however, should not be interpreted as a distinction between two 'kinds' of legal violence, but as two faces of the same violence within law. This ontological vacillation of law's violence is intrinsic to the German term

actually used by Benjamin. Usually translated as 'violence,' *Gewalt* in fact contains an intrinsic ambiguity that the English separates in two different terms: 'power' and 'violence,' sanctioned force and unsanctioned force — an ambiguity that the term violence itself cannot express, despite its original Latin term (*vis*) having this dual sense of force and excess (Ogilvie 2005: 130–1).[4] Between violence and power, *Gewalt* thus denotes the point of intersection of power becoming violence and of violence becoming power.

This becoming must be understood in two senses. On the one hand, this means that there is a *legalization of violence*[5] into State power. The law-making character of violence is not simply characterized by the pursuit of natural ends in opposition to the legal ends of law-preserving violence, but by the transformation of the State's natural ends *into* legal ends (Ertür 2019: 273). What is at stake is how law-making violence can be turned into law-preserving violence, and consequently how this original violence can assume the non-violent character of legitimate coercion. On the other hand, however, law-preserving violence has itself a tendency to convert coercion into excessive violence.[6] Benjamin exemplifies this with an analysis of capital punishment and the modern police. Concerning capital punishment, 'where the highest violence, that over life and death, occurs in the legal system,' he says that 'the origins of law jut manifestly and fearsomely into existence' (Benjamin 1978: 286). Similarly, he describes police violence as a 'shapeless violence' that is simultaneously lawmaking and law-preserving, something he identifies with a 'nowhere tangible, all-pervasive, phantasmagoric appearance [*gespenstische Erscheinung*] in the life of civilized states' (Benjamin 1978: trans. mod.). What is at stake in these cases is the *extra-legality of State power* as an inherent element of the legal form.

The exceptional and excessive aspect of violence is a spectre that haunts all kinds of powers exercised by the State, 'legitimate' or not, and it is at these moments that the violent origins of law — the 'blood that has dried in the codes,' as Foucault put it (Foucault 1997: 56) — comes most explicitly into light. But as mentioned before, this is only one of the sides of the paradox of legal violence. What is equally crucial to understand is that law cannot recognize its own violent dimension. Legal violence, from the standpoint of the law, *cannot exist as such*: law-preserving violence cannot be violent, while lawmaking violence cannot be properly *law*-making. As a true phantom, the violent dimension of law can never be accepted and recognized as such.

Mystical Foundation

It is the effort to explain this paradox of legal violence that orients Jacques Derrida's famous reading of Benjamin's essay. The problem, as he precisely puts it, is the following:

> How are we to distinguish between the force of law of a legitimate power and the supposedly originary violence that must have established this authority and that could not itself have been authorized by any anterior legitimacy, so that, in this initial moment, it is neither legal nor illegal—or, others would quickly say, neither just nor unjust? (Derrida 1992: 6).

The mention to justice in the end of the passage is not trivial. In fact, the problem of the relationship between law and justice is fundamental for understanding the relationship between law and violence. What Derrida rightly perceives is that the original violence in the institution of law must also necessarily involve an institution of justice—an institution that must make legal violence just, justified, legitimate (Derrida 1992: 13–4). If Benjamin started his argument distributing violence and justice between legal means and ends, the problem that now emerges is one of origins—or, to speak Greek, one of *archē,* a word that not by chance means both beginning and political rule.[7]

The shift from the question of means and ends to the question of origins is what enables us to see how authority appears as an underlying problem in Benjamin's essay. An inquiry into the origin of law's authority is an inquiry into its foundation—both its *fondement* (foundation as principle) and its *fondation* (foundation as institution), following the Derridean wordplay (Derrida 1992: 14). Every foundation consists of a founding act that sets up unique boundaries, both geographical and temporal. This act — which must be ritually repeated and periodically reanimated — not only draws the line of jurisdiction, but also establishes a solemn beginning in time, separate and extraordinary in relation to the instituted order.[8] But if law's geographical jurisdiction is clearly visible, its temporal origin can never be really pinpointed. This is the 'major scandal' of legal theory: law must have always already been there (Milisavljević 2012: 81).

Although the existence of law presupposes a moment of its non-existence, of a coming into being, such moment cannot be included in the legal order. As Derrida rightly claims, law and authority 'can't by definition rest on anything but themselves' (Derrida 1992: 14). This means that law cannot be grounded on violence, but *also* that it cannot be grounded on justice. In fact, justice can only emerge together with law, neither of them being reducible to violence nor force:

> Justice—in the sense of *droit* (right or law)—would not simply be put in the service of a social force or power […]. Its very moment of foundation or institution (which in any case is never a moment inscribed in the homogeneous tissue of a history, since it is ripped apart with one decision), the operation that amounts to founding, inaugurating, justifying law (*droit*), making law, would consist of a coup de force, of a performative and therefore interpretative violence that in itself is neither just nor unjust and that no justice and no previous law with its founding anterior moment could guarantee or contradict or invalidate (Derrida, 1992: 13).

Law must thus presuppose the 'legitimacy of its own origin' (Gehring 2008: 58), necessarily grounding itself *on itself* so that it can appeal to the authority of its own institution. This is what Derrida means by the 'mystical foundation of authority' (*fondement mystique de l'autorité*), a concept he recovers from Montaigne and Pascal. In all three authors, what is at stake is the mysterious authority of law not only beyond force, but also beyond justice. 'Laws are kept in force [*se maintiennent en vigueur*]', says Montaigne, 'not because they are

just, but because they are laws. This is the mystical foundation of their authority; they have no other' (Montaigne 1993: 353, trans. mod.). For Pascal too, the 'mystical foundation' of law's authority lies not in its justice, but in its practical effectiveness as custom: 'whoever obeys [the laws] because they are just is obeying a justice he merely imagines, but not the essence of the law' (Pascal 1995, p: [fr. 94][9], trans. mod.). In fact, Pascal warns about the dangers of grounding obedience to law on its justice, and not on the fact that it is simply the law:

> It is dangerous to tell the people that laws are not just, since they obey them only because they believe them to be just. That is why they must be told at the same time to obey them because they are laws, just as they must obey their superiors, not because they are just, but because they are their superiors. All sedition can thereby be prevented if people can be made to understand that, and that this is the proper definition of justice (Pascal 1995: 26 [fr. 100]).

What is crucial in this mystical foundation of law is that its justification is tautological. Behind the authority of law, there is truly nothing — something that is essential to the very notion of authority.[10] As Pascal sharply notes, 'whoever tries to trace this authority back to its origin, destroys it' (Pascal 1995: 24 [fr. 94]). Nonetheless, the mystery persists of how law keeps having authority *despite* denunciations like this one. To call it a 'mystical foundation' does not really help. If laws are not obeyed because they are 'just,' then why are they obeyed at all? If one answers that it is because of law's violence, as Pascal suggests,[11] we are trapped in the same problem from the other side: if law is force, then why does it have to seem just? Why would justice be at all linked to law? Any 'ideological' solution is unconvincing in this regard.

Mythical Authority

Benjamin's answer seems to be rather distinct. For him, the mystical foundation of law's authority is sustained by the *mythical authority* of law's foundation. He describes the dynamic between lawmaking and law-preserving violence as a 'cycle caught under the spell of the mythical forms of law,' hinting with this that myth comes to introduce an authoritative and spell-binding element beyond the interplay of violence and law.[12] He also emphasizes how this myth must be recurrently invoked and recognized in order for political institutions to preserve their force.[13] It is the mythical power of origins that ultimately enables law to be paradoxically non-violent yet grounded on an original violence.

This can happen because myth is the form of articulation in discourse of the impossible origin of law. This means that the spellbinding authority of law is not revealed, as Derrida claims, by a silence 'walled up in the violent structure of the founding act' (Derrida, 1992: 14), but rather by myth's eloquence. For, as Claude Lévi-Strauss have argued, myth *is* language — it exists between the formal structure of *langue* and the practical and constant re-instantiations of *parole* (Lévi-Strauss 1963: 209). It means as well that law's entanglement with myth must have a temporal dimension, in this case, a homology

between their temporal structures relating present and past,[14] something also explicitly noted by Lévi-Strauss:

> [A] myth always refers to events alleged to have taken place long ago. But what gives the myth an operational value is that the specific pattern described is timeless; it explains the present and the past as well as the future. This can be made clear through a comparison between myth and what appears to have largely replaced it in modern societies, namely politics. When the historian refers to the French Revolution, it is always as a sequence of past happenings, a non-reversible series of events the remote consequences of which may still be felt as present. But to the French politician, as well as to his followers, the French Revolution is both a sequence belonging to the past—as to the historian—and a timeless pattern which can be detected in the contemporary French social structure and which provides a clue for its interpretation, a lead from which to infer future developments (Lévi-Strauss 1963: 209).

Myths not only describe impossible origins, they also keep alive the institutions originated. Their ritual re-enactment is part of the story they tell. This is how myth can ground law's authority: not only by producing an extrinsic origin, but also by animating its intrinsic power. Not by chance, Benjamin describes mythical violence as a *manifestation*: 'mythical violence in its archetypal form is a mere manifestation of the gods' (Benjamin 1978: 294).

In its moment of manifestation, mythical violence is at the same time opposed to law — 'immediate,' beyond legal means and ends — *and* expressed through it. As it is known, Benjamin exemplifies mythical violence by invoking the legend of Niobe, who suffered the wrath of the gods despite her actions having not violated any law. As Benjamin calls attention, the violence manifested against her 'establishes a law far more than it punishes for the infringement of one already existing', exposing how mythical violence is clearly distinct from the 'law-preserving violence of punishment' (Benjamin 1978: 294). This is crucial, because indicates a separation between mythical violence and legal violence, the former being essential yet 'external' to the latter. However, mythical violence also cannot be simply identified with law-making violence whereas legal violence is reduced to law-preserving violence. Rather, it shows that a 'lawmaking' violence can only exist precisely as a myth—once again, law-preserving violence cannot be recognized as violent; lawmaking violence cannot be recognized as law-making. Myth is the only solution to the 'question of law's own historicity' (Ertür 2019: 272) *because* law cannot truly have history — its origin must necessarily be mythical.

It is in this sense that one must interpret Benjamin's claim that 'the mythical manifestation of immediate violence shows itself fundamentally identical with all legal violence' (Benjamin 1978: 296). Legal violence and mythical violence are the same only insofar as law mediates mythical violence *as* legal violence. Mythical violence depends on law to be manifested, but law also depends on this mythical violence to sustain its own non-violent dimension. This is why Benjamin claims that the lawmaking character of violence is

'twofold,' meaning both the institution of law as non-violent, and the necessarily violent origin of it. The violence of law-making lies not in law, but in the State power supplementing it: 'Lawmaking is power making, and, to that extent, an immediate manifestation of violence' (Benjamin 1978: 295).

As 'power making', mythical violence reveals its intrinsic relation to authority. Myth is where the authority of origins and the origins of authority meet. As Hannah Arendt claims, Roman *auctoritas*, from which our notion comes from, 'had its roots in the past, but this past was no less present in the actual life of the city than the power and strength of the living' (Arendt 2006a: 122). The preservation of the 'sacredness of foundation' was what defined political activity (Arendt 2006a: 120), and by referring to it one had the capacity of producing the obedience without coercion that characterizes authority.[15] Most interestingly, however, is that the link between authority and foundation can be traced back to the myth of foundation of Rome itself.[16]

In *Mitra–Varuna: An Essay on Two Indo-European Representations of Sovereignty*, the comparative mythologist Georges Dumézil shows how sovereignty is commonly represented in Indo-European myths by two antithetical yet complementary entities: 'the violent sovereign god and the just sovereign god' (Dumézil 1988: 78). In Vedic mythology, where the two functions are most clearly developed, Varuna is the personification of the mysterious and magic law of gods that rules humanity, while Mitra is the god of man-made laws and common affairs. Varuna is the violent founder and binder, he intervenes exceptionally and magically, while Mitra is the juridical overseer of legal and religious rites (Dumézil 1988: 95).

Mitra and Varuna, however, are archetypical, and versions of this pair can be found throughout Indo-European mythology—and, most importantly for us, they are at the centre of Rome's myth of foundation. As Dumézil demonstrates, the same structure connecting Varuna and Mitra can be found in the relationship between Romulus and Numa, the two Roman 'sovereign founders' (Dumézil 1988: 163).[17] Both kings, says Dumézil, 'stand opposed as the 'Terrible' and the 'Ordered,' the 'Violent' and the 'Correct,' the 'Magician' and the 'Jurist"' (Dumézil 1988: 64). As the legend tells, Numa succeeded Romulus, who killed his twin brother Remus in order to found Rome and become its first king. But Romulus' violent act of foundation is incomplete without the institutions established by Numa, something at first puzzling,[18] but explained by their structural interdependence.

As Dumézil points out, Numa not only has concluded what Romulus started, he also established an opposition to the founding work of his predecessor — something that created an internal tension in Roman institutions (Dumézil 1988: 48). The two figures have wholly opposite legacies: Romulus made himself king, Numa was chosen by consent; Romulus was oriented by a desire to rule, Numa regretted accepting his position; Romulus is associated with passion and violence, Numa is passionless and condemns violence; Romulus' rule is unstable and tumultuous, while in Numa's reign sedition is unknown; Romulus is associated with the rape of the Sabines and excessive sexuality, while Numa is linked to the sanctity of marriage; Romulus represents the unbridled passion of youth, Numa the wisdom and moderation of a senior (Dumézil 1988: 50–3). Yet, this term-by-term opposition can never really be recognized as a conflict between the two figures. As

Dumézil shows, 'typologically, Numa, even when reforming or actually annulling his predecessor's work, is thought of as 'completing' or 'perfecting' it, not abolishing it'. Romulus' work subsists in Numa's, and throughout Roman history the two will be equally called fathers of the city (Dumézil 1988: 114).

It is as if Romulus' excess was what made him able to create but not preserve, while Numa's wisdom only made him able to preserve what was made yet not to create (Dumézil 1988: 45). The opposition between their 'immobilized perfection and creative force,' is complementary, just like Mitra and Varuna's (Dumézil 1988: 93), and it is this paradoxical complementary opposition that gives their relationship its mythical character. As Dumézil states, the historical figures — if existent — of Romulus and Numa are not what is really relevant. What is crucial is how the biographies of these characters were included in the founding myths of Rome. If the Romans conceived their myths as a 'dynamic balance between terrestrial actors and forces' instead of awesome gods does not make it less mythical (Dumézil 1988: 152). Sovereign gods, after all, are just 'cosmic projections of earthly sovereignty' (Dumézil 1988: 66).

Therefore, the relevance of Dumézil's study lies in what this mythology can say about modern forms of political authority, or more specifically, how the modern State is also trapped in this entanglement characterized by the pairs Mitra-Varuna or Numa-Romulus.[19] In this sense, Dumézil's analysis of mythological representations of sovereignty is not simply compatible with Benjamin's mythical violence — it puts Benjamin's thesis in another light. How it does so, however, is not immediately clear. At first, it would be intuitive to link Varuna and Romulus to the violent creation of new law, and Mitra and Numa to the conservative violence of established law, but this would turn an opposition *within* myth into one *between* mythical violence and actual law — an interpretation that, as I argued, is not able to explain why this myth would be 'needed' to found law's authority in the first place. Instead, I propose to read in the Mitra-Varuna or Numa-Romulus pairs a fundamental opposition intrinsic to myth itself, to what is at the same time presupposed by and revealed in existing law: not the link between lawmaking and law-preserving violence, but the one between violence and justice. What the structural duality of sovereignty reveals is that underlying established law lies not only a mythical violence, but also a *mythical justice*—both being fundamental for law's authority.

Critique of Justice

As Scholem retells, Benjamin thought that justice could only be truly established in myth.[20] Like mythical violence, mythical justice is fundamental to any kind of law or juridical order, and as in the case of violence, it also occupies a paradoxical position. On the one hand, justice must remain 'external' to law, a regulative idea that enables the normative gap between its 'is' and its 'ought'; but on the other, justice must be identified with law whereas injustice must be reduced to its violation (against which violent coercion is justified). In fact, it is only because law can never be confused with — although intimately related to — neither justice nor violence that law can become justly coercive.[21] This mythical justice, however, does not work as the rational motivation for obedience, as Montaigne

and Pascal have criticized. It is a structural element of legality itself, a supplement to law equally fundamental to it as violence, something without which law cannot really exist *as* law. And it is not by chance that the monopoly over justice have always been crucial to political regimes just as the monopoly of violencee. Their complementary opposition is what sustains legal authority, which, once again, can never be recognized from the standpoint of the current juridico-political order. The law must claim itself to be simultaneously not violent and wholly just, even though it can never waive the use of violence, nor fulfil its own notion of justice. Violence and justice, therefore, can only be portrayed as such in mythical terms.

Nonetheless, the mythical opposition between violence and justice is not perpetual. It exists within our juridical predicament and the myths sustaining it, but its fate-like character can always be changed. If, as Benjamin claims, the mere existence of 'violence outside the law, as pure immediate violence' is the proof of possibility of *another* violence (Benjamin 1978: 300), then another justice is also possible. Mythical violence and mythical justice are the very grounds for thinking another violence and another justice beyond law and its tragic fate. Benjamin's 'divine violence' is precisely such attempt of changing the relationship between violence and justice, of thinking a possible justice that, although not non-violent,[22] establishes something different from legal violence — in sum, of a truly *divine justice* able to counteract the injustice of law itself.[23] Therefore, Benjamin's essay does not only call for a critique of violence, it also entails a *critique of justice*, which by exposing justice's relation to law and violence and the impossibility of fitting justice into the legal problem of means and ends opens the way for the emergence of 'another kind' of justice.

Against the mythical justice of the State, the possibility of a divine justice to come. As I hinted above, this critique of justice would entail a complete re-evaluation of what justice (and also injustice) ultimately is. Benjamin explicitly criticizes the 'stubborn prevailing habit of conceiving those just ends as ends of a possible law,' of understanding justice as something always universalizable and legalizable, which as he points out, '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' (Benjamin 1978: 294). Instead of seeing justice as a principle of law — and, consequently, injustice as violation of law — justice would become something that can only be made here and now, a contingent and delicate procedure that cannot be universalizable, nor accomplished by legal means.[24] It is by claiming justice against law itself that legal violence can truly be questioned, for the fundamental aim of a critique of justice is to revert its violent subordination to law in order to liberate it from institutional reification. Justice as an ethical commitment, we could say; the action of really looking the other in his or her eyes and deciding to make justice here and now. It is only by doing so that we can exit the realm of myth and enter the kingdom of divine possibilities and miracle making. It is only by doing so that justice can become truly possible.

Notes

1 Fenves traces the 'critique of *Gewalt*' as the would-be fourth Kantian critique, a direct consequence of the problem between *Gewalt* and possession in the beginning of Kant's *Doctrine of Right* (Fenves 2010: 194; see Kant 1996).

2 This becomes even more evident in an author such as Thomas Hobbes, who also does not fit Benjamin's description, despite being one of the author's most commonly associated to juridical naturalism (see, for instance, Hobbes 1985: 202 [ch. XV]). For my interpretation of the state of nature in Hobbes, see Hillani 2023.

3 Giorgio Agamben traces this problem to the origins of Western thought, namely, how the Greek notion of *nomos* signified the power mediating the opposition between violence (*bia*) and justice (*dikē*), and how Plato's ironic misquotation of Pindar in the *Gorgias* — 'doing violence to the most just' instead of 'justifying the most violent' — reveals how justifying violence can easily turn into its opposite (see Agamben 1998: 31).

4 On the ambiguity of *Gewalt*, see also Derrida 1992: 6 and Launay 2004.

5 The expression was coined by Guillaume Sibertin-Blanc (2016: 72).

6 For my interpretation on the legalization of violence and the conversion of coercion into excessive violence, see Hillani 2018.

7 Both 'commencement' and 'commandment,' as Derrida puts it (1996: 1).

8 On the notion of foundation, see Detienne 2001.

9 The abbreviation '[fr.]' is used to refer to the specific numbered fragment in Pascal's Pensées in addition to the page of the English edition.

10 See Slavoj Žižek's connection between authority and the sublime object (1989: 192, 250).

11 As Pascal claims in a famous passage invoked by Derrida, 'it is just to follow what is just. It is necessary to follow what is strongest [*plus fort*]. Justice without force is powerless [*impuissante*]. Force without justice is tyrannical. […] Justice is subject to dispute [*sujette à dispute*]. Force is very much recognizable and cannot be disputed. So we have been unable to combine force with justice because force has overturned justice and said that is unjust, claiming justice for itself. So, having been unable to make strong [*fort*] what is just, we have made what is stronger [*fort*] just' (Pascal, 1995: 34 [fr. 135], translation modified).

12 Theodor W. Adorno also uses the notion of 'spell' (*Bann*) with a similar intent. For an analysis of the concept of *Bann* in Adorno's philosophy, see Hillani 2019.

13 As Benjamin claims, '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' (1978: 288).

14 I hold that this is also the case for Benjamin, and that both Benjamin and Lévi-Strauss can be included in the tradition, beginning with Schelling, that sees myths not simply as saying 'something else' that must be uncovered and interpreted, but precisely as saying what cannot be said otherwise (see Vernant 1990: 223–4). That Benjamin might be associated to the romantic interpretations of myth (see Mali 2003: 230–6) whereas Lévi-Strauss developed a structural analysis of mythology that is largely opposed to romanticism (see Lévi-Strauss 2021, 1969, 1981) does not prevent us from attributing to them both a minimal definition of myth as involving a discourse about origins, or at least about a time that is other than the present one.

15 As Arendt puts it, 'where force is used, authority itself has failed' (2006a: 92).

16 Arendt also notes this. In *On Revolution* (2006b, esp. chapter 5), she shows how the problem of foundation in the French and the American Revolutions were framed by the Roman imaginary, manifested both in the search for an absolute foundation for the regime (the political-theological shift from God to the People in the French one) or the self-enclosing of authority in the very act of foundation (the fetishism of the constitution in the American one). What neither of them could escape is the fact that authority is always grounded on alterity (see Sahlins 2014).

17 As Dumézil notes, this opposition repeats itself in the following rulers as an opposition between 'war-loving, terrible kings' and 'pious, peace-loving kings' (1988: 90).

18 If 'Romulus founded the city in a material sense, whereas Numa was responsible only for its institutions,' writes Dumézil, '[the analysts] still wondered why Rome had to wait (if only during Romulus' lifetime) for

the creation of the religious or social institutions that ancient thought experience found to be so primary and germinal to the existence of the city' (1988: 47).

19 It is not by chance that Gilles Deleuze and Félix Guattari resort to Dumézil's analysis to develop their theory of the apparatus of capture that defines the modern State (see Deleuze & Guattari 1987: 424-73; see also Sibertin-Blanc 2016). This does not mean that the Mitra-Varuna duality is absolutely universal—after all, there are and there were societies without state—but, at least, that this pair is constitutive of modern Western notions of power, justice, authority, sovereignty, all of them deriving from Roman conceptions.

20 Scholem 2003: 31.

21 Andrew Benjamin states this is a consequence of equating justice with revenge (Benjamin 2013: 100).

22 As he claims, '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' (Benjamin 1978: 273).

23 This injustice inherent to law is exemplified by Anatole France's jest, cited by Benjamin: 'poor and rich are equally forbidden to spend the night under the bridges' (Benjamin 1978: 296). A similar argument has been developed by Gérard Bensussan (see Bensussan 2010).

24 This is the major problem of Derrida's interpretation of the triangle law-violence-justice in Benjamin's essay. He ends up 'naturalizing' the form of justice intrinsic to law, forbidding any thought on justice that is able to go beyond this legal structure. When all is said and done, Derrida's aporetic justice is still a justice made by 'judges,' a justice based on the possibility of legal decisions and interpretations, and is trapped in a form of 'juridical thinking,' so to speak.

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Mito e autoridade: Fórum sobre a atualidade da "Crítica da Violência" de Benjamin em seu centenário, Parte I – A autoridade mítica da fundação: para uma crítica da justiça

Resumo: Este ensaio propõe uma interpretação da relação entre direito, violência e justiça baseada no trabalho de Walter Benjamin 'Para a Crítica da Violência'. Eu argumento que os três termos supracitados são sustentados no ensaio de Benjamin por uma noção de autoridade que lhes é subjacente e que, de acordo com este, possui um caráter mítico. Isto é apresentado por meio de uma interpretação da autoridade do direito como vinculada à sua fundação mítica. Então, analisando a mitologia ocidental e como a noção de autoridade em nossa tradição está vinculada às figuras romanas de Rômulo e Numa, eu proponho uma nova interpretação da relação entre direito e mito no texto de Benjamin, mostrando como o direito sempre depende de uma justiça mítica e como a crítica da violência também deve envolver uma crítica da justiça. Eu concluo o trabalho traçando um paralelo entre a violência divina de Benjamin e o que poderia ser chamada de justiça divina.

Palavras-Chave: Benjamin; crítica da violência; justiça; autoridade; mito

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