3

Law without violence

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"Law is itself violence" (p. 3) – this claim is not only an "observation" about forms of law existing hitherto, but a thesis about the very concept of law as such. According to Christoph Menke, there never was and never can be any law without violence. The reason for this dependency of law on violence lies in its need to be enforced; Menke follows Kant's definition according to which law consists in a reciprocal authority to use coercion. The aim of my essay is to question this basic assumption. While it is certainly true that the history of occidental legal forms was a history of torture and cruelty, of discipline and punishment, of police, prisons, and border control, there are at least two normative orders within the European ethical horizon that should be called "legal orders" even though they forego the use of coercion and are thus potentially nonviolent. The first one is international law, as most prominently conceptualized by Kant himself (thereby contradicting his own definition of law): international legal norms are binding, but have no distinct coercive forces at their disposal. The second one is Jewish law, developed and practiced over centuries under conditions of the diaspora, thus lacking any state-based means of enforcement. Both legal orders already informed the agenda laid out by Walter Benjamin's "Critique of Violence" (1920/21) which can therefore guide a critical interrogation of Menke's hidden premises. Benjamin's notion of deposing the law (*Entsetzung des Rechts*), I argue, should not be interpreted as a "self-reflection of law," as Menke suggests, but rather as the idea of a law without violence. Only if we interpret Benjamin's

philosophical-political program as the attempt to rigorously *eliminate* violence from law (instead of prolonging it against its own will, p. 61) can it guide a social transformation that truly does justice to the victims of past and present legal violence.

I will proceed in four steps. First, I will attempt to reject Menke's thesis about the necessary connection of law and violence by discussing two cases of non-coercive law: international law as presented in Kant's *Metaphysics of Morals* (1) and Jewish law as conceptualized by Benjamin, among others (2). I will then discuss an additional argument for the irreducibility of violence in law that Menke has presented in a different context, namely the claim that violence in law is necessary in order to deploy a socially transformative force (3). Finally, I will argue that Benjamin's demand to "depose" law, understood as a liberation of law from violence, is not only able to serve as a common denominator of the goals of current social movements against state-sanctioned violence such as prison abolitionism or the Black Lives Matter movement, but also offers an important perspective for any future critical theory of law (4).[1]

1. Kant's "pure law"

Christoph Menke's claim that violence is implied in the very "*concept* of law" (p. 4, original emphasis) is derived from the definition of law provided by Immanuel Kant's chapter on the "Doctrine of Right" in his *Metaphysics of Morals*.[2] "Right and authorization to use coercion," Kant succinctly states, "mean one and the same thing."[3] This connection between law and coercion is conceptual and not merely historical, because it is generated by means of an a priori analysis. Coercion, for Kant, is the simple negation of a negation of freedom: since law is an order of freedom, every illegal act is a hindrance to freedom. Coercion, on the other hand, is a "hindering of a hindrance of freedom" and thus "by the principle of contradiction" automatically just.[4] Kant thus believes he can derive the authority to use coercion without regard to

any empirical considerations, merely by making explicit the logical structure of law as such.

Kant's definition has been extremely influential, not only in legal and political philosophy, but also in public discourse and in our everyday understanding of law and legal matters. There is a nearly unanimous consensus that all law, in order to really be law, has to be *enforced*. This widely unquestioned adoption of Kant's doctrine is astounding, since it rests on a number of problematic premises. First of all, Kant offers no argument for his claim that the "hindrance of a hindrance" must take the form of coercion. In fact, this assertion is based not on analytical, but on empirical assumptions: the idea that coercion secures the possibility of law implies expectations about the *actual* suitability of coercion to fulfill the function ascribed to it. Since law is an outer norm (as opposed to morality as an inner norm), it cannot do without a prudent consideration regarding the best means to implement it. Instead of providing such an empirical deliberation, Kant – the philosopher of autonomy, after all – uncritically accepts the traditional mechanistic notion that only force can counteract force. However, empirically speaking, major doubts can be raised against this assumption. The over 200-year-long history of bourgeois society has proven that legal coercion neither prevents breaches of law, nor does it compensate for them retrospectively, nor does it work as a reliable medium for conflict resolution at all. On the contrary, there are a number of good reasons to believe that the juridical apparatus and the police regularly tend to breach the law themselves, as recent social movements such as prison abolitionism and the Black Lives Matter movement, as well as many contemporary critical theorists, have convincingly argued.[5] (This is what Benjamin already hints at when he writes that "the assertion that the ends of police violence are always identical or even connected to those of general law is entirely untrue."[6]) The experiences from penal law in particular show that legal coercion does not actually help to hinder hindrances of law; state-inflicted punishment – paradigmatically the prison system – rather continually produces and reproduces "milieus of delinquency"[7] outside of the legal order.

Besides their empirical ineffectivity, moral objections can be raised against means of coercion on strictly deontological grounds. Once coercion and law are no longer a priori bound to each other, normative criteria are needed in order to distinguish legitimate from illegitimate hindrances of hindrances of freedom: the legitimacy of coercion can no longer simply be deduced from the law itself. This is the starting point of Benjamin's "Critique of Violence": the legal order, even if it was perfectly just, would still not contain "a criterion for violence itself as a principle but, rather, the criterion for cases of its use. The question would remain open whether violence as a principle, could be a moral means even to just ends."[8] This question is avoided by classical political theory, because it presupposes the notion of legal force as a means to the end of law. Its basic dogma is that "just ends can be attained by justified means, justified means used for just ends"[9], which means that the possibility that the principles of the ends and the principles of the means could collide with each other cannot be excluded. To even recognize such a possible collision, independent criteria for both moral spheres are needed, Benjamin concludes. In the sphere of the means, the legitimacy of state-sanctioned violence *in principle* must be addressed, and therefore a question concerning a criterion "without regard for the ends they serve"[10] arises. Kant himself has prepared the grounds for questioning the legitimacy of violence even as a means for just ends. His moral philosophy postulates that moral imperatives apply *categorically*, that is, they need to be followed without regard for the empirical consequences. This notion has crucial consequence for the evaluation of violence as a means to the ends of law. Think of the example of torture: in liberal democracies, torture is prohibited notwithstanding questions of its (in-)effectivity. Human dignity, including the criminal's dignity, is to be respected unconditionally. Benjamin's move now is to expand the scope of Kant's transcendental argument to the entire register of legally sanctioned violence: police and prisons are illegitimate independently of the ends they serve, because they are structurally incapable of treating human beings as ends in themselves.[11]

Kant's claim (which Menke adopts), according to which violence is implied in the very concept of law, is therefore problematic for both empirical and moral reasons. It is empirically wrong, because it can be shown that violence is not an effective means to hinder hindrances of freedom, and it is morally wrong, because violence, even if used as a means to just ends, violates deontological moral principles. It is remarkable, however, that Kant himself does not consistently apply his own definition of law. Despite his own original definition of law, Kant mentions one case of a normative order that he explicitly calls a legal order but that is not based on force: international law. It follows directly from the universality of reason that law cannot be limited to the territories of single states. Democratic reform of national legal orders will therefore lead to the establishment of an international law whose regulative idea is the idea of perpetual peace. This idea substantially undermines the principle of sovereignty, as Kant asserts a source of legal norms that are higher than any national law, which are binding on individual nation states, and which cannot be dispensed with. These international legal norms for Kant are not "overpositive" norms that stem from morality or natural rights; the principles of a binding international law are rather inherent to the very concept of universal law as such. It is important, however, to note that Kant does not posit a world state to enforce this law, which is, after all, the highest of all legal norms of his entire doctrine of right. Kant envisages only a dissoluble confederation of states without any authority to use coercion. International law thus becomes, to borrow Hans Kelsen's term, "pure law," a law independent of its own enforceability.

It is not relevant for these considerations that the actually existing international law is not non-coercive. My aim here is merely to prove that the connection between law and coercion is not a conceptual, but a historical one. It is therefore at least possible to imagine a non-coercive law. By allowing for a non-coercive legal order in his doctrine of right, Kant himself must have sensed this possibility to conceive of a merely voluntary rule-following. People, states even, are in principle capable of adhering to the law simply because they recognize it as reasonable.

This is what Benjamin has in mind when he refers to diplomacy as an instance of nonviolent conflict resolution.[12] For Kant, the condition for such an international order to be effective is that all member states have a republican constitution: only a just internal order disposes states to follow international law even when they are not forced to do so. If we replace "republican" with "radically democratic," we arrive at a plausible description of the conditions necessary to secure voluntary compliance with a legal order: if people themselves are the authors of a rule (the *actual* authors, not the presumed authors in a counterfactual thought experiment), the chance that they will comply with it radically increases.

Kant goes even further in realizing that the mere existence of means of violence actually *undermines* a voluntary compliance: standing armies – armies that by definition do not actually apply force, but merely represent the possibility of force – should, according to Kant's essay on "Perpetual Peace," in time be abolished altogether, for:

> they incessantly threaten other states with war by readiness to appear always prepared for war; they spur states on to outdo one another in the number of armed men, which knows no limit; and inasmuch as peace, by the costs related to it, finally becomes even more aggressive than a short war, a standing army is itself the cause of an offensive war, waged by a state in order to be relieved of this burden; in addition, being hired to kill or to be killed seems to involve a use of human beings as mere machines and tools in the hands of another (a state), and this cannot well be reconciled with the right of humanity in our own person.[13]

The right of humanity, Kant states, is not only injured by a violent act, but has already been injured by the threat of and the readiness to resort to violence. Kant therefore deems it to be our duty to create the political and institutional conditions necessary for this constant threat of violence to end. All of these arguments, however, also hold true against the existence of police and prisons: they are institutions which in principle pervade society with violence, thereby constantly undermining the

possibility of a just and free life. Nobody has expressed this more pertinently than the Marburg neo-Kantian Herman Cohen (who taught Kant to Benjamin): "Coercion represents, logically as well as ethically, the end of reason."[14]

2. Jewish diasporic law

The concept of international law in Kant proves at least that much: violence is not a *constitutive* part of law, but its specific historical *attribute*. The idea of a non-coercive law expresses the hope to liberate the rational capacities aggregated in law by eliminating its violent dimension. Besides Kant's idealistic notion, there is at least one other legal order that foregoes its own coercive enforcement: Jewish law. Over centuries, Jewish legal traditions have not only theoretically reflected, but also reliably practiced, a law without any recourse to state-sanctioned violence. They also were among the most important sources of inspiration for the young Benjamin (as well as for his teacher Cohen).

The social, political, and cultural circumstances to which any legal system is subject also contribute to determining the form and content of this system. As far as Judaism is concerned, this means the conditions of the diaspora; since the destruction of the Temple in AD 70, Jewish law has had to preserve itself in hostile environments, without being represented in a state form. These conditions have thus shaped a legal order that is fundamentally different from all other European legal orders: it created a law without sovereignty. Due to our preoccupation with the state, legal scholars and philosophers even today have difficulty with actually recognizing it as a legal order at all. According to the centuries-long Jewish legal tradition, however, Jewish law is certainly not merely a religious normative order but a proper *law* – it entails scope, content, and function typical for a legal regime. Interestingly though, due to the conditions of the Diaspora, Jewish law cannot have recourse to any governmental apparatus of power by way of an enforcement

agency. Its reference in the life of the members of the legal community must therefore be ensured without the use of force.

For this reason, Jewish law has had to develop very different resources as its means of persuasion, resources that were simply not available to the Roman-Christian tradition. Among the most important features of Jewish law is their pedagogical character: it is not to be understood as imperative commandment, but as *teaching*. It cannot secure its own relevance through police and court houses, but through schools and academies. In this respect the absence of executive agencies is connected with the idea, already set out in the Bible, that mankind will have to account for its interpretation of law before God, which excludes any application based purely on passive obedience. Because it does not address its members on an authoritative basis, therefore, but is directed towards a mature understanding, Emanuel Lévinas has rightly referred to Judaism as a "religion for adults."[15] To connect law with coercion would mean to preclude its study and thus any authentic responsibility. This is also the case because in Judaism, study is always essentially conflictual and not made for a naive application. This leads to a particular appreciation and nurturing of the controversial and dissenting exchange of different legal opinions and thus to the creation of a *community of interpreters*.

It is important to note that this is not a utopian image to be realized in a faraway future, but an already existing practice that has proven its capacity to reliably solve conflicts and regulate human behavior over centuries. Jewish legal practice has always been a legal practice in distance to the state and thus a legal practice in which Kant's analytic connection between law and coercion was never appropriate. Besides his own radicalization of Kant's categorical imperative, it was the Jewish legal tradition that inspired Benjamin to search for a nonviolent form of obligation. Against previous forms of law and law enforcement, which Benjamin refers to as "mythical," his aim is to defend a non-statist form of commandment that can be seen as opposing or distancing itself from the state. This becomes clear when Benjamin discusses the question whether a critique of violence as a means of law

undermines the very validity of any legal rule. "This," he responds with explicit reference to "Judaism," "cannot be conceded. For the question 'May I kill?' meets its irreducible answer in the commandment 'Thou shalt not kill.'"[16] The irreducibility of this commandment, Benjamin insists further, is not dependent on its violent enforcement. On the contrary, violent enforcement prevents us from truly taking responsibility by, as Benjamin puts it, "wrestling" with the law (an activity that can never be skipped because we always need to find an interpretation of the law's meaning for the situation at hand). Rather, Benjamin says in his essay on Kafka: "Law which is studied but no longer practiced is the gate to justice."[17] This notion, which is a reference to the idea of the Talmud (Hebrew for "study") entails Benjamin's political program in a nutshell: neither the abolition, nor the (however "self-reflective") perpetuation of the law, but the suspension of its violent application.

At this point, an objection could be made that the study of law is not nonviolent, but rather simply based on *another form of violence*: educational violence. It is not only since Foucault's *Discipline and Punish* that we have learned that education, even under the guise of humanism and enlightenment, is based on a variety of disciplinary strategies. This objection is thus indeed an important reminder that violence can take unexpected forms and that we therefore should not be too quick with self-congratulatory gestures: even the study of law can entail traces of violence, be it in the form of repressive teaching methods or in more subtle forms of moralism and conformism. It does not follow from this, however, that the relation between law and non-law is *always or necessarily* a relation of violence, much less, as Menke claims, of "pure violence" or "violence through and through" (p. 22). Menke's claim that the gap between the legal and the non-legal can *in principle* never be bridged through reasoning or insight (p. 22) and, furthermore, that legal rule-following must always be based on fear (p. 21), is based on two hidden premises: Menke first naturalizes the antagonism he observes between the members of bourgeois society to an eternally irreconcilable conflict between human beings, and second, he follows Kant in adopting a mechanistic notion of cause and effect according to which only force

can move force. Both premises are problematic: we already know forms of nonviolent conflict resolution that can reconcile adversaries without recourse to the threat of violence (Benjamin hints at this possibility when he mentions the "conference, considered as a technique of civil agreement"[18]), and there are ways to increase rule-following behavior other than by invoking fear (for example, by making rule-following behavior *more attractive* than rule-breaking behavior). The notion of the study of law is well equipped to accomplish both: since it addresses all members of the legal community as participants of an interpretative process and thus treats them as subjects rather than objects of the legal procedure, it hopes to reconcile the adversaries with each other and at the same time with the legal rule. If we then again replace the religion-based motivation to enter into such a strenuous study with the illocutionary binding energies set free by radically democratic and participatory processes of deliberation, we arrive at a notion of law as a voluntary agreement that is based precisely on rational insight and that Benjamin has therefore called "the gate to justice."

3. Violence and social transformation

So far, I have tried to refute Menke's claim that a nonviolent law is *conceptually* impossible. In a recent response to Andreas Fischer-Lescano (who has presented a critique in a similar vein as mine),[19] Menke has introduced an additional argument in favor of law's violent application that is not yet fully developed in "Law and Violence." Even if law without violence was possible, he argues, it is not *desirable* from the perspective of a critical theory of law. Menke certainly does not follow the mainstream of political philosophy in basing the need for violent enforcement of law on a Hobbesian anthropology: law's authority to use coercion is not derived from a need to protect men from each other. Rather, Menke discovers a genuinely *emancipatory* reason not to get rid of the violent dimension of law. His basic argument is that only a law that has material forces at its disposal can be a tool for the

struggle against social domination: "The law needs to remain violence," he writes, "in order to critically intervene into society."[20] The reason for this, according to Menke, is that in order to transform society, law needs to keep a distance to it. If it opens itself up towards non-legal practices too much, it will be absorbed by forces of social domination and thus lose its critical edge.

By introducing an argument concerning the strategy of social transformation, Menke leaves the terrain of legal philosophy in favor of a philosophy of history. This turn is quite welcome, as it is precisely the domain in which Benjamin's "Critique of Violence" is situated. The whole point of Benjamin's essay, however, is to expose the problematic consequences of the very assumption Menke takes for granted: the assumption namely that only violence can counteract violence (an assumption that, as noted above, is based on a mechanistic notion of cause and effect). According to Benjamin, violent revolutions suffer from the same problematic as the law: they tend to justify the violence they imply by reference of the justness of their ends. This justification strategy is problematic simply because it too neglects the question whether or not violence, "as a principle, could be a moral means even to just ends."[21] By failing to ask this question, all revolutions hitherto have deemed it unproblematic to posit new law. They have thereby also reproduced the law-preserving violence of police and military as well as new revolutionary counterviolences; they have, in short, simply prolonged the historical "cycle maintained by mythical forms of law."[22] Benjamin, on the other hand, is not ready to let go of the possibility of fundamentally *nonviolent* modes of interaction. He therefore explicitly demands "a new historical epoch"[23] that has rigorously terminated the vicious circle of violence and counterviolence. To put it bluntly: revolutionary ends do not legitimize the violence in law; as Menke would have it, the violence in law rather delegitimizes its (potentially) revolutionary ends. As long as the law remains violent, all forms of social transformation that are essentially legal can never be fully just.

Is nonviolent social transformation possible? To answer this question was the task that Benjamin had set to himself in "Critique of

Violence." On the one hand, social transformation seems violent by definition, since it is a "cause that intervenes into a moral order."[24] On the other hand, Benjamin repudiates all justifications of violence based on the ends they serve. What is needed, then, is a "different kind of violence,"[25] a nonviolent (or "pure") violence: a form of political action that has manifest consequences in the world without resorting to violence as a means, or in other words, a *force that moves without force*. His prime example for such a nonviolent violence is the proletarian general strike. Unlike a mere political, extortionary general strike, Benjamin asserts that the proletarian general strike is "as a pure means […] nonviolent" for "it takes place not in readiness to resume work following external concessions and this or that modification to working conditions, but in determination to resume only a wholly transformed work, no longer enforced by the state, an upheaval that this kind of strike not so much causes as consummates."[26] This proposal, according to which the proletarian general strike does not "cause but consummate" social transformation, is an explicit reference to the anarchist concept of direct action: Benjamin advocates a non-instrumental mode of political action which has given up any relationship to the law and its extortionary procedures.[27] This model of direct action offers an – historically at least partially successful – alternative to the law-based model of social transformation that Menke has in mind. Benjamin's essay thus provides resources to question both Menke's legal philosophical as well as his historico-philosophical basic assumptions: it is neither true that the law is conceptually bound to be violent, as the examples of Kant's pure international law as well as Jewish diasporic law have proven, nor is legal violence the only possible way to struggle against social domination, as the example of direct action shows.

4. Liberating law from violence

Menke's claim that law without violence is conceptually impossible has created a dilemma for his theory. On the one hand, Menke can no

longer envision the utopia of social reconciliation (as the early Frankfurt School did), because that would contradict his claim about the irresolvable link between law and violence.[28] On the other hand, if Menke's legal theory is to remain a genuinely *critical* theory, it may not simply opt for the perpetuation of the same forms of interaction as the ones already existing. Menke solves this dilemma by proposing a new understanding of Benjamin's notion of "deposing the law" (*Entsetzung des Rechts*, translated in this book as "relief of law"). According to Menke, the task of legal criticism is not to discriminate law and violence, but to discriminate different "modes of implementation" (*Vollzugsweisen*) (p. 39 *passim*) of law. Menke beholds the establishment of a "self-reflective" mode of implementation of law, one that does not conceal but unfolds its own paradoxical intertwinement with violence, to be the proper goal of a radical transformation of law. Such a law, according to Menke, would at least do away with the "fateful" and thus the "mythical" character of all previous legal forms. "[T]he self-reflection of law," he writes, "leads into a paradox that does not promise a realm beyond the contention, violence, and suffering against which the law takes a stand and that it ends up reenacting within itself. The self-reflective implementation promises nothing more than a law that knows as much about itself" (p. 61). Menke calls such a self-reflective law "a law against its will" or a "repugnant law" (p. 61).

Given the overall brilliance and ruthlessness of Menke's essay, this seems like a rather cheerless promise. The perspective offered by Menke fails to satisfy the radicalism of Benjamin's critique. For this critique is not concerned with the law's ignorance of itself, much less with the judge's mood. Benjamin's critique demands nothing less than the deposing of law (*Entsetzung des Rechts*) "with all the forces on which it depends as they depend on it, finally therefore […] the abolition of state power."[29] This demand was the necessary consequence of Benjamin's diagnosis about both the *structurally ineffective* as well as the *transcendentally illegitimate* character of legal violence and is supported by the possibility of nonviolent forms of conflict resolution, some of which,

like international law and Jewish law, have a legal form. In addition, Benjamin has also laid out a strategy how to accomplish this goal, namely by following the anarchist concept of direct action that is situated beyond law and state power. One might find Benjamin's utopia of the abolition of state power to be too simplistic or messianic, his strategy to be naive or unrealistic. However, as I have attempted to show in this essay, there is *at least no conceptual reason* to resign and to give up the utopia of nonviolence prematurely.

It is precisely the radicalism of Benjamin's demand that allows it to serve as a common denominator of a whole range of emancipatory social struggles. In fact, at least three of the most important contemporary political movements are concerned with state-sanctioned violence: first, the insistent critiques of mass incarceration as presented by prison abolitionism; second, the vast Black Lives Matter movement triggered by the frequent racist police killings in the US, and third the refugees' struggles against state violence executed at borders or in internment camps all around the world. All of these initiatives reject the aggregation of manifest violence in the apparatuses of the modern nation state. Their vision is easy to express but hard to accomplish: to find a way of organizing our political community in a non- (or at least less) violent way. If Marx is correct in his famous assertion that philosophy represents "the self-clarification of the struggles and wishes of the age,"[30] it is the task of any emancipatory legal theory to provide for the theoretical articulation of the desires expressed by such movements.

Notes

1 In this essay, I draw on arguments that I first presented in my book *Kritik der Souveränität* (Frankfurt am Main and New York: Campus, 2012); for a conceptualization of the idea of law without violence, see especially part III.

2 I agree with Menke here that coercion is always to be understood as a form of violence: "Coercion […] is exercised through the administration

or threat of violence that assails the body and the soul" (p. 4). However, while all coercion is violence, not all violence is coercion. Manifestations of non-coercive violence include psychological harm or injuries. This opens up the possibility that even a non-coercive law can remain (or become) violent. This threat is particularly pertinent with respect to the notion of pedagogical law as outlined below. In my opinion, critical theory has to take this *possibility* seriously, but should not elevate it to a *conceptual* feature of law.

3 I. Kant, *The Metaphysics of Morals*, trans. M. J. Gregor (Cambridge: University of Cambridge Press, 1991), 57.

4 *Ibid.*

5 For a theoretical reflection of the criticism articulated by these movements, see e.g. A. Davis, *Are Prisons Obsolete?* (New York: Seven Stories, 2003); A. Vitale, *Abolish the Police* (London and New York: Verso, forthcoming).

6 W. Benjamin, "Critique of Violence," trans. E. Jephcott, in *Reflections* (New York: Schocken, 1986), 287.

7 M. Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage, 1977), 272.

8 Benjamin, "Critique of Violence," 277.

9 *Ibid*., 278.

10 *Ibid*., 277.

11 The "minmum program" of the categorical imperative, Benjamin states, contains "too little," for it still allows people to be used as means in any respect (see Benjamin, "Critique of Violence," 252, note 2). A critique of the subordination of people under the ends of law, he says, "coincides with the critique of all legal violence […] and cannot be performed by any lesser program" (*ibid*., 241).

12 Benjamin, "Critique of Violence," 289.

13 I. Kant, "Toward Perpetual Peace," trans. M. J. Gregor, in *The Cambridge Edition of the Works of Immanuel Kant, Practical Philosophy* (Cambridge: Cambridge University Press, 1996), 318.

14 H. Cohen, *Kants Begründung der Ethik nebst ihren Anwendungen auf Recht, Religion und Geschichte, Werke*, vol. 2 (Hildesheim: Olms, 2011), 398, my translation.

15 E. Levinas, "A Religion for Adults," in *Difficult Freedom* (London: Athlone Press, 1990).
16 Benjamin, "Critique of Violence," 250.
17 W. Benjamin, "Franz Kafka: Zur zehnten Wiederkehr seines Todestages," in *Gesammelte Schriften*, vol. 2.2 (Frankfurt am Main: Suhrkamp, 1991), 437; my translation.
18 Benjamin, "Critique of Violence," 289.
19 See A. Fischer-Lescano, "Postmoderne Rechtstheorie als kritische Theorie," *Deutsche Zeitschrift für Philosophie*, 61:2 (2013), 179–96.
20 C. Menke, "Die Möglichkeit eines anderen Rechts: Zur Auseinandersetzung mit Andreas Fischer-Lescano," *Deutsche Zeitschrift für Philosophie*, 62:1 (2014), 142, my translation.
21 Benjamin, "Critique of Violence," 236.
22 *Ibid*., 251.
23 *Ibid*., 253.
24 *Ibid*., 236; translation modified.
25 *Ibid*., 247.
26 *Ibid*., 246.
27 One could argue that both of Benjamin's demands – to find a law without violence and to find a revolution without violence – are combined in the Jewish concept of the exodus. By leaving Egypt, the Israelites "severed relations" with the Pharaoh instead of imitating him by trying to overpower him. They did so by constituting a new law in the Promised Land, but one that was structurally different from the violent Pharaonic law.
28 Another option to consider would be a world without law (and thus without violence). For reasons that cannot be discussed at length in this text but have to do with law's capacity to create normative orders of autonomy and equality, this option seems feasible neither to Benjamin, nor to Menke, nor to me.
29 Benjamin, "Critique of Violence," 251–52.
30 Karl Marx, Letter to Arnold Ruge, in *Marx & Engels Collected Works*, vol. 3 (London: Lawrence & Wishart, 2010), 145.