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The Violent Origins of Law

1. This article aims to address a longstanding yet unresolved question, discussed by philosophers and legal scholars ever since ancient times, about the origins of law, understood, as Michel Foucault suggested, not simply as a single norm but as “all the apparatuses, institutions, and rules that apply it”.¹ In other words, it attempts to respond to the following questions: can we ultimately trace the origins of law back to violence, and could it be that law is in fact a continuation of violence by other means?

First of all, when assessing the concepts of law, force and violence, some preliminary remarks must be made. Even though, in the context of a descriptive approach, the terms “force” and “violence” are used as synonyms, in juridical doctrine “force” seeks “to define interventions that are compliant with the law and therefore legitimate”, and “violence” denotes “what violates rules and therefore is illegal”.² Consequently, if law is understood as “an organized body of *rules guaranteed by force*” as well as “an organized body of *rules about force*”,³ at the same time it cannot be denied that there is, in any case, a *strong* or *weak* link or, better to say, an *internal* or *external* one, between law and force. Therefore, regardless of the choice one makes between the two approaches, in this essay we attempt to demonstrate that law fails to completely neutralize violence, even transforming it into *force-of-law*, while law itself gives rise to further violence. Obviously, it is also necessary to consider here just how difficult it is to reveal the violent substratum of law, given that the very relationship between law and violence is an extremely contradictory and problematic one — in that, as has been emphasized by Christoph Menke, “every attempt at defining the relationship between law

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¹ Michel FOUCAULT, *Society Must Be Defended*, Picador, New York 2003, p. 27.

² Mário STOPPINO, “Forza” (entry), in: Norberto BOBBIO, Nicola MATTEUCCI, and Gianfranco PASQUINO (eds.), *Dizionario di Politica*, Utet, Torino 1983, pp. 443-444.

³ Norberto BOBBIO, “Law and Force”, *The Monist* 1965, vol. 49, no. 3, pp. 321-322 [321-341].

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 counter-violence and counter-counter-violence, 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 [...] external violence that attacks physically, as well as inner violence that hurts the convict's soul, his being".⁴

Taking into account these fundamental premises, we would like to analyse the law–violence relation in terms that draw upon the works of two eminent philosophers of the twentieth century, Michel Foucault (1926-1984) and Walter Benjamin (1892-1940). While the question of the origins of law remained in the background of Foucault's book **Society Must be Defended** (see Section 2 below), it was openly confronted by Benjamin in his work "Critique of Violence" (see Section 3 of this paper). However, as we shall subsequently see (in Section 4 below), its roots can be traced back to a time before philosophy itself, in the form of the ancient Greek tragedies, where law and violence are two sides of the same coin.

2. The violent origins of law have been interrogated in a provocative way by, among others, Michel Foucault, in his lectures at the Collège de France collected in the book **Society Must be Defended** and posthumously published in 1997. In particular, the French philosopher sought to interpret "political power in terms of war, struggles, and confrontations"⁵ in order to analyse it in terms that avoided economic schemata, in that "power is not something that is given, exchanged, or taken back, that is something that is exercised and that exists only in action",⁶ and, moreover, because "power is not primarily the perpetuation and renewal of economic relations, in itself, a relationship of force".⁷

The starting question that drives Foucault's hypothesis could be summarized in the following terms: "If power is exercised, what is the exercising of that power? What does it consist in? What is the mechanism?" (*ibid.*). Foucault proposed two possible "off-the-cuff answers", the first being the so called "legal model" or "Reich's hypothesis", and the second being "the approach of Nietzsche" that held that "the basis of the power-relationship lies in a warlike clash between forces".⁸ Consequently, we may

⁴ Christoph MENKE, "Law and Violence", *Law and Literature* 2010, vol. 22, no. 1, p. 1 [1-17].

⁵ FOUCAULT, **Society Must Be Defended...**, p. 23.

⁶ FOUCAULT, **Society Must Be Defended...**, p. 14.

⁷ FOUCAULT, **Society Must Be Defended...**, p. 15.

⁸ FOUCAULT, **Society Must Be Defended...**, p. 16.

say that Foucault was on the one hand radically criticizing a certain juridical-discursive representation of power,⁹ while on the other attempting to overcome this approach by elaborating an alternative thesis.

With this purpose in mind, Foucault puts forward the view that power is not basically or essentially repressive, but is war — the continuation of war by other means, provided that, according to the French philosopher, war is understood as the real structure of power relations hidden by politics. Through a reversal of Clausewitz's formula, Foucault interpreted power not in terms of surrender, contract, or alienation, but rather as conflict, confrontation and war. This also means that within a political system the struggles, the clashes, over or involving power, the modification of relations of force — the shifting balance, the reversals — must be interpreted as a continuation of war.¹⁰ According to the Prussian strategist, "war is nothing but a continuation of political intercourse, with a mixture of other means", but for Foucault warfare is, on the contrary, the general model for all societal relations. Moreover, the latter, in a similar vein, wrote that "it is one of the essential traits of (modern) Western societies that the force relationships which for a long time had found expression in war, in every form of warfare, gradually became invested in the order of political power".¹¹

In order to show the long-lasting and ancient bond between law and power, Foucault underlined the fact that the Western juridical constructions since the Middle Ages had been essentially centered around royal power, so that the central problem around which the theory of right had developed had been that of sovereignty.¹² In his eyes, as someone aiming to elaborate an alternative approach to the legal one, this was further proof that law is a tool of domination, but at the same time also something that is a "vehicle for and implements relations that are not relations of sovereignty, but relation of domination".¹³

Hence, the thesis put forward by Foucault becomes comprehensible if read as an attempt to challenge, and thereby subvert, the model of sovereignty elaborated by Thomas Hobbes — or rather, the legal conception of power that construed the latter as the set of rights subjects surrender to the sovereign as a result of the social contract. In Hobbes' work, power had been understood in terms of its homogeneous and unitary sense — or better, in terms of a mere relationship of obedience, with law only permit-

⁹ See Michel FOUCAULT, *The History of Sexuality*, vol. I, Pantheon Books, New York 1978, p. 82.

¹⁰ FOUCAULT, *Society Must Be Defended...*, p. 15.

¹¹ FOUCAULT, *The History of Sexuality...*, vol. I, p. 102.

¹² See FOUCAULT, *Society Must Be Defended...*, p. 25-26.

¹³ FOUCAULT, *Society Must Be Defended...*, p. 27.

ted to show its repressive aspect. The merely juridical model of sovereignty, in Foucault's opinion, was not useful for pursuing "a concrete analysis of the multiplicity of power relations". In other words, the concept of law was not a tool for delimiting power, but had instead been used as a means of oppression and domination.

Put another way, "we have to abandon the model of Leviathan", as Foucault stated concisely. With this aim in mind, conversely, we need to analyse power "outside the field delineated by juridical sovereignty and the institution of the State" and inside "the techniques and tactics of domination".¹⁴ Obviously, this problem is intimately related to the birth and development of the concept of the State itself: in the early-seventeenth century the "old" power based on the sovereign–subject relation was replaced by a "new" mechanism of power with its own specific procedures, new instruments and different tools.¹⁵ This new kind of power — defined by Foucault as "disciplinary power" — applied primarily to bodies, and was exercised through constant surveillance focused on a "closely meshed grid of material coercions rather than the physical existence of a sovereign".¹⁶ It was no coincidence that such disciplinary power was expected to furnish, in its entirety, the grand juridical structure associated with the theory of sovereignty: after all, rather than having disappeared, the latter had simply shed its skin. Indeed, sovereignty, even when directed towards the path of democracy, survived in other places and other systems (here one need only think of how it came to be codified in the nineteenth century), thanks to invisible yet highly pervasive tools involving disciplinary mechanisms: "the theory of sovereignty [...] and the organization of a juridical code centered upon it, made it possible to superimpose on the mechanism of discipline a system of right that concealed its mechanisms and erased the element [...] and the techniques of domination involved in discipline, and which, finally guaranteed that everyone could exercise his or her own sovereign rights thanks to the sovereignty of the State".¹⁷

Foucault was thus swimming against the tide, in that most legal philosophers have believed (and still believe) that the emergence of law should coincide with an end to war and violence. In this sense, the following words of the French philosopher count as emblematic: "The organisation and juridical structure of power, of States, monarchies, and societies, does not emerge when the clash of arms ceases [...] Right, peace, and laws were born in the blood and mud of battle [...] The law is not born of nature, and it was not born near the fountains that the first shepherds frequented: the law is born of

¹⁴ FOUCAULT, *Society Must Be Defended...*, p. 34.

¹⁵ FOUCAULT, *Society Must Be Defended...*, p. 35.

¹⁶ FOUCAULT, *Society Must Be Defended...*, p. 36.

¹⁷ FOUCAULT, *Society Must Be Defended...*, p. 37.

real battles, victories, massacres, and conquests which can be dated and which have their horrific heroes; the law was born in burning towns and ravaged fields. It was born together with the famous innocents who died at break of day”.¹⁸ And, more caustically, Foucault underlines the violence of law when he states that “law is not pacification, for beneath the law, war continues to rage in all the mechanisms of power, even in the most regular”.¹⁹

In Foucault’s thesis we definitely encounter, illuminated in the background, the controversial figure of Nietzsche. Yet in 1887 the German philosopher had used powerful words to describe the origins of law: “all began with a thorough and prolonged bloodletting, like the beginning of all great things on earth; [...] for a long time, «law» was a *vetitum*, a crime, a novelty; introduced with force, as a force to which man submitted, ashamed of himself. Each step on earth, even the smallest, was.”²⁰

3. The problem of the origins of law and, consequently, of the relationship between law and violence, were analysed by the German philosopher Walter Benjamin in his famous, yet “brief and disconcerting”²¹ essay “Critique of Violence” (1921). Actually, this article should have been published as the final part of a trilogy entitled **Politik**, whose first part consisted of “The True Politician” (“Der wahre Politiker”). Its second part, entitled “The True Politics” (“Die wahre Politics”), was divided into two chapters, “Der Abbau der Gewalt” (later published as **Kritik der Gewalt**) and “Teleologie ohne Endzweck” (better known as the “Theological-Political Fragment”). Finally, its third and last part was intended to be a philosophical critique of Paul Scheerbart’s utopian novel **Lesabéndio**.

More specifically, Benjamin, seeking the metaphysical roots of politics, attempted to retrace the unavoidable connection between violence and law that persists beyond such distinctions in the two opposing approaches associated with law itself (i.e. natural law and legal positivism): “natural law attempts, by the justness of the ends, to «justify» the means, positive law to «guarantee» the justness of the ends through the justification of the means”.²²

¹⁸ FOUCAULT, **Society Must Be Defended...**, p. 50.

¹⁹ FOUCAULT, **Society Must Be Defended...**, p. 50.

²⁰ Friedrich NIETZSCHE, **Genealogy of Morals**, Cambridge University Press, Cambridge 2018, pp. 41 and 82.

²¹ Jacques DERRIDA, “Force of Law. The «Mystical Foundation of Authority»”, in: Drucilla CORNELL, Michel ROSENFELD, and David G. CARLSON (eds.), **Deconstruction and the Possibility of Justice**, Routledge, New York and London 1992, p. 29 [3-67].

²² Walter BENJAMIN, “Critique of Violence”, in: Walter BENJAMIN, **Selected Writings 1913-1926**, eds. Marcus Bullock and Michael W. Jennings, Harvard University Press, Cambridge and London 1996, p. 237

In other words, the two conceptions of law, like a Jack of Spades, were mirrored in one another and only apparently different, being reflected as they were in the use of the concept of *Gewalt* that survived in both of them. If, for natural law, violence could be something existing in nature, and something that human beings could use all the while they pursued their purposes, for legal positivism, on the contrary, violence had been an indispensable weapon when it came to guaranteeing the endurance of historically established power.

A possible escape route from this vicious cycle of violence could be furnished from a different perspective seeking to consider law from the point of view of the philosophy of history. With this end in view, it seemed that Benjamin stood to benefit from Sorel's distinction between two opposing kinds of violence: bourgeois force and proletarian violence. This distinction, far from being a mere terminological clarification, understandably assumed fundamental importance in the context of Sorel's theory of political myth. If bourgeois force preserved the *status quo*, only proletarian violence could lead to a complete removal of the political order. The distinction between a political strike (which aims to preserve) and a proletarian strike (which tends to destroy) becomes, in consequence, clearly defined. The political one, coming from above, does not have a devastating impact on the governmental system, and engineers instead a simple "shift of power" that fails to dismantle the legal machinery itself — it being only a form of right that stands opposed to another one. Thus, only the proletarian strike (arising from below) could constitute a real break with the pre-existing order.

In particular, Benjamin used this distinction as a starting point for elaborating his thesis on violence. Once the existence of an ineradicable link between violence and law had been established, he attempted, developing Sorel's *force-violence* dichotomy, to elaborate "another form of violence" that could terminate the dialectical spiral of violence created by law and violence in order to preserve law itself. On closer inspection, law implies in Benjamin's thought a messianic and utopian-negative vision that seems to echo a terrible "Kafkaesque waiting",²³ in which a tremendous and unknown punishment repeatedly threatens and looms over the protagonist, who is caught in a circularity with no way out. As in a sort of eternal return, the violence that seeks to overthrow a legal system does not create a new order completely different from the previous one, but rather replaces it in an endless continuum. Benjamin defined this vicious circle as a "mythical violence" which, in its archetypal form, coincided with the *pure* manifestation of the gods' will. It suffices in this regard to think of the punishments inflicted re-

[236-252].

²³ Marcello STRAZZERI, "Walter Benjamin e la funzione della violenza nella creazione giuridica", *Sociologia* 2010, vol. 1, no. 1, p. 20 [17-22].

spectively on Niobe and Prometheus. The first was forced to undergo the killing of her children, while the second was sentenced to be shackled to a rock and tortured by having his liver consumed daily — two different destinies imposed for having, due to their *hubris*, defied the gods.

However, what might seem like a punishment for the violation of an existing law established by the gods was, according to Benjamin, actually the institution of a new law through violence – one not entirely destructive: in the case of Niobe, for example, the tragic murder of her children by Apollo and Artemis stopped with her, leaving to live on while condemned to feel guilty forever. Not by chance, the concept of guilt was the real point of reference for the distinction between human beings and gods, as Benjamin wrote in “Fate and Character” (1921), where he focused on “the dogma of the natural guilt of human life, of original guilt”,²⁴ and in one of his early fragments, in which he analysed the concept of guilt as “the highest category of world history”.

In reality, mythic violence survived in every form of law, even when not immediately evident, in that a violent substrate always remained. An example of this was furnished by parliamentarism, which Benjamin attacked openly, thus showing himself to be in tune with Sorel (and Schmitt). He himself repeatedly claimed to repudiate violence, but the compromise form typical of parliamentary discussion was, according to the German philosopher, in fact “a product situated within the mentality of violence”,²⁵ because every form of compromise somehow involved an act of enforcement. So how might it be possible to definitively escape from this circularity by breaking the “magic circle of mythical violence”? Only thanks to another form of violence, or rather a “different violence”, a form of “pure” or divine violence. Thus, Benjamin contrasted with myth God – who, with his violence, can annihilate law as established by mythic violence: “if mythic violence is lawmaking, divine violence is law-destroying; if the former sets boundaries, the latter boundlessly destroy them; if mythic violence brings at once guilt and retribution, divine power only expiates; if the former threatens, the latter strikes; if the former is bloody, the latter is lethal without spilling blood”.²⁶

This is the same divine violence that suddenly struck down the tribe of Korah, incinerating them instantaneously and without bloodshed. It is the divine judgment that destroys by purifying. In other words, the contrast between law and justice, as understood in Jewish culture, plays a crucial role: if law is specifically human, justice is by definition divine. Moreover, the very lexical origins of the terms “law” and “justice” al-

²⁴ Walter BENJAMIN, “Fate and Character”, in: BENJAMIN, *Selected Writings 1913-1926...*, p. 206 [201-206].

²⁵ BENJAMIN, “Critique of Violence...”, p. 244.

²⁶ BENJAMIN, “Critique of Violence...”, pp. 249-250.

ready demonstrate this: whilst in German they appear similar (*Recht* and *Gerecht*), in biblical Hebrew the two terms *Mišpat* and *Zedeq* are completely different. The general strike advocated by Sorel approximated to the divine violence of the *Zedeq*, which — through the abolition of work — aimed to achieve “free work” in total contrast to bourgeois law, completely breaking apart the pre-existing order rather than replacing it. What is contrasted here, once again, is the time of law (the time of myth) and that of justice (the time of redemption), in which, as Benjamin pointed out in his “Theological-Political Fragment”, only the arrival of the Messiah could interrupt the course of history. In a similar fashion, the spread of ‘revolutionary violence’ results in a “reflection of divine justice in the human sphere, paradoxical and utopian to the point that it can be defined as pure violence of man”.

4. According to Christoph Menke, “tragedy, before philosophy, discloses the relationship between law and violence”.²⁷ In particular, Aeschylus’ *Oresteia* is considered by the majority of legal philosophers to mark the end of vindictive justice and the beginning, or rather birth, of the trial.²⁸ This tragedy — as the title suggests — was inspired by the story of Orestes, accused of killing his mother Clytemnestra in order to avenge the death of his father. As is well known, Orestes’ father had earlier on been murdered by his wife Clytemnestra, in order to punish him for having sacrificed their daughter Iphigenia. The third and final tragedy, entitled **The Eumenides**, where Aeschylus focuses on Orestes’ trial, is of particular relevance when it comes to questioning the origins of law. The trial begins with an admission of responsibility from Orestes (“I am not a suppliant, nor had I any stain upon my hands”), who tries to justify his deeds by explaining his reasons: “I am an Argive; my father — ask, and make me proud! — /was Agamemnon, commander of the sea-borne warriors, /in company with whom you made the Trojan town of Ilium /a town no more. This man, he died disgracefully on his /return to home. My mother, black of heart and mind, /destroyed him; embroidered were the nets she caught /him in, and they bore witness to the murder in the bath. /And I came home at last from lengthy banishment, /to kill her, yes, the one who gave me birth — and I shall not /deny it — in murderous requital for my dear father’s death. /And Loxias was equally responsible and my accomplice, /foretelling tortures fit to goad the very heart of me, /if I should fail to work my vengeance on the guilty ones. /Now you must judge if I have justice on my side or not; /My fate is in your hands and I am quite content at that” (vv. 456-469).

This is an especially difficult case, not only “for any single mortal man to judge”, but also for Athena, due to the passionate emotions involved. For this reason, she de-

²⁷ MENKE, “Law and Violence...”, p. 2.

²⁸ See François OST, *Raconter la loi. Aux sources de l’imaginaire juridique*, Odile Jacob, Paris 2004.

cides to appoint a new court composed of judges chosen from amongst the honest citizens, or rather, “a solemn court of judges sworn to deal /with homicide, from this day forth until the end of time” (vv. 483-484). This *revolutionary* court established by Athena for the express purpose of trying the “bloody homicide” (v. 682) is deprived of any specific functions. More specifically, the Aeropagus is no longer the “Guardian of Laws”, its jurisdiction being limited, thanks to the efforts of the Athenian politician Ephialtes, to the mere role of “judges of homicide” (v. 486). The latter’s reforms, which brought about the shift from an aristocratic *ghenos* to a democratic *polis*, aroused the greatest opposition amongst conservatives, and he was assassinated shortly afterwards. (In the words of a prominent English classical scholar, “it may be inferred that Aeschylus acquiesced retrospectively in the curtailment of its powers”.²⁹)

Alongside Orestes’ portrayal as “a suppliant in that place, dripping blood /from his hands, which held a sword, freshly drawn, /and a branch of olive from high on the bush, all wrapped with great care in a long piece of wool from a fleece /of fine colour” (vv. 44-45), the Furies are the undisputed protagonists of the tragedy. They are described in dark and somber tones as creatures more terrifying than the infamous Gorgons, “lacking wings, and black, abominations totally, that snored out breath miasmatic, unapproachable, while from their eyes there oozed unlovely pus” (vv. 52-54).

After having heard all the parties involved, the final judgement absolves Orestes, thanks to Athena’s decisive vote. She then tries to appease the anger of the Furies, whose accusation is that the younger Gods have “ridden down the older laws, appropriated them themselves” (vv. 808-809), escorting them away both to avoid their spewing “poisonous anger on the earth” and not to be “angry with my land and make /it barren, raining down your demon drops to spear /and blight and savage the land’s increase of seed” (vv. 801-803). This extended and thought provoking dialogue is of the utmost significance, and the tragedy concludes, not by chance, with a summons to “now lift up your voice in the hymn!” As we have seen, the events narrated by Aeschylus in the tragedy **The Eumenides** revolve around the crucial role played by human powers of persuasion.³⁰ In particular, the Goddess of Persuasion *Pheito* helps Athena to overcome the impasse with “the fascination of her voice, the magic of her words, the power of language exerted over others, the mysterious alchemy that at the same time mobilizes the argumentation that convinces the spirit and the seduction that enchants the heart”.³¹

In a nutshell, it seems that dialogue and violence stand in a relation of eternal and

²⁹ George D. THOMSON, *Aeschylus and Athens. A Study in the Social Origins of Drama*, Lawrence & Wishart, London 1916, p. 286.

³⁰ See R.G.A. BUXTON, *Persuasion in Greek Tragedy*, Cambridge University Press, New York 1982.

³¹ OST, *Raconter la loi...*, p. 122.

irreconcilable contraposition. If **Agamemnon** and **The Libation Bearers** are tragedies soaked in violence, **The Eumenides** requires, by contrast, an intervention on the part of Athena that breaks the spiral of endless revenge: “Everything commences within the *genos* in the **Agamemnon**, where the palace of the Atrides is inhabited by the Erinyes of the family line or by Eris (Discord) [...] And it comes to an end, in the **Eumenides**, only at Athens, with the foundation of the Areopagus, a tribunal of blood destined to judge the murderer god Ares when, ‘domesticated’, he struck out at the one who had taken him in; then, installed at the foot of the hill to which the god gives his name, the Erinyes will preserve the city against the Ares of the *phylon* (*Arēs emphylios*), who is unleashed in civil war. The civic order has integrated the family within itself. Which means that it is always virtually menaced by the discord that is like a second nature to kinship and that it has always already gone beyond that menace”.³²

We may thus pose to ourselves the following question: what if *The Eumenides* is not emblematic of a shift from violence to persuasion, but rather — in its depiction of the latter — of the violent nature of law itself? Not surprisingly, according to certain eminent classical scholars, “the true material of tragedy is the social thought peculiar to the city-state, in particular the legal thought that was then in the process of being evolved” — including its inevitable contradictions and aporias. Therefore, what “tragedy depicts is one *dike* in conflict with another, a law that is not fixed, shifting and changing into its opposite”.³³

Aeschylus’ tragedy has not been univocally interpreted as an end to divine violence and the beginning of human justice issuing from the transformation of the dreadful and monstrous Furies into the benevolent Eumenides. It is an ambivalent and contradictory text, characterized by an inherent tension between law and violence. In other words, this transformation could signal not a passage from vengeance to justice (and *mythos* to *logos*), but rather proof of the problematic relationship between law and violence. As evidence of this, we may point to the fact that the tragedy known as **The Eumenides** came to be re-written by Sophocles, and above all by Euripides, about fifty years or so later on. The latter, like both Aeschylus and Sophocles, put the blame on revenge, but also sarcastically challenged this “new” kind of human justice, wondering what had happened to “the honest citizens” composing the “incorruptible court”.³⁴

5. Foucault and Benjamin have the undoubted merit of having brought to light, within the tragic framework of the twentieth century, the relationship between law and

³² Nicole LOREAU, “War in the Family”, *Parresia* 2017, vol. 27, p. 25 [13-47].

³³ Jean-Pierre VERNANT and Pierre VIDAL-NAQUET, **Myth and Tragedy in Ancient Greece**, Zone Books, New York 1990, pp. 25-26.

³⁴ See OST, **Raconter la loi...**, p. 149.

violence already shown in the Greek tragedies and, especially, in Aeschylus' *Oresteia*. Moreover, while the French philosopher never mentioned Benjamin in his essay *Society Must be Defended*, he was able to unmask the violent face of law — or, rather, the violence without a face of modern law. Anyway, both of them mounted a radical critique of law: on the one hand, Foucault defined it as an oppressive system of domination, and on the other, Benjamin considered it “merely a residue of the demonic stage of human existence”.³⁵

Nevertheless, such provocative and radical approaches, it has even been suggested, exhibit the limitation that they only show the “dark side of law”, and serve to obscure its positive dimension. Actually, law is Janus-faced, in that we find both of its contrasting aspects well represented in Western legal history. On the one hand, there has been the repressive face of law, powerfully symbolised by disciplinary mechanisms and oppressive means for maintaining order and political power; on the other hand, we may glimpse the progressive face of law — for instance, in the gradual recognition of individual and social rights.

In relation to this, we may wish to recall the famous quotation of Benjamin's essay “Theses on the Philosophy of History”, where he traces back the metaphor of the chess player that the German philosopher drew from the story of Edgar Allan Poe entitled **Maelzel's Chess Player** (1836) (in Baudelaire's translation): “The story is told of an automaton constructed in such a way that it could play a winning game of chess, answering each move of an opponent with a countermove. A puppet in Turkish attire and with a hookah in its mouth sat before a chessboard placed on a large table [...] Actually, a little hunchback who was an expert chess player sat inside and guided the puppet's hand by means of strings. One can imagine a philosophical counterpart to this device. The puppet called ‘historical materialism’ is to win all the time. It can easily be a match for anyone if it enlists the services of theology, which today, as we know, is wizened and has to keep out of sight”.³⁶ This metaphor should now be re-interpreted along the following lines: the automaton that only deceptively appears to be playing chess according to abstract rules is in fact a monstrous dwarf that, in an occult fashion and at will, moves the chess pieces around. In the same way, the neutrality of law — or rather, the idea of law's indifference toward specific social elements — helps to make invisible the real violence hidden in law itself.

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³⁵ BENJAMIN, “Fate and Character...”, p. 203.

³⁶ Walter BENJAMIN, **Illuminations**, Schocken Books, New York 1968, p. 253.

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The Violent Origins of Law

Summary

The aim of this article is to analyse an issue discussed by philosophers and legal scholars since ancient times: the violent origins of law. In other words, it attempts to respond to the following questions: can we ultimately trace the origins of law back to violence, and could it be that law is in fact a continuation of violence by other means? To this purpose, there will be retraced the law-violence relation as portrayed in the Greek tragedy **The Eumenides** where Aeschylus focuses on Orestes' trial, is of particular relevance when it comes to questioning the origins of law. At the same time, there will be followed the footsteps of Michel Foucault and Walter Benjamin who had the undoubted merit of having brought to light, within the tragic framework of the twentieth century, the relationship between law and violence.

Keywords: law, violence, tragedy, myth, justice.