



## Divine violence and reparative justice: the spheres of radical democracy

Alexandra Leong\*

**Abstract:** *The present article challenges the presupposition in the authoritarianism-political violence formulation of well-defined boundaries between legitimate and illegitimate violence, suggesting Benjamin's point that they are details of sanctioned legality. Invoking Benjamin's conceptualisation of violence, this article analyzes how radical democracy is best viewed as a politics of resistance that encompasses both redress and divine violence, one as justice and the other as freedom; thus radical democracy breaks radically with authoritarianism and its legal legitimacy of political violence, rather than blurring with or into it and serving its means or ends. Within this critical framework, it becomes crucial to dissociate divine violence necessitated by radical democracy from either types of "legitimate" or "illegitimate" state violence, since what is at stake is a break with authoritarianism, new forms of redress for those victimised by authoritarian violence, historical consciousness, and an equitable transition from liberal to radical democracy (an evolving process rather than an end). This article concludes that only against an asymmetrical authoritarian backdrop do the twin forces of restorative justice and divine violence both become necessary to transition toward radical democracy in critical ways.*

**Keywords:** *Walter Benjamin, Carl Schmitt, divine violence, reparative justice, authoritarianism, political violence, radical democracy.*

### **Introduction: The authoritarianism-political violence nexus, false distinctions between legitimate and illegitimate violence, and 'white privilege' in the redress debate**

Authoritarianism and political violence are historically tied with the rise of the modern nation-state<sup>1</sup>, colonialism, and the discourse of legal legitimacy. Both concepts typically connote illegitimate governments or 'rogue' states, but these imply several presuppositions that will be qualified throughout this text, including

---

<sup>1</sup> See Wendy Brown's *Walled States, Waning Sovereignty* and *Sovereignty and the Return of the Repressed* for a fuller theoretical investigation of the concept of 'political sovereignty' and 'sovereignty of the political' in relation to her discussion of the rise of social contract notions of the political.

the presupposition that authoritarian political violence is a deviation from a 'legitimate' norm; that law and legal legitimacy are unquestioned or unquestionable; and that modes of democratic government are otherwise functional in times of relative 'peace'. Several international crises over the last decades have called into question the relation between expressions of asymmetrical military violence and the question of legitimacy of such acts within otherwise stable democracies. The present article will address several of these recent interconnected crises in the United States and Palestine with attention to their historical origins, and explore their relationship to debates surrounding the concepts of political violence, authoritarianism, and legitimacy.

To date, much has been said about the inherent political violence 'embedded' into modern liberal constitutional polities by Carl Schmitt, and the false presupposition of boundaries between legitimate and illegitimate violence, insofar as their difference lies solely within legality as Walter Benjamin has delineated in his 'Critique of Violence'. The literature in contemporary political thought has also reflected on the debate over whether 'radical democracy' as an alternative can transform our current liberal-capital crisis, turning on the question of which methods are most appropriate within an asymmetrical sphere of authoritarian violence, and whether long-term revolutionary projects should move 'from democracy to divine violence' (Zizek 2011), or whether there is space carved out for historical redress — what is at times referred to as 'transitional justice' in human rights discourse (HRD). These summarize the two dominant discourses surrounding the issue of radical democracy; one leans toward moving away completely from liberal democratic models of state redress and toward egalitarian communist lines; the latter (HRD) suggests some form of legal redress is needed for an equitable form of justice along with full citizen rights.

This article invokes radical democracy in a different context from either of these two discourses while retaining the conclusions of both through two claims. My first claim relates to the false distinctions between legitimate and illegitimate violence through a reading of Benjamin, and the other addresses the question of transition from HRD to one of equitable radical democracy, as a 'politics of resistance' rather than a prescribed 'form of governance' (Brown 2010) and distinct from any paradigm of liberal subjectivity. Both claims are made in light of the view that it is necessary to begin from an equitable starting position from which to claim radical democracy, as opposed to a blank slate without redress for historical injustice. The present article's invocation of *transition* toward radical democracy is distinct from that of HRD insofar as it carves out a space for collective memory recollection, redress, self-determination, equal redistribution, historical consciousness, and divine violence, beyond mere compensation or return to the status quo. Neither does this paper suggest transition to democracy in the sense it has been invoked to mean party formation in countries undergoing decolonisation, but more accurately a form of historical consciousness and resistance to colonial, authoritarian, capital and state power, wherein transition opens up possibilities of alliances against the capitalist representative democracy model.

To do this, it is crucial to qualify and distinguish between what is meant by redress and divine violence. Divine violence is a concept developed by Walter Benjamin to offer a framework against the matrix of legal and state violence, while the notion of redress referenced in this article is informed by Robert Meister's analysis of market societies, capitalism, and historical injustice, which I suggest offers a tenable solution to the question of transitioning from liberal democracy toward a discussion of radical democratic long-term social alternatives. This period or transition of redress coupled with historical shifts in public memory would offer a new opportunity from which to move beyond unequal positions among different classes, racial groups, genders, and other groups. Furthermore, divine violence and historical redress can also be seen as homologous to freedom (from legal violence) and (reparative) justice, respectively, insofar as 'divine violence' is that 'notion of nonviolent violence... this strike against the shackles of the law, this expiation of guilt and resuscitation of life' (Butler 2006), while any recourse to redress should be viewed from within a strictly transitional process toward redistributive justice, especially from the perspective of those most affected by authoritarian violence structurally, systemically, and historically, including Native Americans, Arab Palestinians, African Americans, Jewish, and indigenous peoples, etc. Ultimately, the relationship between them is premised against an asymmetrical authoritarian backdrop, necessitating both reparative justice and divine violence toward a transition to historically conscious radical democracy.

While coextensive claims of divine violence and restorative justice may appear to contradict one another in their correlative claims to law-destroying and restitutive acts, respectively, indeed divine violence presupposes divine justice (Žižek 1997) in its 'expiating' properties, and in the reading that follows it is proposed that divine violence and restorative justice do not preclude one another by virtue of belonging to different spheres viz. Benjamin's criteria of 'means' and 'ends'. Reparative justice is one possibility within the political realm to consider equitable transitions for subjects of historical injustice to radical democracy, a politics of self-determination, while divine violence is meant to 'expiate' and rehabilitate subjects from legal violence through acts of radical resistance.

The distinction between legitimate and illegitimate violence is also called into question through Walter Benjamin's 'Critique of Violence', suggesting that both types are forms of state violence that rely on the consistency of

'excess [as] a necessary constituent of the notion of sovereignty—the asymmetry is here structural, i.e., the law can only sustain its authority if subjects hear in it an echo of the obscene unconditional self-assertion. And the people's 'divine violence' is correlative to this excess of power: it is its counterpart—it targets this excess and undermines it' (Žižek 2011).

A new vision of radical democracy emerges through the prism of divine violence that fundamentally breaks with authoritarian excess and its legal legitimacy, necessitating a crucial dissociation between divine violence

occasioned by radical democracy and the spectrum of legitimate and illegitimate state violence(s). Dissociation is especially critical for radical democracy in light of the continued blurring of boundaries between democracy and authoritarianism in recent global contemporary contexts, with putative democracies such as the United States and Israel engaging in violent repression of popular anti-racist movements such as Ferguson and anti-imperialism in Gaza, respectively, two interrelated radical democratic movements which this article will consider.

This article addresses a second aspect of the authoritarianism-political violence debate over the fraught question of historical redress for victims of political violence, and the role that historically conscious transitions to radical democracy can play in this rupture from legitimate/illegitimate political violence. Historical consciousness<sup>2</sup> should neither be equated with compensation nor redress, but as a process of ‘dislocating hegemonic’ theories and practices that ‘enacts a shift’ (de Lauretis 1990) in thought about the experiences of those whose lives are at stake in this question. Historical consciousness is especially critical for this movement in light of some of the common concerns voiced by those who caution against any form of legal redress from the state. Those who maintain that recourse to legal redress has ‘many of the attributes of what Nietzsche named the politics of *ressentiment*’, i.e., an identity politics which engenders reactive values in this case by appealing to the state for ‘injury’, as well as ‘legitimizing law and the state as appropriate protectors against injury’ (Brown 1995) neglect how disavowing redress precludes *ressentiment* in any call for radical democracy from those who have suffered the worst historical injustices. This article presents a revolutionary and historically-conscious project that acknowledges the necessity for reparation from those who have suffered injustice, which ‘however necessary, should *never* be confused with compensation for past injury, much less with a broader restoration of social justice going forward’ (Meister 2011) and which must confront the systemic question over who bears the brunt of authoritarianism? Only then can a move away from *ressentiment* and a movement toward healing and equity begin to take place.

As black feminists, women of color, fourth-wave feminists, and allies have rightfully noted, ‘swift dismissals of reparations’ from mainly white feminists and ‘critics of identity politics have a corresponding responsibility to ask when their assessments of reparations codify and entrench white privilege, when they mask the workings of white supremacy, and when they directly contest or transform racialized forms of power’ (Balfour 2005). They should further ask, why is it that those who call for reparative justice are typically victims who have suffered differential historical injustice and not its beneficiaries?

---

<sup>2</sup> Teresa de Lauretis, “Eccentric Subjects: Feminist Theory and Historical Consciousness,” *Feminist Studies* 16:1 (1990): 138. de Lauretis’ position on historical consciousness is relevant here for her acknowledgment that feminists of color in particular from Audre Lorde to Cherrie Moraga and Gloria Anzaldua have ‘risked dislocating hegemonic feminist theory’ to ‘not merely expand or reconfigure previous discursive boundaries by the inclusion of new categories, but also [to] represent and enact a shift in historical consciousness’ (de Lauretis 1990) of feminist theory by considering intersecting nuances of race, class, and sexuality to the discussion of feminism.

In this article, I will give a brief review of the methodology informing my position and make two claims; the first relates to the political-authoritarianism nexus and its problematic relationship to the issue of legitimacy as seen through Benjamin's critique of legal/state violence. The second claim will espouse a framework of reparative justice as advanced by Robert Meister.

### **Methodology: psychoanalytical, anti-imperialist, and feminist approaches toward reparative justice**

Why do we need radical democracy? The call for radical democracy is based on a combination of interdisciplinary, political, and interventional approaches as well as hermeneutic and analytical positions that are critical of liberalism, HRD, authoritarian violence, and 'swift dismissals of reparations that codify white privilege' (Balfour 2005). As critics of HRD and liberal transitional justice frameworks have noted, such models frequently omit 'themes of gender, power and structural violence' (Nagy 2008), not to mention race, culture, and ethnicity. A fuller critique of the ideological legitimacy of classic liberal views of democracy as representative and legally legitimate (and systemically violent) is informed by psychoanalytic discourse theory and political theory — and the view that any attempt to prescribe forms of governance instated by symbolic law ideologically and symbolically 'interpellates' subjects, in Althusserian terms, who are differentially subjectivated, lacking, and alienated, and further places guilt on the subject in her 'relation to the law' (Butler 2006). These provide critical theoretical and historical background as to much of the self-fulfilling nature of political violence, authoritarianism, and state power in the present era.

Interventional approaches by feminists apply critiques against the lived experience(s) of structurally marginalised and subjugated peoples by specific discourses of power, such as imperialism, authoritarianism, colonialism, capitalism, and racism, as they are frequently those who bear this brunt — many of whom are not initially accounted for in classical notions of liberal subjectivity, taking the erasure of native Palestinians in their struggle for self-determination<sup>3</sup> against Israeli occupation. Hence, such a position engenders a fundamentally unequal starting point for a discussion about transitioning to 'radical democracy' - whether in the form of communism, anarchism, socialism, or something else, and warrants a transitional notion of reparative justice to account for this fundamental gap.

Two exemplary anti-imperialist feminist approaches toward reparative justice stand out in particular which might reinforce current calls for reparative justice. Chandra Mohanty's 'transnationalist feminist' project offers an alternative method for socioeconomic change that is structurally centripetal, starting from the outskirts of the most marginalised loci of devastated societies toward the center where capitalist structures are

---

<sup>3</sup> Rashid Khalidi, *The Iron Cage: The Story of the Palestinian Struggle for Statehood* (Massachusetts: Beacon Press, 2006).

most resilient, insuring that ‘attention to the everyday experiences of tribal women, and the micropolitics of their ultimately anticapitalist struggles illuminates the macropolitics of global restructuring’ (Mohanty 2002). Angela Davis’ ‘prison abolitionist’ approach also gets at the heart of a violent punitive system of law when she asks ‘how can we imagine a society in which race and class are not primary determinants of punishment? Or one in which punishment itself is no longer the central concern in the making of justice?’ (Davis 2003). Davis’ own answer to this predicament is to ‘to envision a continuum of alternatives to imprisonment — demilitarization of schools, revitalization of education at all levels, a health system that provides free physical and mental care to all, and a justice system based on *reparation and reconciliation rather than retribution and vengeance*’ (Davis 2003). Is Davis’ view of ‘decarceration’ and ‘reparation and reconciliation’ not a tenable alternative of restorative justice going forward against the differentially punitive, liberal-capitalist model?

These are only two examples of approaches for rehabilitating victims of injustice with a more equitable system of reparative justice, which does not penalize or punish victims. Only against an authoritarian political backdrop does the necessity of a reparative model of justice for victims of injustice to equitably transition toward permanent radical democracy become clear, insofar as radical democracy is a process - an active trajectory - that turns on the question of who bears the brunt of legal violence? and is concerned not only with democracy but justice. In the following section, I will assess Benjamin’s prism of legal and state violence and its resonance for present discussions of authoritarianism and political violence.

### **Walter Benjamin’s ‘moral and historical spheres’, Carl Schmitt’s ‘state of exception’**

Walter Benjamin’s discussion of spheres of ‘means’ and ‘ends’ is central to the question of radical democracy, insofar as both spheres of divine justice and divine violence are needed for justice and freedom from legal violence and authoritarianism. It is crucial to be aware of Benjamin’s distinctions, as well as the technical limits between legitimate and illegitimate, or ‘sanctioned’ and ‘unsanctioned’ violence to illustrate the ways in which all legal violence is historically predicated on a means-ends equation which Benjamin seeks to move past. He writes:

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... Instead, the central place is given to the question of the justification of certain means that constitute violence (Benjamin 1986, 278).

Both theories of law then focus on this means-to-ends and ends-to-means formulas, whereas Benjamin’s critique of violence is aimed primarily at a new analysis of violence through the ‘sphere of means themselves,

---

<sup>4</sup> Italics mine.

without regard for the ends they serve', violence as a principle of moral means as such. Positive law, however, highlights the relationship between the historically constituted nature of violence by the state, insofar as 'the differing function of violence, depending on whether it serves natural or legal ends, can be most clearly traced against a background of specific legal conditions' (Benjamin, 1986, 280). The distinction between legitimate and illegitimate state violence, then, turns on the question of legal ends from within positive law:

'The meaning of the distinction between legitimate and illegitimate violence is not immediately obvious. The misunderstanding in natural law by which a distinction is drawn between violence used for just and unjust ends must be emphatically rejected. *Rather, it has already been indicated that positive law demands of all violence a proof of its historical origin, which under certain conditions is declared legal, sanctioned.* Since the acknowledgment of legal violence is most tangibly evident in a deliberate submission to its ends, a hypothetical distinction between kinds of violence must be based on the presence or absence of a general historical acknowledgment of its ends. *Ends that lack such acknowledgment may be called natural ends, the other legal ends'* (Benjamin 1986, 279-280).

This 'hypothetical' distinction is conditional on historical proof of such an acknowledgement of sanction, which 'consists precisely in recognizing the new conditions as a *new "law"*', rendering illegitimate violence a natural end with the possibility of having a legitimating character, such as in military violence. Benjamin's further set of distinctions between law-making violence and law-preserving violence (such as in the case of conscription), characterises this false distinction between legitimate and illegitimate violence further — demonstrating how illegitimate violence can always be legally legitimated on the basis of a 'means to the ends of the state' formula and its 'inherent... lawmaking character'.

This highlights the inherent violence of and contradiction in law and state sovereignty (where authoritarianism can at times appear subtle when defended in patriotic terms), which can be seen in the Gaza-Israeli border conflicts today. For example, the 'illegitimate' law-making authoritarian violence of Israeli assaults on Gaza and its *illegal* settlements on the Gaza Strip and West Bank calls this distinction of legitimate and illegitimate state violence into question in several ways. One way dates back to Israel's founding through the constitutional loophole of recognition integral to law itself in the British Mandate of 1922, which can still be felt today as the Mandate effectively architected a national home for the Jewish people by explicitly and constitutionally excluding the native Palestinian population who had previously lived there for centuries as Ottoman subjects. The discriminatory and exclusionary legal architecture of such a basis for a Zionist *state* uniquely exemplifies the law-making manner of illegitimate legal violence, when:

The League of Nations Mandate for Palestine, constituting the entire legal basis for the British regime erected in their country (and which was never edified until the demise of the League with the outbreak of World War II), explicitly refrained from mentioning either the Palestinians as a people or their national self-determination. By contrast, the Jewish minority of the population was so recognized. Indeed, it could be argued that the "constitutional" structure of the regime built in Palestine on the basis of the League of Nations Mandate was specifically designed by its British architects to

exclude national self-determination for the Arab majority, even while facilitating the same end for the Jewish minority (Khalidi 2006).<sup>5</sup>

The Mandate thus set the legal precedent (law-making) for preferential treatment of Palestine's yishuv (the old Jewish community in Palestine) to have continued hegemony in the region, simultaneously disenfranchising and expelling the native Arab population, and setting the hostile backdrop for much of the conflict in the region presently, such as the questions of borders, settlements, and the issue of statehood for Palestinians.

A second technique is through what Avi Shlaim has called 'creating facts on the ground'<sup>6</sup> (Shlaim 2001), noting how Israel's first Prime Minister, David Ben-Gurion's uncompromising attitude following the United Nations resolution to treat Jerusalem as an international regime is a case in point; while the Jewish Agency originally accepted the proposal, Ben-Gurion moved parliament offices from Tel Aviv to Jerusalem, reflecting a greater template of not only securing hegemony *extralegally*, but of impunity after violation of UN rule. Thus Benjamin's critique of legal violence, both law-making and law-preserving, from the point of view of law highlights the ways in which 'all violence as a means is either lawmaking or law-preserving', based on the inherence of violence to law.

Carl Schmitt's theories of dictatorship<sup>7</sup> are especially useful here for elucidating this false legitimate-illegitimate violence nexus in two distinct ways. The first is through the fundamental relationship between authoritarianism and liberal democracy in the principle of 'commissarial' or 'embedded dictatorship' — ('dictatorship embedded in constitutional guarantees') — and the second is in the principle of 'sovereign dictatorship', which is underlined by the power to legitimate illegitimate violence insofar as sovereign 'dictatorship [as such] does not appeal to an existing constitution, but to one that is still to come' (Schmitt 2014, 119). Both rest on a 'state of exception', or:

'...the public right of exception, which basically should be that whoever is in command is allowed to deviate from the *ius commune* [common law] in a case of emergency, in the interests of the maintenance of the state and of public tranquility and security... War and uproar are two most significant cases where this right is put into practice. It is a right of exception, a *ius speciale* [special right], in contrast to the normal right of sovereignty... That it is limited to the state of exception has no positive meaning, because this is only a limitation derived from legally grounded principles of justice. From a juridical point of view, it is only relevant that, whenever a state of exception arises, the one who is in full command has to decide for himself' (Schmitt, 2014, 12-13).

---

<sup>5</sup> Rashid Khalidi, *The Iron Cage: The Story of the Palestinian Struggle for Statehood* (Massachusetts: Beacon Press, 2006).

<sup>6</sup> Avi Shlaim, *The Iron Wall: Israel and the Arab World* (New York: W.W. Norton & Company, 2001).

<sup>7</sup> Carl Schmitt, *Dictatorship*. (Cambridge, UK, and Malden, MA: Polity Press, 2014). Schmitt's further distinctions between commissarial and sovereign dictatorship are beyond the scope of this essay, but for the most part this article is concerned with his concept of sovereign dictatorship, sovereignty and the state of exception, as well as its end results in creating a 'new constitution', making dictatorship law-making in the fact that it has the potential of being legitimated by the very laws it is unprincipled by.



This passage further highlights the inherent violence built into not only constitutional law, but the embedded dictatorial power of the modern nation-state *beyond* law and ‘freed from restrictions imposed by the law’ (Schmitt 2014, 8) — where the distinction between legitimate and illegitimate authoritarian violence is again reinforced solely as a matter of sanction. For Schmitt, the classical relationship between authoritarianism and political violence hinges on this state of exception, and who is granted supreme authority to decide and intervene in times of crisis, a power prescribed into the very concept of sovereignty and the ‘sheer executive, which is not conditioned in advance by any norm in the legal sense’ (Schmitt 2014, 8). Thus this exception from law or legal accountability built into the notion of state power and sovereignty simultaneously demonstrates Benjamin’s ‘law-preserving’ and ‘law-making’ theory of state violence, and Schmitt’s theory of the extra-legal dictatorial nature of modern sovereignty. To wit, Schmitt states:

‘This orientation toward dictatorship — an orientation consisting of the three elements of rationalism, technicality and the executive — is at the origins of the modern state. The word ‘dictatorship’ is used here to designate a kind of commandment that, by definition, is not dependent upon any agreement or insight of the party being addressed and does not wait for his/her acceptance. Historically, the modern state emerged from some kind of political technology of expertise. With it begins, as its theoretical reflex, the doctrine related to the *raison d’etat*... — that is to a socio-political maxim that stands above the dualism legality/illegality and is derived only from the necessities of the assertion and extension of political power’ (Schmitt 2014, 9).

Critics of illegitimate authoritarian violence fail to take such objections to their logical conclusions by extending criticism toward the not qualitatively different concept of embedded ‘illegitimate’ violence within the legitimacy of law itself, and in the legitimating power constitutive of sovereignty to create ‘new constitutions’ beyond law — as in such instances as the U.S. Patriot Act, the militarised response of police forces following the Arab Spring, Occupy Wall Street, and Ferguson, and the systemic extrajudicial killings of 1) unarmed black citizens by the police, 2) Middle Eastern men, women, and children in drone strikes by U.S. ‘counter-terrorism’, or of 3) Palestinians by the IDF and Mossad, and the refusal of the Israeli government to grant Palestinians self-determination — executively legitimated on such grounds as ‘national security’ and other ‘states of emergency’. Thus the real problem is not when types of political violence are legitimate or illegitimate, but how legitimacy is negotiated and granted through either the discourse of law or that of ‘permanent’ states of exception circumscribed by sovereignty and endowed with the power to make new law. Indeed, a logical critique of authoritarian violence might extend furthest to the notion of statehood itself, questioning the entire apparatus of legitimacy, law, legal violence, sovereignty, the police, and courts. Is this not the point of Benjamin’s critique?

### **Divine violence and reparative justice: toward an equitable transition to radical democracy**

The question this article presently turns to is the extent to which Benjamin's conception of divine violence can suit us in this age of authoritarianism, and how radical democracy can be sustained as a politics of resistance that looks to both redress *and* divine violence, justice and freedom, occasioning a total break with the authoritarianism/political violence nexus? For Benjamin, divine violence is a real violence that intrudes in the symbolic sphere of law, and is noticeable only by its expiatory effects. Quite distinct from the spectrum of legitimate or illegitimate legal violence, divine violence strikes as 'a pure immediate violence that might be able to call a halt to mythical violence. Just as in all spheres God opposes myth, mythical violence is confronted by the divine' (Benjamin 1986, 297). Modern examples of radical democratic movements of the last several decades which engage with divine violence include the Arab Spring, the Palestinian Intifadas of 1987 and 2000, and the Ferguson movement of 2014 (also known as 'Black Lives Matter') — all marked by offsetting the power of sovereignty, whether in the forms of authoritarianism, imperialism, police violence (a form of legal and state violence) and/or white supremacy.

Clearly, the necessity of divine violence is marked by the power which these mass movements generate in terms of awareness of social justice and issues permeating historically marginalized communities. At a more radical level, these movements can be seen as divinely violent in that they speak to a departure from legal norms, state power, white supremacy, and political violence, and through their actions articulate new possibilities for just futures. In addition to the long-term changes they engender, these movements undermine the state and legal violence precisely by disturbing its order, calling it into question, and breaking with the status quo.

Judith Butler's examination of divine violence further delineates the 'expiatory' effects of divine violence from not only law but guilt itself, and the ways that divine violence can be read as a form of redress from legal and state violence, insofar as:

'This sacred or divine sense of life is also allied with the anarchistic, with that which is beyond or outside of principle... the coming to terms with the commandment of a nongeneralizable moment that destroys the basis of law, one that is called forth by another law in the name of life and in the hope of a future for the living outside the shackles of coercion, guilt, and accountability that keep the legal status quo unchallenged. The destruction or annihilation of state power belongs neither to lawmaking nor to law-preserving violence. Although an epoch is founded through this abolition or revolutionary destruction of legal violence, no law is made from this place..

...Anarchism or destruction [of state power] that Benjamin refers to here is to be understood neither as another kind of political state nor as an alternative to positive law. Rather, it constantly recurs as the condition of positive law and as its necessary limit. It does not portend an epoch yet to come, but underlies legal violence of all kinds, constituting the potential for destruction that underwrites every act by which the subject is bound by law....' (Butler 2006).

In light of this view, radical democracy is best viewed through this lens as a conditional recurring resistance that breaks with authoritarianism and legitimacy not by countering it with new laws or political systems but by undermining state power of all kinds. Through expiation of the guilt-ridden subject bound by law, the state, and legal violence of all kinds, a historic moment for justice is generated through what Benjamin and Butler theorize as struggling with ‘the commandment’ precisely in this anarchistic way and electing to follow or break it in the name of justice. So when Benjamin writes that ‘justice is the principle of all divine end making, power the principle of all mythical lawmaking’, he imbues the concept of divine violence with tacit divine ‘ends’, or divine *justice* (the sphere of ends) — which is to say divine violence bears divine justice that is unknowable and inapplicable to the human realm of judgment insofar as the commandment *precedes* the ‘deed’ and thus, its judgment. Thus, divine violence and a notion of justice are not mutually exclusive, yet there is a critical departure and distinction from divine justice (belonging to divine violence) to that of reparative justice, which is concerned not with divine transformative potential but with equitable transitions toward radical democracy that begin on a just premise of historically conscious redress for the sake of public memory, healing, and self-determination.

Thus, a call for reparative justice is mandatory and necessary based on the violence of the legal system and the international apparatus of legitimacy in contexts of authoritarianism and of relative ‘normalcy’. The ramifications of appealing to market law for reparative justice as considered by Robert Meister are discussed below. The point of reparative justice (as opposed to radical divine justice qua divine violence) is that recourse to redress ought to be viewed within present *transitional* terms not meant to be permanent or to ‘return’ to any prior idealized status quo before slavery or colonialism, insofar as radical democracy is a process and our society is still one in which humanity is bound to laws and the state. Robert Meister’s concept of ‘inter-temporal justice’ (Meister 2011) is one possibility that appeals to property law in prioritizing the question over amends to groups and victims of past injustice by bringing their past injustices forward, delegitimizing, ‘re-appropriating’, and ‘re-contextualising’<sup>8</sup> (Butler 1997) that same law of the past prior to moving forward to any future political configurations.

Meister’s ‘gains-based model of reparative justice’ offers an interesting re-appropriation of property law, wherein

‘the primary burden would be to figure out who should pay and how much; only then would we need to find someone with an arguable right to get paid. Only then would we ask under what con-

---

<sup>8</sup> Judith Butler, “Sovereign Performatives in the Contemporary Scene of Utterance” *Critical Inquiry* 23:2 (1997): 350-377. Butler discusses the re-appropriative potential of utterance in her discussion of hate speech. The extent to which I apply such revolutionary properties to Meister’s re-appropriation of property law is based on the discourse of law and its material codification.

tingencies, and at what price, the right to retake unjustly held gains could actually be exercised...'

... 'it directly addresses the circumstances in which the benefits of past injustice have been cumulative, in which an ever decreasing number of the direct victims survive, and in which individual victims would have difficulty proving losses on the scale of the cumulative gains that were thereby produced' (Meister 2011).

Meister's model arises from the view of historical injustice as a 'form of property' (distinguishing further between property as right or remedy) and the concomitant idea that property law as it is understood 'retains the possibility of 'restitution'... as a remedy for past injustice' (Meister 2011). Thus this gains-based model of justice is not merely reactively restitutive, but creative of *new* or remedial property *after the fact* for those historically disadvantaged or dispossessed, and entails an attendant 'disgorgement' of beneficiaries' gains from historical injustice. To be clear, Meister asks 'whether systemic versions of reparative justice are appropriate, even if only as *partial steps toward distributive justice*, and also whether claims for reparations could be justified' (Meister 2011), especially in the context of propositions of socialism. His analysis of the potentiality of reparative justice is informed by an analysis of property-based societies, which have the means with which to legislate and achieve restorative justice. All of this is meaningless, however, without accompanying 'moral victory', since 'for a wrong to be redressed, any windfall benefits traceable to it must be expropriated, which makes unavoidable the question of how, and to whom, the proceeds should be redistributed so that justice will be served' (Meister 2011). The benefits of such a model of justice lies in 'options', or historical claims that can 'be valued (have a price)' (Meister 2011) and liquidated not based on a system of debt, but on 'inter-temporal justice' that makes such claims meaningful and valuable presently regardless of changes in advantage or value.

While there are clearly problems in appealing to the state for reparative justice, Meister's model is offered with the view of the potential that market societies have to achieve it. Critics of this model ignore this fundamental discrepancy of who bears the brunt of not only authoritarian violence but structural, 'legitimate' violence in times of 'normal' democracy long after injustices of authoritarian violence have passed. Typically, critics of restorative justice argue that such a model comes 'at the cost of reinforcing the very system of property that perpetuates the injustice of dispossession', and that the true goal of equality in 'socialism is not the redistribution of property but its abolition' (Toscano 2014). The obvious point here is that this objection ignores 'white hypocrisy that allows U.S. courts [to] have dismissed lawsuits seeking restitution for black slavery, despite allowing recovery for the forced labor of deceased Nazi victims' (Meister 2011). Further, it fails to consider how, for example, after desegregation, critics of affirmative action were blind to the ways in which that constitutional procedural equality was hardly enough to rectify what was a fundamentally unequal starting point for equal access to education after centuries of slavery and racial discrimination.

Further, at a deeper level socialism conceived as the temporal 'after' of 'evil' fails to assess its reconstituted 'self-perpetuation' from the form of the 'commodity' to the 'option' form, as Meister has originally argued in the 'Rethinking Capitalism' Conference (Meister 2010), or that the goal of socialism is the abolition of *private* property and the ideological supports of the state. Further, as Meister has also suggested, by placing itself after capitalism, socialism, like capitalism, regards the past as 'over and done with', but who is to say the past cannot be 'inter-temporally' presented again through a system of reparative justice that seeks to do just that? Abolishing property, while ideal, is not itself presently enough to engender the radical democracy of socialism that its proponents advocate for if it means that justice is not first served for those who are still dispossessed or disenfranchised, or both as in the case of Palestinians in their continued struggle for national self-determination (whether in a one- or two-state form) and legal standing in Geneva and the International Criminal Court. Clearly the kind of redress that a reparative justice model calls for is not the end goal of a neocolonial state or the creation of new laws, but a response to the very asymmetrical dispossession and the violence of settler colonialism and authoritarianism which amounts to a re-appropriation of both property law and capitalism, precedents which already exist in Jewish and Japanese reparations in the Luxembourg Agreement and the Civil Liberties Act of 1988<sup>9</sup>, respectively. Granted, reparative justice is not the end goal of radical democracy, but a transitional point from which to begin to move toward a more equitable footing from which to realize any future alternatives, such as socialism, that cannot be prescribed in advance. Reparative justice is conditioned by historical consciousness and public memory so that its critics also fail to account for the ways in which white identity politics are at work in many of their critiques, usually voiced as a bigger picture standpoint against the 'single-issue movements' and racial identity politics (Zizek 2008) of non-white groups who call for many of the same goals.

Further, abolishing property as a long-term goal must be accompanied by the abolition of 'super-structural' institutions of racism, heterosexuality, patriarchy, and other inequalities exacerbated by capitalism, and reparative justice coupled with historical consciousness is one way to alter that current. Restoration to victims of injustice might eventually lead toward abolishing property altogether after an indefinite period of collective reparations, and Meister's proposal also considers this possibility that 'alternative, socialist, remedies can be crafted that reduce inequality rather than increasing license'. Distinct from transitional justice, transition to radical democracy presupposes time, the end of capitalism, redress, and historical consciousness of the injustice of the past, or what Meister calls [invoking Benjamin] "now-time," in which *another* time is also made present and thus redeemed. This intertemporality of justice is... the proper valuation of the present claims that can be made through them..." (Meister 2011).

---

<sup>9</sup> Ricardo Rene Laremont "Jewish and Japanese American Reparations: Political Lessons for the Africana Community" *Journal of Asian American Studies* 4.3 (2001) 235-250.

## **Conclusion: from a framework of legitimacy toward relational ethics**

In this article, I have made two related claims about the false distinctions of legitimacy (legitimate versus illegitimate) and its relationship to violence using frameworks by Walter Benjamin and Carl Schmitt, concluding that a break with authoritarianism entails a movement of radical democracy that includes *both* a system of redress and divine violence (as opposed to one or the other). Finally, having illustrated the problems with legitimacy and sovereignty, I suggest, using Robert Meister's model of redress, that reparative justice is a preliminary step toward general conversations over future alternatives to systems of authoritarian political violence. If divine violence births divine justice in its moment of expiation, why then is an additional call for reparative justice necessary and how does this specifically bear on radical democracy? Much of this has to do with questions of historical injustice, difference, and a long-term system of equity that would account for differential lived experience, i.e., people experience political violence in historically different ways. Using examples of Palestine and the United States, I have shown that native Palestinians' continued struggle for national recognition is a direct product of political violence (and the apparatus of negotiated legitimacy) implemented less than a century ago in the British Mandate of 1922<sup>10</sup>. I have also connected the Palestinian example of historical injustice to the recent Ferguson and 'Black Lives Matter' movement in the United States, as these both highlight the connection between white supremacy, authoritarianism, political violence, imperialism, state power, ethnic cleansing, and racism, as well as the issue of structural violence and disproportionate authoritarianism as experienced by historically marginalized groups. Arguably, Arab Palestinians and African Americans (and Native Americans) share not only a common narrative, but occupy structurally homologous positions in the current authoritarian climate instigated by Israel and the United States, respectively and collectively, since historically the United States, like Israel, was founded against a violent settler colonial, racist, genocidal history.

I have used the term radical democracy as a movement of resistance calling for the twin spheres of divine violence and restorative justice for freedom and justice; one is meant to break with law and legitimacy while the other is meant to effect just transitions to move forward from the authoritarianism-political violence matrix (insofar as divine violence is not a form of governance). Divine justice *qua* divine violence that 'expiates' subjects from legal violence must be distinguished from reparative justice that is meant to redress specific contexts of historical injustice. Precisely insofar as reparative justice is a response to authoritarianism, and not a divine justice *qua* divine violence as such, restorative justice would cease to have meaning without the current climate of asymmetrical political violence in which it becomes crucial. Therefore, divine violence and

---

<sup>10</sup> Arguably this dates even further back to the Balfour Declaration of 1917, and one can go even further back to Theodor Herzl in the First Zionist Congress in Basel, Switzerland in 1897 with "the aim of Zionism to create for the Jewish people a home in Palestine *secured by public law*". See Avi Shlaim, *The Iron Wall: Israel and the Arab World* (New York: W.W. Norton & Company, 2001). Emphasis added.

restorative justice must be thought of as separate but not preclusive, with divine violence being a form of divine justice as such (the Arab Spring) belonging to the moment of Benjamin's commandment, and reparative justice as specific *transitions* from past to present, 'inter-temporal' justice to radical democracy.

In departing from a legal framework of legitimacy, what possibilities of ethics might emerge for alternative ways of living radically and equitably? In looking beyond reparative justice, we can begin to discuss future alternatives for society structured around relational ethics, a philosophical concept taken from the tradition of identity politics and post-identity politics, such as feminist thought. Within this framework, a relational system of difference based on equality, or better, equity and 'equivalence'<sup>11</sup> (Irigaray 2000), is preferable to the current 'colorblind' liberal-legal system of 'equality'<sup>12</sup> that has its origins in a historically exclusive, racist, and sexist framework for educated, wealthy, propertied white males, which women and people of color managed to gain access to only after centuries of struggle.

What radical alliances might we produce after reparative justice, after giving Palestinians restorative justice to their native land, and Native and African Americans reparations from slavery, genocide, and police brutality, that we can move forward with a truly pure, nonviolent means of being outside the 'shackles of the law and guilt'? These are questions which can only be answered from the point of view of social justice and radical democracy as practiced by global movements, not from the generic wholesale calls for socialism or communism that do not take difference into account into their utopian prescriptions of future society. Otherwise, one runs the risk of re-inscribing 'colorblind' visions into society that fail to account for the real and structurally different lived experiences of diverse groups and their unique relationships to authoritarianism and political violence.

---

<sup>11</sup> Luce Irigaray is a major feminist figure in the psychoanalytic tradition who champions a 'relational paradigm' of difference between the genders that specifically seeks *not* to reduce either to one but to maintain their unique identities while respecting one another. Hers is one that champions separate laws, and civil codes. While her gender philosophy can certainly be complicated and critiqued, these notions of difference are especially fruitful to a greater relational paradigm of ethics. See Luce Irigaray, *Democracy Begins Between Two* (New York: Routledge, 2000).

<sup>12</sup> The intellectual history of liberalism and liberal ideology can be traced from the works of Thomas Hobbes, John Locke, and Jean-Jacques Rousseau. The tenets of classical liberalism begin as a secularized political discourse with seventeenth-century 'social contract theory' and the 'natural' view of rights of Enlightenment thinkers Hobbes and Locke — taking 'Reason' as a point of departure for why men *contract* into social life out an anarchistic state of nature and form political institutions based on the signifiers of the rule of 'law', 'rights', 'liberty', 'individuality', and 'equality'. Its roots begin with momentous events such as the beginning of national sovereignty and international relations with the 1688 Treaty of Westphalia, the overthrow of feudalism with the French Revolution of 1789, and even further back to the checking of 'divine right' with the Protestant Reformation circa 1517. See Wendy Brown's *Walled States, Waning Sovereignty*, "Sovereignty and the Return of the Repressed," and *Neo-liberalism and the End of Liberal Democracy* for an explication of the classical meaning of the political doctrine of liberalism. Wendy Brown, 'Sovereignty and the Return of the Repressed' In: David Campbell and Morton Schoolman. ed. *The New Pluralism: William Connolly and the Contemporary Global Condition* (New Haven: Yale University Press, 2008) pp. 250-72.

## References

- Balfour, L. 2005. "Reparations After Identity Politics," *Political Theory* 33: 786-811.
- Benjamin, W. 1986. "Critique of Violence," in *Reflections: Essays, Aphorisms, Autobiographical Writings*. New York: Schocken Books, pp. 277-300.
- Brown, W. 2008. Sovereignty and the Return of the Repressed. In: David Campbell and Morton Schoolman. ed. *The New Pluralism: William Connolly and the Contemporary Global Condition*. New Haven: Yale University Press, pp. 250-72.
- Brown, W. 2010. "We Are All Democrats Now..." *Theory & Event* 13(2): 44-57.
- Butler, J. 1997. "Sovereign Performatives in the Contemporary Scene of Utterance," *Critical Inquiry* 23(2): 350-377.
- Butler, J. 2006. "Critique, Coercion, and Sacred Life in Benjamin's "Critique of Violence," in *Political Theologies: Public Religions in a Post-Secular World*. United States: Fordham University Press, pp. 201-219.
- Davis, A.Y. 2003. *Are Prisons Obsolete?* Canada: Publishers Group Canada.
- de Lauretis, T. 1990. "Eccentric Subjects: Feminist Theory and Historical Consciousness," *Feminist Studies* 16(1): 115-150
- Irigaray, L. 2000. *Democracy Begins Between Two*. New York: Routledge.
- Khalidi, R. 2006. *The Iron Cage: The Story of the Palestinian Struggle for Statehood*. Massachusetts: Beacon Press.
- Laremont, R. 2001. "Jewish and Japanese American Reparations: Political Lessons for the African Community," *Journal of Asian American Studies* 4(3): 235-250.
- Meister, R. 2010. "Financialization and Political Theory: Economies as Affective and Material Worlds," *Rethinking Capitalism Conference. Social and Political Thought*, University of California Santa Cruz.
- Meister, R. 2011. *After Evil: A Politics of Human Rights*. New York: Columbia University Press.
- Mohanty, C. 2002. "Under Western Eyes Revisited: Feminist Solidarity through Anticapitalist Struggles," *Signs: Journal of Women in Culture and Society* 28(2): 499-545.
- Nagy, R. 2008. "Transitional Justice as Global Project: Critical Reflections," *Third World Quarterly* 29(2): 275-289.
- Schmitt, C. 2014. *Dictatorship*. Cambridge, UK, and Malden, MA: Polity Press.
- Shlaim, A. 2001. *The Iron Wall: Israel and the Arab World*. New York: W.W. Norton & Company.
- Toscano, A. 2014. "The Tactics and Ethics of Humanitarianism," *International Journal of Human Rights, Humanitarianism, and Development* 5(1): 123-147.
- Zizek, S. 2008. "The Prospects of Radical Politics Today," *International Journal of Baudrillard Studies* 5(1).



Zizek, S. 2011. "From Democracy to Divine Violence," in *Democracy in What State?* New York: Columbia University Press, pp. 100-120.

Zizek, S. 1997/2006. "Robespierre or the "Divine Violence" of Terror," <http://www.lacan.com/zizrob.htm>, pp. 1-35.