



On the suspension of law and the total transformation of labour: Reflections on the philosophy of history in Walter Benjamin's 'Critique of Violence'

Duy Lap Nguyen
University of Houston, USA

Thesis Eleven

1–21

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DOI: 10.1177/0725513615602185

the.sagepub.com



Abstract

This paper argues for the contemporary significance of the 'Critique of Violence' by proposing a Benjaminian reading of two important analyses of the relationship between history, politics and the Rights of Man: Hegel's account of the French Revolution and the concept of *dissensus* proposed by Jacques Rancière. For both Hegel and Rancière, the gap between right and reality – between the ideal of equality, for example, and the existence of concrete inequality – does not warrant a rejection of the Rights of Man. Rather, the gap is a constitutive condition of law and political rights. From the perspective of Benjamin's 'Critique of Violence', however, these analyses serve to perpetuate a *bourgeois* legality, one that both Hegel and Rancière acknowledge can never be realized due to the constitutive discrepancy between right and reality. In preserving the promise of *legal* equality, these analyses preclude the possibility of a suspension or 'absolution' *from* law. This suspension of law is a task that Benjamin identified with the proletarian general strike, a strategy whose pure violence is supposed to secure what Benjamin described, enigmatically, as a 'wholly transformed work'. Remarkably, however, the relationship between the suspension of law in a general strike and a total transformation of labour is never clearly defined in the 'Critique'. This paper will develop an account of this

Corresponding author:

Duy Lap Nguyen, Department of Modern and Classical Languages, University of Houston, 620 Agnes Arnold Hall, Houston, TX 77204, USA.

Email: dnguye54@central.uh.edu

relationship by pursuing the references to Marx's critical theory of capitalism in Benjamin's writings.

Keywords

Agamben, Benjamin, 'Critique of Violence', democracy-to-come, Marx, Rancière

Introduction

This paper argues for the contemporary significance of the 'Critique of Violence' by developing a Benjaminian reading of two important analyses of the relationship between history, politics and the Rights of Man: Hegel's account of the French Revolution and the concept of *dissensus* proposed by Jacques Rancière. For both Hegel and Rancière, the gap between right and reality – between the ideal of equality, for example, and the existence of concrete inequality – does not warrant a rejection of the Rights of Man. In Hegel's analysis of the French Revolution, this contradiction proves to be a constitutive condition of law. What the Revolution reveals is that the attempt to completely actualize law in reality leads to the exact opposite state of affairs, to the total destruction of law in a 'fury' of anomic violence, which Hegel identified with the Terror. For Rancière, similarly, the gap between right and reality constitutes the normal condition of politics, the condition for a paradoxical process of political subjectivization in which individuals who are deprived of their rights, lay claim to the latter by enacting the rights that they do not possess. In Benjamin's terms, the gap between right and reality in Hegel and Rancière is conceived as an 'objective contradiction' of law, one that, precisely because it is constitutive, can never be completely corrected by a more consistent application of its universal principles.

From the perspective of Benjamin's 'Critique of Violence', however, these theories – which propose to perpetuate a *bourgeois* legality that they acknowledge can never be realized – preclude the possibility of a suspension or 'absolution' from law. This suspension of law is a task that Benjamin identified with the proletarian general strike. But in the 'Critique of Violence,' Benjamin never clearly explains how the strategy of general strike is supposed to accomplish such a grandiose task. In this paper, I argue that the suspension of law in the general strike should be understood in relation to what Benjamin calls the 'determination', on the part of the participants in a general strike, 'to resume only a wholly transformed work'. The suspension of law, in other words, presupposes a total transformation of labour. In the philosophy of history implicit in Benjamin's 'Critique of Violence', this transformation of labour, I argue, constitutes the historical or 'temporal' condition for resolving the eternal or timeless dilemma of law.

In the final part of this paper, I turn to Marx's late critical theory of capitalism in order to develop an account of the relationship between the transformation of labour and the suspension of law. This critical theory, I argue, contains a critique of law that, like Hegel and Rancière's, acknowledges what Marx refers to as the 'necessary difference between ideal and reality'. Like Hegel, therefore, Marx insisted that the ideals of the French

Revolution were *inherently* unrealizable. When actualized, these ideals appear as their opposite, as unfreedom and inequality.

For Marx, moreover, this necessary difference between ideal and reality is not simply a feature of the juridical superstructure of capitalism. Rather, in Marx's analysis, the Rights of Man – which necessarily diverge with reality – are the *same* laws that regulate the exchange of commodities underlying the capitalist economy. In particular, Marx identifies the law of equality with the law of equal compensation for equal labour, which presupposes the determination of value according to labour time. Equality between individuals presupposes an equivalence in the value of the products of labour they receive in exchange for their own. However, due to the necessary discrepancy between ideal and reality, this law of equality, in Marx's analysis, engenders its opposite in the *unequal* relation between wage labour and capital, a relation that Marx identifies as the source of surplus value. Thus, a reading attentive to the critique of the law embedded in Marx's critical theory reveals that, far from conceiving of the struggle between labour and capital as a conflict whose resolution will result in the establishment of a classless society, Marx regarded this class 'civil war' as an *irresolvable* contradiction in the *capitalist* law of equality, an 'antinomy of right against right, both sides bearing the seal of exchange'.

As in Hegel's analysis of the French Revolution, therefore, the contradiction to the law of equality is conceived in Marx's mature critical theory as 'objective' in nature. In contrast to Hegel and Rancière, however, Marx does not *affirm* this irresolvable contradiction as a condition for the perpetuation of law, politics or the state. Rather, Marx's analysis – as I will argue through a reading of the 'Fragment on Machines' – points to the possibility of a suspension of law, a suspension of law accomplished by means of what Marx refers to in the 'Fragment' as a 'suspension' of labour. By making direct human labour a largely superfluous part of the process of production, machinery simultaneously renders the law of equal compensation for labour an unnecessary criterion for the distribution of goods (goods which labour, increasingly, no longer plays any role in producing). And instead of providing a legal solution to the contradiction between labour and capital, the rise of machinery renders this contradiction irrelevant; with the development of the industrial process of production, therefore, the 'antinomy of right against right' is reduced to a legal anachronism, that of a mode of production that persists in exploiting a direct human labour on which it no longer depends.

Finally, I argue that the concept of socialism that emerges from this critique of the law is not one in which the law of equality is finally realized (or infinitely deferred for the sake of its own continuation). Rather, it is that of a *classless society without human equality*, a society established through a total transformation of labour leading to a permanent suspension of law.

This paper is divided into four sections. The first will present a summary of Benjamin's conception of the general strike as a pure means without ends. The second section will propose a reading of Hegel's analysis of the French Revolution and its reversal into the Terror. One of the primary aims of this section will be to set up for a discussion of the differences between the lawless destruction and death that Hegel identifies with the Terror, and the anomic violence that Benjamin ascribed to the general strike. The third section revisits the debates between Rancière and Agamben on the Rights of Man,

reading Agamben's response as a critique of the concept of *dissensus* deeply informed by Benjamin's theory of violence and law. The final section turns to Marx's critical theory of capitalism in order to develop an account of the relationship between the suspension of law and the total transformation of labour implicit in the 'Critique of Violence'.

The general strike as means without ends

For Benjamin, the proletarian general strike is an exemplary instance of a 'pure' or 'unalloyed' means, an instrument of violence that is not employed for the purpose of achieving an ends that can be interpreted by the state as either lawful or unlawful in character. In contrast to partial or political strikes – strikes which are limited to a particular sector or industry – the interruption of work in a general strike is not intended as a means of forcing the state to recognize the right of labour to a greater proportion of the wealth it has helped to create. In Benjamin's terms, the general strike is not 'extortionate' in character; the non-violent refusal to work in a general strike is not simply intended to increase the value of labour through the use of an extra-economic means of coercion (Benjamin, 1996: 246).

Not only does the general strike, as Sorel explained, 'clearly [announce] its indifference toward material gain through conquest'. According to Benjamin, it undermines the possibility of 'material gain' itself (or better, perhaps, the possibility of accumulating value, whether in the form of profits, wages or rent) by disrupting the production and sale of commodities throughout large sectors of a capitalist economy. Deprived by a general strike of the labour upon which it depends, this economy, according to Benjamin, 'resembles much less a machine that stands idle while abandoned than a beast who goes berserk as soon as it tamer turns his back' (Benjamin, 1996: 246).

But since the pervasive 'omission of services' in a proletarian general strike makes 'material gain' impossible for everyone equally (workers as well as employers), it cannot be justified as a legitimate means used by a juridical subject in pursuit of its interests. For that reason, 'the state retains the right to declare that a simultaneous use of strikes in all industries is illegal, since the specific reasons for the strikes [i.e. 'material gain'] admitted by legislation cannot be prevalent in every workshop' (Benjamin, 1996: 240).

The general strike, then, is excessive with regard to any possible legal-political ends to which it could be applied. Thus, in contrast to Lukács' characterization of the proletarian revolution, the general strike cannot be construed as a means of achieving the aims of a particular social class – the proletariat – aims which, insofar as this class can be said to constitute the majority, would correspond to the 'objective aim of society' itself (Lukács, 1971: 323). On the contrary, the general strike is opposed to the objective interests of *all* social classes, since it adversely affects the capitalist economy as a whole. And this is why the non-violent refusal to work (as the principal means employed by a general strike) is viewed by the state in a situation of crisis not only as a wilful violation of particular laws, but as a threat to legality itself, in spite (and precisely because) of the fact that the strikers make no demands that can be legally recognized or disputed.

As Benjamin points out, however, the problem posed by the general strike is not that of a 'logical contradiction in the law' – that of a state, for example, which recognizes the right of formal equality while perpetuating the existence of concrete equality by its

unwillingness to legally restrict the exploitation of labour by capital. Rather, what the general strike exposes is ‘an *objective* contradiction in the legal situation’, one which, insofar as it is inherent to law itself, cannot be removed either by legal reform or recourse to a revolutionary violence that promises to establish a new and more equitable law (Benjamin, 1996: 240). For Benjamin, in other words, the general strike is not an illegal activity that is justified in the name of what Lukács referred to as the ‘right of the Revolution to establish its own lawful order’.¹ While the two perspectives of revolution and reform obviously differ in terms of their methods or means, both attempt to address the injustice perpetuated by existing juridical institutions as a ‘logical contradiction’, one that can be resolved through the establishment of a more consistent *form* of the law, a law that would be more lawful (or law-like, so to speak) insofar as its validity would extend in actuality to everyone, universally and without exception.

For Benjamin, such a perspective is based on ‘the stubborn prevailing habit of conceiving . . . just ends as ends of a *possible* law, that is, not only generally valid . . . but also as *capable of generalization*’ (Benjamin, 1996: 246). But in that sense, the opposing perspectives of reform and revolution (as the latter are defined by Lukács at least) are essentially in accord with the point of view of the state, insofar as they can only conceive of violence in relation to either existing or possible juridical ends. From the perspective of the state, therefore, as well as its reformist and revolutionary opponents, the general strike must be construed as either an illegal form of violence or an extra-judicial condition for the establishment of a new and more just legal order. In other words, it is either an unlawful attack upon a ‘constituent power’ or the force of a ‘constituting power,’ which could potentially found a new law.

For Benjamin, however, the excessive character of the general strike in relation to all legal ends cannot be equated with the excess of mythic or ‘law-creating’ violence, vis-à-vis the original action or crime that it punishes. The excess or asymmetry of lawmaking violence – ‘quite out of “proportion”’ with the situation in which it is applied – serves merely to ground the proportional or symmetrical nature of law in its constituted or institutionalized form (Benjamin, 1996: 242). The general strike, on the other hand, is not simply another exceptional instance of violence, one which, like sovereignty, paradoxically exempts itself from the law (and its universality) precisely in order to ensure that the law applies to everyone equally (Schmitt, 1985: 13). And indeed one of Benjamin’s principal aims in the essay is to distinguish the violence enacted in the general strike from that of the sovereign decision and its ‘executive force’, a force whose ‘highest’ manifestation is ‘violence . . . over life and death’, violence through which law, ‘more than in any other legal act . . . affirms itself’. This lawmaking violence therefore is one that can be exercised by the state as well as by those seeking to overturn it (Benjamin, 1996: 242).

Violence and the French Revolution

For Benjamin, it is the absence of (or excess in relation to) all legal ends that distinguishes the general strike from the struggles of the French Revolution, an event which, according to Benjamin, ‘provided an ideological foundation’ for the view that violence can only be judged according to its real or possible ends (Benjamin, 1996: 236). In

contrast to the general strike, the violence of the French Revolution was not the product of a 'non-action' or 'omission of service' without legal ends. On the contrary, as Hegel describes in the *Phenomenology of Spirit*, the Terror was the inevitable consequence of the attempt to actualize 'absolute freedom', to will the ultimate juridical ends, so to speak, in the form of a law that could completely embody the 'general will' of the people, without excluding the particular interests of any one of its individual classes, factions or members (Hegel, 1977: 360). The aim of the French Revolution, then, was to achieve the Enlightenment ideal of a totally self-determining juridical-political subject (liberated from all forms of religious authority, viewed as foreign to reason and the rational will) (Hegel, 1977: 355–6) – what Michel Foucault referred to as the 'sovereign subject', capable of collectively actualizing itself in the form of institutions and laws that would represent the sovereign will of all of its constituents (Foucault, 1973: 312).

As the leaders of the various factions in the French Revolution quickly discovered, however, the ideal of 'absolute freedom' is antithetical to every attempt to actualize it in a 'positive' form, through actions undertaken on the behalf of the people, as well as in the form of enduring institutions and laws. The people, according to Hegel, are unable to act as a united or unified subject without at the same time acting *against* the interests of some of its members, without 'exclud[ing] the remaining individuals from its deed' (Hegel, 1977: 358, 360). 'Absolute freedom', in other words, cannot be actualized without contradicting the 'general will' of the people. Any attempt to assert this 'general will' in a 'positive' form inevitably results, therefore, in the latter's violent suppression.

To use Benjamin's terminology, the 'general will' is characterized by Hegel as a 'constituting power' that is constitutively incapable of enacting a law, that is, of founding a new constituent order. The attempt to actualize 'absolute freedom', therefore, reveals what Benjamin refers to in *The Origin of German Tragic Drama* as the unbridgeable gap or 'antithesis between sovereign power and the capacity to exercise it' (Benjamin, 1977: 70–1). In the *Phenomenology*, this paradox is described in almost identical terms as the 'antithesis in which pure willing and the agent of that willing are ... distinct' (Hegel, 1977: 363). For Hegel, this executive power – or 'agent of ... willing' – must assume the form of a 'One' in order to act: 'Before the universal can perform a deed it must concentrate itself into the One of individuality and put at the head an individual self-consciousness; for the universal will is only an actual will in a self, which is a One.' In the *Philosophy of Right*, this 'One' is explicitly identified as the sovereign, as the 'single individual' who, during a 'situation of exigency [*im Zustande*]', 'cuts short the weighing of pros and cons between which it lets itself oscillate perpetually ... and by saying "I will" makes its decision and so inaugurates all activity and actuality' (Hegel, 1967: 181). Since the sovereign decision, however (as an action performed by a 'One' on behalf of the whole or the many), always excludes a part of the general will it attempts to embody, the decision necessarily misrepresents the general interests that it simultaneously actualizes: 'For where the self is merely represented ... there it is not actual; where it is represented by proxy, it is not' (Hegel, 1977: 359).

As such, any attempt to represent the 'general will' through individual actions (and sovereign decisions) necessarily appears as a 'crime ... committed against the universal will', a denial of the latter's absolute freedom, produced by the very attempt to realize this freedom in practice. As such, actions performed by individual 'factions' on behalf of

the people, lead to the 'immediate necessity of [their] overthrow'. Hence the political purges that occurred during the Terror, aimed precisely at those individuals who had distinguished themselves through personal sacrifice on the Revolution's behalf (Lukács, 1971: 226). The representative status of leaders and heroes (as spokesmen for the general will) immediately mark them as suspect, enemies of the people, guilty of the crime of betraying the latter's absolute freedom precisely by attempting to actualize it through individual actions. The Revolution, then, proceeds to 'devour its own children' (Hegel, 1977: 359).

For Hegel, therefore, the paradox posed by the 'general will' is one in which the most powerful sovereign force (the violence of an entire people, which 'ascends to the throne of world without any power capable of resisting it') proves, paradoxically, to be antithetical to the principle of sovereignty itself (Hegel, 1977: 357). Having succeeded in overthrowing every existing institution of law – as well as the division of labour and relations of servitude that these institutions were used to preserve – the general will proves unable to found a new law. It is incapable of expressing its absolute freedom in a positive manner, since the 'constituting power' of the people is opposed to every *constituent* power that emerges in order to represent its juridical interests (Hegel, 1977: 361). Unable to decide, then, upon the state of exception brought about by its own invincible violence, the sovereign people

can thus produce neither a positive work nor a positive deed, and there remains for it merely the negative act. It is merely the *fury* of destruction. . . . The sole work and deed of universal freedom is thus *death*, the most meaningless death of all, with no more significance than cleaving a head of cabbage. (Hegel, 1977: 359, 260)

This death, however (directed at every attempt to represent the will of the people through individual acts which inevitably betray their universal intention), is distinct from the death that is endured by the master in Hegel's more well-known discussion of lordship and bondage. In contrast to the latter, the meaningless death produced by the Terror precludes the significance obtained through individual sacrifice, the 'significance of actual recognition' which the master acquires by 'staking his life' or risking the ultimate personal interest.² In the 'noble consciousness' described in Hegel's discussion of the absolute monarchy, personal sacrifice in the form of the 'heroism of Service' (the 'virtue which sacrifices individual being to the universal') becomes the basis of state-power itself, as well as its sovereign representative.³ With the appearance of absolute freedom, however, the universal 'significance of recognition' gained through personal sacrifice becomes opposed to the general will of the people, insofar as that recognition confers a representative status upon individuals. As such, the deaths of these representative persons – revolutionary leaders and heroes, guilty of the crime of excluding the people whose interests they actualize – *must* be deprived of all meaning; the 'meaningless death' or 'pure terror' of the French Revolution 'thus can give nothing in return for the sacrifice'. The attempt to realize absolute freedom – to actualize the ultimate juridical ends of the people in general, to realize the legal interest of all – produces, therefore, an entirely non-judicial or 'anomic' form of violence or death.

For Hegel, therefore, what emerges out of the Terror is not a new juridical order, capable of resolving the ‘antithesis between sovereign power and the capacity to exercise it’ – a new ‘constituent power’ that succeeds, somehow, in completely subsuming the ‘constituting power’ of a meaningless, anomic violence, opposed to all forms of law or authority (and therefore to every constituent power). Instead, what emerges is a state that recognizes the inevitable failure to actualize absolute freedom. In that sense, the law to which the people are compelled to submit in the post-revolutionary period is not a law that realizes the general will. Rather, it is the law of the latter’s reversal, when fully actualized, into meaningless violence and death – the law, in other words, of the inevitable failure of law to realize its own absolute ends. In Benjamin’s terms, the post-revolutionary state is one which grasps the ‘dialectical rising and falling in the law-making and law-preserving formations of violence ... [t]he law governing their oscillation’ (Benjamin, 1996: 251).

This dialectical law is not a law whose universal validity is grounded in a sovereign decision on a state of exception; its condition is not the sovereignty of a ‘One’ whose actions necessarily misrepresent the General Will of the people that it simultaneously actualizes. Rather, in the post-revolutionary period, the People’s persisting subjection to the institution of sovereignty (and the extra-legal decisions through which it establishes law) is secured through the ‘fear’ of an *anomic* violence that otherwise would result in the wake of its complete dissolution. The perpetuation of sovereignty, then, is secured not through fear of the sovereign, and of his sovereign right to ‘take life or let live’, but rather through what Hegel describes as the ‘fear’ of a meaningless ‘*fury* of destruction’, produced by the death of the sovereign. The fear, therefore – fear of a death entirely outside of the law, of a state of exception upon which no sovereign can ever decide, and hence from which no law could ever arise – finally compels the people to accept the existence of social inequality and resume their roles within the division of labour: ‘These individuals, who have felt the fear of their absolute lord and master – *death* – now once again acquiesce in negation and distinctions, put themselves into the various orderings of the social spheres’ (Hegel, 1977: 361).

The Hegelian state, then, can be described as a power that preserves the principle of sovereignty, and therefore of the law that the sovereign decision establishes, *after* the historical revelation of the latter’s insolubility, after the discovery, in other words, of an ‘objective contradiction in the legal situation’. This contradiction is defined by the impossibility of creating a completely inclusive form of legality, of eliminating every exception or logical inconsistency that contradicts the universality of existing juridical norms, whether by legal reform or through extra-judicial violence. The End of History, therefore, reveals that history can never achieve its ultimate ends. In that sense, the Hegelian state serves to perpetuate history (understood as the historical actualization of law) by permanently preventing its complete realization, a realization that would undermine law in a fury of meaningless death and destruction.

It is this particular feature of Hegel’s analysis, perhaps, which fundamentally distinguishes it from the philosophy of history implicit in Benjamin’s critique of violence. In both the *Phenomenology of Spirit* and the ‘Critique of Violence’, the objective contradiction in the law constitutes a dialectical ‘law of law’, a meta-law governing the historical reversal of law into its opposite. For both Hegel and Benjamin, moreover, this

law of law is revealed by a philosophy of history that conceives of this law as both ‘temporal’ and eternal in nature; it is a timeless philosophical principle – what Benjamin calls the ‘ultimate undecidability of *all* legal problems’ – which paradoxically emerges from a particular historical experience, that of the failure of the French Revolution.

In contrast to Hegel, however, this history, for Benjamin, does not reach its conclusion with the establishment of a post-revolutionary state which recognizes the ultimate undecidability of law. But nor does Benjamin, of course, insist on a final legal solution to a problem which history has shown to be insolvable. What the ‘Critique of Violence’ proposes, therefore, is not a state that perpetuates law after the ‘temporal’ revelation that its ultimate ends can never arrive, but rather an anomic violence which, by completely *suspending* the law and its (cyclical) history, deposes the state and establishes a new historical era:

The critique of violence is the philosophy of its history – the ‘philosophy’ of this history, because only the idea of its development makes possible a critical, discriminating, and decisive approach to its temporal data. On the *breaking* of this cycle maintained by mythical forms of law, on the *suspension* of law with all the forces on which it depends ... finally therefore on the abolition of state power, a new historical epoch is founded. (Benjamin, 1996: 252)

Unlike the End of History in Hegel, therefore, the ‘new historical epoch’ evoked in the passage above is not identified with a state that acknowledges the dialectical reversal of law into its opposite, preserving a law that can never be actualized. Rather, to borrow a figure from the *Passagenwerk*, the new historical epoch will emerge from an anomic violence in which the dialectic of law and its history are suspended or brought to a standstill.

Dissensus by consent: Excursus on Rancière

This feature of Benjamin’s philosophy of history – its insistence upon a suspension of the interminable oscillation of law between its constitutive and constituting formations – has figured prominently in the work of Giorgio Agamben, particularly in his writings on the subject of political rights. In the latter, Benjamin’s critique of state violence is pitted against the concepts of democracy developed by thinkers like Derrida and Rancière.

This intervention, however, has been largely ignored in the commentary on these dialogues and debates. In his critique of *Homo Sacer*, for example, Rancière makes no reference at all to Benjamin’s writing, and includes only Schmitt, Foucault and Arendt in his intellectual genealogy of Agamben’s analysis of sovereignty and democracy. This omission is a significant one, given the fact that many of the key categories in Agamben’s analysis – including the concepts of ‘life’ and the ‘real state of exception’ – are taken directly from Benjamin’s writings (see Weber, 2008: 205, 259–60). In *Homo Sacer*, moreover, Benjamin’s critique of the law is proposed not only as a ‘corrective’ to Foucault’s conception of the bio-political (Agamben, 1998: 9) but also as a rejoinder to Schmitt’s theory of sovereignty (Agamben, 2005a: 55), Derrida’s concept of messianicity (Agamben, 2005a: 53), and Negri’s analysis of constituting power (Agamben,

1998: 39–48). This would seem to suggest that Benjamin's writings provide the larger philosophical framework for Agamben's reflections on politics.

This framework, moreover, is evident even where Benjamin's work is never explicitly cited, as, for example, in the dialogue or 'esoteric dossier' between Rancière and Agamben. In the latter, Agamben's critique of Rancière's conception of rights as an interminable process closely corresponds to the logic of Benjamin's thesis on the suspension of law and its oscillation in history. In considering the contemporary significance of Benjamin's critique of violence, therefore, it will be useful to revisit this dialogue, reading it as an implicit attempt to apply this critique to recent debates on the Rights of Man.

In 'Who is the Subject of the Rights of Man?', Rancière argues that the concept of democracy employed by Agamben simply 'misses the logic of political subjectivization' (Rancière, 2004: 305). Contrary to Agamben, the 'Rights of Man are not the rights of a single subject that would be at once the source and the bearer of the rights and would only use the rights that she or he possesses. . . . It is enacted The subject of rights is . . . the process of subjectivization' (Rancière, 2004: 302). The Rights of Man, therefore, exist only insofar as they are enacted by political subjects, subjects who are subjectivized in the process of claiming their rights. Isolated, however, from the process of political subjectivization, these rights are reduced to empty abstractions. And as abstractions, they can then be disproven simply by pointing to their factual non-existence in particular circumstances (as in the case of stateless persons or refugees). Thus, by missing the logic of the subjectivization, Agamben arrives at the mistaken conclusion that the Rights of Man are mere empty illusions (Rancière, 2004: 298).

What Rancière's reading apparently misses, however, is the fact that this criticism is already anticipated in *Homo Sacer*. Agamben does not overlook the logic of political subjectivization. On the contrary, he explicitly challenges this logic, incorporating the latter into a larger analysis of political power. This analysis, moreover, is one that directly engages with Rancière's conception of politics (something which Rancière also overlooks or ignores).

In the section on the 'people' in *Homo Sacer* (which Rancière employs as a foil to his concept of the *demos*), Agamben reiterates Rancière's notion of political rights as the 'part of those who have no part'. This part is not a right that belongs to a pre-existing subject of law. Rather, it belongs to a subject that is subjectivized in the very process of claiming a right that it does not (or does not yet) possess. Contrary to Rancière's reading, moreover, Agamben does not simply identify this political subject – the 'people' – exclusively with the 'lower classes', nor does he identify it with any other particular grouping or party (with any 'single *x*', as Rancière (2004: 304) puts it). As Agamben explains, the concept of the 'people' is not that of 'a unitary subject'. Rather, the political subject emerges in 'a double movement and a complex relation between two extremes', the relation between the 'People', as 'the constitutive political subject', and the 'people' as 'the class that is, *de facto* if not *de jure*, excluded from politics' (Agamben, 1998: 276–8).

For Agamben, then, political subjectivization is the process or movement which produces the 'people' precisely as what Rancière describes as 'supplementary part [which] separates the political community from the count of the parts of the population'

(Rancière, 2004: 304). In Agamben's terms, the political subject is 'that which can never coincide with itself, as all or as part, that which infinitely remains or resists in each division, and ... never allows us to be reduced to a majority or a minority' (Agamben, 2005b: 55).

What distinguishes Agamben's position from Rancière's, then, is not (as Rancière seems to suggest) that Agamben identifies the political subject with 'bare, natural life', or that the rights enacted by the political subject are understood by Agamben as empty appearances rather than 'surplus names' (that is, as rights that exist insofar as they are claimed and appropriated as the part of those who do not yet possess them). On the contrary, Agamben, like Rancière, defines the *demos* as the process which establishes the supplementary relationship between the political and the 'realm of necessity'.

What this suggests is that the difference between Agamben and Rancière, therefore, is not that the former simply ignores the logic of political subjectivization while the latter does not. Rather, as Agamben explains in *The Time That Remains*, the difference lies in whether the process of subjectivization – which Rancière identifies with the process of democratic dispute or *dissensus* – is understood as interminable or 'absolute':

Rancière ... developed [the Foucauldian concept of the 'pleb' as the 'limit' of power relationships] into the concept of the people, understood as the 'part of those who have no part', meaning a supernumerary party, the bearer of a wrong which establishes democracy as a 'community of dispute'. But everything depends on how one interprets 'wrong' and 'dispute'. If democratic dispute is understood for what it truly is, that is, the possibility of stasis or of civil war, then the definition is pertinent. If, however, following what Rancière seems to think, the wrong for whom the people are the cipher is not 'absolute' (as it still was for Marx), but, by definition, can be 'processed', then the line between democracy and its consensual, or post-democratic, counterfeit (which Rancière goes so far as to overtly critique) tends to dissolve. (Agamben, 2005b: 58)

Agamben's critique of Rancière's conception of politics in the passage above is extremely condensed and paradoxical in its formulation. The 'line between democracy and its *consensual*, or post-democratic, counterfeit' (between democracy and what Agamben refers to in *Homo Sacer* as 'post-democratic, spectacular societies') (Agamben, 1998: 10) is dissolved when the 'wrong' born by the 'people' is conceived as something which must be indefinitely 'processed', as opposed to 'absolute'. This statement would appear at first sight to amount to a contradictory assertion: the distinction between *dissensus* and *consensus* is dissolved when *dissensus* is considered precisely as *dissensus*, as an interminable processing of 'wrong' by political subjects.

The meaning of this paradoxical statement becomes clearer, perhaps, if we understand it in relation to Agamben's reading of Hegel's philosophy of history, particularly in relation to the notion of the 'absolute'. For Hegel, the standpoint of the 'absolute' is not that of a Subject that has sublated all difference and otherness into itself (or, in this case, that of a 'People' which completely coincides with itself, in a state of 'perfect communication and transparency').⁴ Rather, it is the standpoint of a Subject that recognizes the difference between itself and the other as a condition of its own constitution (the 'identity of identity and difference'). The 'end of history' for Hegel is not therefore the

realization of the historical project of producing an ‘undivided people’ (as the identical subject-object of history), but rather the establishment of an ‘absolute’ state-form which acknowledges the constitutive ‘split’ between the people and the People. In Benjamin’s terms, the Hegelian state is one that recognizes the unbridgeable gap or ‘antithesis between sovereign power and the capacity to exercise it’. In *Homo Sacer*, Agamben refers to this form as a ‘State which survives history, a State sovereignty that maintains itself beyond the accomplishment of its *telos*’ (Agamben, 1998: 60).

Reading Hegel ‘beyond Hegel’, however, Agamben suggests another interpretation of the ‘absolute’, one which would not fall back into the ‘infinite repetition’ of a history that has already ended; an ‘absolute’ that would not only recognize the constitutive (or ‘absolute’) character of the ‘wrong’ committed against the people (the exclusion of the ‘people’ from the ‘People’ as the ‘absolute’ of a politics which attempts to suppress this exclusion), but which would also *absolve* humanity of the burden of performing the endless and impossible act of uniting a people who must be divided in order to act (Agamben, 1999: 121). What Agamben proposes, therefore, is not another politics of the ‘absolute’ state (one which would recognize the existence of ‘wrong’ as the ‘absolute’ condition of right), but rather, ‘absolution’ from a ‘politics’ that persists in pursuing an end that it knows (‘absolutely’) it can never remove.

It is this latter sense of the term ‘absolute’ (as ‘absolution’) which Agamben appears to employ in his critique of Rancière’s conception of the political subject. Once the ‘supplementary part’ which ‘separates the political community from the count of the parts of the population’ (Rancière, 2004: 305) has been revealed, historically, as a constitutive condition of (as opposed to a contradiction to) democracy, *dissensus* – as the process which produces the ‘people’ as the supplementary relationship between the ‘bearer of rights’ and ‘bearer of wrongs’ – becomes itself a form of consensus. Once this separation or split has been exposed as constitutive of the ‘people’ and its politics (as a result, in the 20th century, of the disastrous outcomes of the various bio-political projects ‘to produce an undivided people’), *dissensus* begins to converge with its opposite. It becomes a consensual form of *dissensus*, so to speak, a consensus upon the inevitable character of *dissensus* itself, in which a politics that has exhausted its historical possibilities is preserved in the form of a practice suspended forever between the twin alternatives of stasis or civil war.

Insofar as *dissensus* fails to ‘absolve’ us from the infinite oscillation between these two possibilities (by refusing to recognize the ‘wrong’ born by the people as ‘absolute’, as opposed to indefinitely ‘processed’), *dissensus* ‘dissolves the line’ between itself and its ‘consensual, or post-democratic, counterfeit’. It becomes a political ‘spectacle’, a practice which can no longer be *lived* insofar as the infinite deferral of its ‘absolute’ end (i.e. the ‘righting’ of the ultimate ‘wrong’ committed against the people) is already recognized as its ‘absolute’ condition of possibility. *Praxis* becomes impossible to distinguish from passivity or spectatorship when politics is performed for the purpose of achieving a political ends which the political subject acknowledges (passively) must be suspended forever in order for ‘politics’ itself to be possible. *Dissensus*, in other words, becomes consensual and spectacular when it is ‘staged’ for the sake of preserving its own possibility. A politics which acknowledges the impossibility of its absolute end as its own formal condition is one that has exhausted its content, and yet continually posits the

latter for the purpose of perpetuating its form. It becomes a 'formal' exercise, the pure performance of its own possibility, endlessly rehearsing its inevitable failure to arrive at its final conclusion.

This critique of *dissensus* could be extended as well to Derrida's concept of democracy, as a 'promise' which must be suspended in order to remain a promise, since the end of democracy would spell the end of democracy. Like *dissensus*, the Derridean promise merely reformulates the fundamental problem of democracy as its own solution: the 'gap' which permanently divides the people from itself (separating the subject of rights from the subject of wrong) is resolved by simply presenting the latter as a constitutive condition of politics or democracy itself (see Rancière, 2010: 58).⁵

Law and the total transformation of labour

Thus, from the Benjaminian perspective implicit in Agamben's critique of Rancière, the concepts of *dissensus* and democracy-to-come would appear to be in essential agreement with Hegel's analysis of the post-revolutionary state. Like the Hegelian state, both *dissensus* and democracy-to-come serve to perpetuate the pursuit of the legal ideal of equality by permanently postponing its complete actualization, an actualization that would undermine the possibility of *dissensus*, as well as that of democracy and absolute freedom. Like Hegel, both Rancière and Derrida insist on the necessary relationship between exclusion and political representation, a relation defined by a gap or discrepancy that cannot be overcome since it constitutes the very condition of politics. As in Hegel's analysis of the actions or deeds performed on behalf of the people by the various factions of the French Revolution, politics, for Rancière, necessarily misrepresents the will of the people that it simultaneously enacts. In the idea of exclusion as a necessary condition of political representation, therefore, Derrida's and Rancière's philosophies of *dissensus* and difference converge unexpectedly with the Hegelian dialectic of world history, and its defence of the particular form of the state that emerges in the aftermath of the French Revolution and the European Enlightenment.⁶

In 'Force of Law', Derrida suggests that it is Benjamin's wholesale rejection of this political form – that of a parliamentary state – that fundamentally distinguishes Benjamin's position from his own. In its purportedly romantic conception of a pure violence outside of all legal and linguistic representation, Benjamin's Marxist messianism, according to Derrida, resembles the fascist mythologization of violence and war to which it nominally opposes itself:

Zur Kritik der Gewalt is a critique of representation not only as perversion and fall of language, but as a political system of formal and parliamentary-democracy. From that point of view, this revolutionary essay (revolutionary in a style that is at once Marxist and messianic) belongs ... to the great anti-parliamentary and anti-'*Aufklärung*' wave on which Nazism ... surfaced ... in the '20s. (Derrida, 2002: 259)

This 'peculiar misunderstanding' (to use Agamben's description of Derrida's reading of Benjamin) attests to the difficulty of distinguishing the anomic violence that serves to establish 'the new historical epoch' from the lawless destruction produced by events like

the Terror. Just as the Terror, for Hegel, constitutes a ‘pure negation devoid of mediation’ (Hegel, 1977: 360) – a destructive, (non)constituting power which exceeds every juridical ends to which it could be applied – so the violence of the proletarian general strike is ‘non-mediate’ in nature, beyond the mediation of both language and law (Benjamin, 1996: 248).

Unlike the Terror, however, this non-mediate violence is not the result of an action or deed aimed at achieving the ultimate legal objective (that of an absolute freedom whose actualization proves that it can never be actualized). Rather, pure violence, for Benjamin, is the product of ‘non-action’ (Benjamin, 1996: 248). The end to which this non-action is applied, moreover – an end that is ‘not so much caused as consummated’ – is not the achievement of a *juridical* freedom, to be fulfilled by a possible law freed from every ‘logical contradiction’ to its universality. Rather, the end to be consummated by means of the non-mediate violence of the general strike is a freedom *from* law, liberation from a legality whose history has revealed its ‘objective contradiction’ in the ‘ultimate undecidability of all legal problems’ (Benjamin, 1996: 247).

This liberation from law – including the dialectical law of the latter’s inversion or oscillation into meaningless violence – must be understood in relationship to what Benjamin refers to, enigmatically, as the determination on the part of participants in a general strike ‘to resume only a *wholly transformed work*, no longer enforced by the state’ (Benjamin, 1996: 246 emphasis added). This determination is distinguished from the ‘readiness [in a political strike] to resume work following external concessions and this or that modification to working conditions’. Since the general strike, for Benjamin, constitutes a means without juridical ends, this determination would seem to refer to something like a non-juridical motive, the anomic objective of a violence exceeding all legal justification.

But insofar as the ‘critique of violence is a *philosophy* of its history’, in the sense that its universal, philosophical insights are dependent upon a particular historical development, the general strike cannot simply be understood as a specific instantiation of a pure means without ends, viewed as a general category of violence. Rather, Benjamin’s insistence upon the temporal conditions imposed on philosophy suggests that the possibility of pure violence is inextricably bound up with the general strike as a historically specific phenomenon. The possibility of pure violence, in other words, emerges together with that of the proletarian strike, as a strategy deployed against a particular form of society, one which, because it depends upon wage labour, can be thrown into crisis by the interruption of work. For Benjamin, then, a potential solution to the eternal or timeless dilemma of law – the ultimate undecidability of its problems – arises as a result of a particular set of conditions, conditions which include the development of a ‘modern economy’ which, when deprived of the labour upon which it depends, ‘resembles . . . less a machine that stands idle . . . than a beast who goes berserk’.

The historically specific result that this solution to the eternal problem of law is supposed to accomplish, however, is not the economic objective of better working conditions and wages. Rather, the pure violence of the general strike is applied to the purpose of achieving a total transformation of labour. Yet, remarkably, the nature of this transformation is left unexplained in Benjamin’s text. Despite its apparent importance in terms of elaborating a critique of violence, the concept of a ‘wholly transformed work’ is never clearly defined.

What is the relationship between law, labour and violence? How does pure violence lead to a total transformation of work? How does the idea of a total transformation of labour relate to that of a suspension of law and its interminable oscillation in history? What is the relationship between this transformation and the new historical epoch that the general strike is supposed to inaugurate through the use of its pure and non-mediate violence?

Although these questions are left for the most part unanswered in the ‘Critique’, Benjamin’s later writings suggest that he sought a solution to some of these problems in Marx’s critical analysis of capitalism. In the *Passagenwerk*, for example, the idea of a wholly transformed labour reappears in the form of Fourier’s insistence that work, with the advent of machinery, should be transformed into play, into labour ‘impassioned by play’. The same passage from Fourier also appears at a crucial moment in the famous ‘Fragment on Machines’ in the *Grundrisse*, where Marx identifies the abolition of capitalism with the ‘suspension’ or *Aufhebung* of labour as the measure of value. In the *Passagenwerk*, similarly, the possibility of a wholly transformed work is defined as a labour which, inspired by play, would no longer be productive of value: ‘To have instituted play as the canon of a labour no longer rooted in exploitation is one of the great merits of Fourier. Such work inspired by play aims not at the *creation of values* [*die Erzeugung von Werten*]’ (Benjamin, 1999: [J75, 2]).

For Benjamin, the transformation of work into play is a possibility that is conditioned historically by the development of machinery in industrial capitalism. But because capitalism is based upon wage labour aimed at the creation of value, the same machinery that could potentially allow for a total transformation of work serves to diminish the value of commodities, thereby reducing both profits and wages, and creating the potential for crises of overproduction and underconsumption.⁷

For Benjamin, therefore, machinery contributes to the possibility of both crisis and play. In the *Passagenwerk*, for example, Benjamin argues that with the development of the forces of production in industrial capitalism, humanity is confronted with the alternative between a total transformation of labour and crises which could potentially lead to an ‘extreme case of war’: ‘The unfolding of work in *play* presupposes highly developed forces of production, such as only today stand at the disposal of humanity, and stand mobilized in a direction contrary to their possibilities – that is, they are poised for an *extreme case of war* [*Ernstfall des Krieges*]’ (Benjamin, 1999: [J75a]).

As Agamben points out, the term *Ernstfall* appears in Carl Schmitt’s writings as a synonym for *Ausnahmezustand*, or ‘state of exception’ (Agamben, 2005a: 53). The ‘unfolding of work in play’, therefore, is opposed to the extra-judicial violence associated with the state of exception, a violence which, according to Schmitt, is the founding or originary condition of law. Thus, the total transformation of labour is opposed to the continual threat of a lawmaking violence, provoked by crises in capitalism, a violence whose ‘most horrifying features’ (to borrow Benjamin’s description of modern mechanical warfare) ‘are determined by the discrepancy between the enormous means of production and their inadequate use in the process of production (in other words, by unemployment and the lack of markets)’ (Benjamin, 2008: 42).

But if machinery imposes the alternative between lawmaking violence and a wholly transformed labour, it remains unclear how this labour, for Benjamin, is related to the

problem of law, and to the possibility of suspending the dialectic of constituting and constitutive state power. In Marx's later writings, the question of the relationship between labour and law is most directly addressed in 'Critique of the Gotha Programme', a text which Benjamin cites in his critique of *Social Democracy* and its 'vulgar Marxist conception' of labour as the 'source of all wealth'. As Marx explains in the 'Gotha Programme', this concept of labour – which 'falsely ascrib[es] *supernatural creative power* to labour' – implies an ideal of equality in which the 'right of the producers is proportional to the labour they supply' (Marx, 1996: 209). Equality between persons, in other words, implies an equivalence between the labour that each person receives for their own. For Marx, however, this ideal cannot serve as the foundation for a socialist society, since '*equal right* ... is still in principle – *bourgeois* right'. The vulgar conception of labour as the 'source of all wealth', therefore, is the '*same* principle as the one ... which regulates the exchange of commodities, as far as this is exchange of equal values ... a given amount of labour in one form is exchanged for an equal amount of labour in another form' (Marx, 1996: 209).

In *Capital*, this principle – based on a belief in the supernatural power to labour – is identified with the fetishism of commodities, with the idea that a 'use-value, a useful article ... has value only because abstract human labour is objectified or materialised in it' (Marx, 1977: 129). This 'theological' and 'metaphysical' property, however – namely, value measured by labour time – is one which 'no chemist has ever discovered ... either in a pearl or a diamond' (Marx, 1977: 52). The bourgeois conception of right, therefore, is founded on commodity fetishism, as the fundamental condition of capitalism.

As Marx points out in the 'Gotha Programme', however, the principle of equal compensation for labour produces in practice an unequal distribution of wealth. This paradox is due to the fact the principle applies an equal standard of labour to individuals who, by nature, are unequally endowed with the ability to labour. In practice, therefore, the ideal of equality produces the opposite:

[E]qual right is an unequal right for unequal labour. It recognises no class differences ... [but] it tacitly recognises unequal individual endowment, and thus productive capacity, as a natural privilege. It is, therefore, a right of inequality, in its content, *like every right*. Right, by its very nature, can consist only in the application of an equal standard; but unequal individuals (and they would not be different individuals if they were not unequal) are measurable only by an equal standard ... everything else being ignored ... right, instead of being equal, would have to be unequal. (Marx, 1996: 214)

By imposing an equal standard (abstract labour time) to unequal individuals, the right to equal labour engenders the very inequality it attempts to abolish. This contradiction – that of an 'equal right' which, in practice, proves to be 'an unequal right for unequal labour' – is one that cannot be removed from the law. In Benjamin's terms, it is not a *logical* contradiction, one which can be rectified by making the practice conform to the principle. Rather, the reversal of right into its opposite, as Marx describes it in the passage above, is an *objective* contradiction. It is a law of law governing '*every right*', arising from the nature of law itself.

For Marx, the failure to recognize the objective character of this contradiction to the law of equality was a defining feature of the ‘Gotha Programme’ and its particular conception of socialism. Unable to grasp the *intrinsic* connection between the right of equality and the unequal right to unequal labour, Social Democracy imagined a socialism in which the *bourgeois* ideal of equality would no longer engender the concrete inequality that it always creates. In Marx’s terms, the notion of ‘equal right’ endorsed in the ‘Gotha Programme’ is ‘in principle ... *bourgeois right*, although principle and practice are no longer at loggerheads’ (Marx, 1996: 214). Socialism, therefore, is conceived as a society in which the fundamental law of capitalism – the principle of equal labour for equal labour regulating the exchange of commodities – is freed at last from the contradictions that this principle always produces in practice.

In the *Grundrisse*, Marx extends this critique to Proudhon and utopian socialism. As in the ‘Gotha Programme’, Marx, in the passage below, insists that the supposedly socialist ideals of freedom and equality are, in fact, based upon the *same* principle of equal labour which regulates the exchange of commodities. In practice, however, these principles do not appear to apply in the case of the unequal exchange between labour and capital, which is the source of surplus value. But this discrepancy, according to Marx, is not merely a logical one; it cannot be corrected by a more consistent application of the law of equal labour. Rather, the contradictions (or ‘disturbances’) to the law of equality that arise in the wage labour relation are contradictions that are *inherent* to the principle of equality itself, a principle which, when realized in practice, proves to be exactly the opposite:

[E]xchange value or ... the money system *is* in fact the system of equality and freedom, and ... the disturbances which [utopian socialists] encounter in the further development of the system are disturbances *inherent* in it, are merely the realization of equality and freedom, which prove to be inequality and unfreedom. It is just as pious as it is stupid to wish that exchange value would not develop into capital, nor labour which produces exchange value into wage labour. (Marx, 1973: 248–9)

For Marx, the inability to grasp these disturbances as an inherent feature of the law of equality ‘reveals ... the foolishness of those ... who want to depict socialism as the realization of the ideals of *bourgeois* society articulated by the French revolution’ (Marx, 1973: 248). Although these socialists, according to Marx, are acutely aware of the realities that contradict the ideal of equality, they are incapable of understanding the latter as necessary or inevitable:

What divides these gentlemen from the bourgeois apologists is, on one side, their sensitivity to the contradictions included in the system; on the other, the utopian inability to grasp the *necessary difference* between the real and the ideal form of bourgeois society, which is the cause of their desire to undertake the superfluous business of realizing the ideal expression again, which is in fact only the inverted projection of this reality. (Marx, 2005: 249)

This analysis of the law – which is embedded in a larger critical theory of capitalism – departs fundamentally from Marx’s early critique of the formalism of the Rights of Man. Here, the discrepancy between formal equality and concrete inequality is conceived as a

‘necessary difference’, as opposed to a contradiction that can be overcome. As in Hegel’s account of the state, therefore, the gap between right and reality for Marx is ‘absolute’. As a constitutive condition of right, its contrast with reality cannot be removed. And because this contradiction is objective, the ideal of equality can never be realized historically, contrary to ‘those who ... depict socialism as the realization of the ideals of ... the French revolution’.

This emphasis upon the objective – and therefore untranscendable – character of the contradiction inherent to the law of equality is by no means a departure from Marx’s usual method. Contrary to Derrida, this method does not conceive of antinomies or *aporiae* as ‘dialectizable contradiction[s] in the Hegelian or Marxist sense’, as opposed to ‘contradictions or antagonisms among equally imperative laws’ (Derrida, 1993: 16). Nor is the objective or undialectizable contradiction identified in the *Grundrisse* and the ‘Gotha Programme’ merely confined to the juridical superstructure of capitalism. On the contrary, it is an integral aspect of Marx’s critical analysis of the capitalist economy, a critique that begins with the commodity form whose principle of exchange is identical to that of the law of equality. In the chapter on the working day, for example, the unequal relationship between labour and capital is developed as a consequence of the law of equal exchange, a law which, in practice, proves to be a law of inequality:

The capitalist maintains his rights as a purchaser when he tries to make the working day as long as possible ... on the other hand, the peculiar nature of the commodity sold [i.e. the physical limitations of the labourer] implies a limit to its consumption by the purchaser, and the worker maintains his right as a seller when he wishes to reduce the working day to a particular normal length. There is here therefore an antinomy, of right and against right, *both equally bearing the seal of the law of exchange*. Between equal rights, force decides. (Marx, 1977: 161)

Thus, in the struggle to determine the length of the working-day, the relationship between labour and capital arrives at a legal ‘antinomy’. The latter is not a ‘dialectizable contradiction’ but rather an *undecidable antinomy* between two equally legitimate claims upon the same law of equality (which is also the law of exchange). As Massimiliano Tomba has argued, moreover, the ‘force’ or ‘violence’ (*Gewalt*) that decides on this legal antinomy is a violence internal to the reproduction of capitalism: ‘Marx was very clear that these rights are equally stamped by the laws of commodity exchange and that the struggle between these equal rights is completely inscribed within the “history of capitalist production”’ (Tomba, 2009: 128). Contrary to Lukács, therefore, this force is not ‘the point where the “eternal laws” of capitalist economics fail and become dialectical and are thus compelled to yield up the decisions regarding the fate of history to the conscious actions of men’ (Lukács, 1971: 178). Rather, the extra-legal decision imposed by this executive force is a lawmaking violence, one which, by deciding upon an undialectizable antinomy, merely restores the conditions under which the *capitalist* law of equality can continue to operate normally. This antinomy, then, produces a class ‘civil war’, one which is waged on both sides of the conflict in the name of the *same* bourgeois ideal of equality.

For Marx, however, the fact that this antinomy is objective – and that the workers, therefore, will never receive the full equal right to their labour – does not imply, of course, that capitalism cannot be abolished. But nor does it imply that the construction of a classless society must be conceived as an ‘infinite task’ that forever remains out of reach. For if Marx, like Hegel and Rancière, recognized that the gap between right and reality cannot be removed, *unlike* Hegel and Rancière, he does not affirm this discrepancy as a necessary condition for the ongoing pursuit of an ideal that can never be realized. On the contrary, Marx repudiates the ideal as a fundamentally bourgeois institution, and he identifies the discrepancy between the ideal and reality as an internal condition for the reproduction of capitalism as a particular form of society. For if the concept of equality is based on the same principle as the exchange of commodities, and if the commodity is the fundamental cell-form of capitalism, then the abolition of capitalism necessarily entails an end to the ideal of equality, as a right that is always at odds with reality.

But if that is the case, then the concept of a socialist society that emerges in Marx’s critique of the law (which is embedded in his critical theory of capitalism) is a paradoxical one; it is that of a *classless society without equal rights*, a classless society in which the law of equality is not realized, but, rather, is no longer applied. Like Benjamin, therefore, Marx identifies the end of class society not with the establishment of a more just legal order, but rather with a liberation from law, together its insuperable legal antinomies.

Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

Notes

1. While ‘all revolutionary movements’, according to Lukács, ‘begin with the romanticism of illegality’, this illegality is ultimately to be justified on the basis of its ‘utility’ in relation to the aims of the Revolution and the ‘legitimacy of its [eventual] rule’. The ‘hypostatisation of “illegality”’, and the performance of actions ‘against the *law qua law*’, actions which attempt to ‘break the law with a grand gesture’, merely preserve the legality of the existing order in ‘an inverted form’, ‘endow[ing] the existing state with a certain legal validity’ (Lukács, 1971: 226).
2. By ‘staking his life’ – that is, by confronting another self-consciousness in a manner that proves he is ‘fettered to no determinate existence . . . not bound at all by the particularity . . . characteristic of existence as such’ – the master, according to Hegel, retrieves recognition and meaning from what would otherwise be a meaningless death – from a ‘natural ‘negation’ of consciousness, negation without . . . the requisite significance of actual recognition’ (Hegel, 1977: 113).
3. ‘The noble type of consciousness . . . finds itself in the judgment related to state-power, in the sense that this power is indeed not a self as yet but at first is universal substance, in which, however, this form of mind feels its own essential nature to exist, is conscious of its own purpose and absolute content. By taking up a positive relation to this substance, it assumes a negative attitude towards its own special purposes, its particular content and individual

existence, and lets them disappear. This type of mind is the heroism of Service; the virtue which sacrifices individual being to the universal, and thereby brings this into existence; the type of personality which of itself renounces possession and enjoyment, acts for the sake of the prevailing power, and in this way becomes a concrete reality' (Kain, 2005: 161).

4. 'The absolute identity of the *Volk* is *not*, as many anti-Hegelians have however argued, a concept of identity, violently subsuming the singular. This would be a philosophy of ... "relative identity" in Hegelian terms, exactly what the development of the idea of the Volk recognises as an illusion' (Beardsworth, 1996: 75).
5. See Rancière's (2010: 58) discussion of the relationship between *dissensus* and democracy-to-come.
6. I should note here, however, a significant difference between Hegel and Derrida's position on the state and its ability to embody the 'law of law', the law of the reversal of law into violence, or (in Derrida's terms) the originary co-implication of violence and law. As Richard Beardsworth points out, the 'implications of *différance*' with regard to the law, namely that 'the end of *x* (the content, for example, of the Idea of autonomy or of the Highest Good) would be the end of *x*', are indeed close to those of Hegelian dialectics, in which the fulfilment of law results in the fury of death and destruction. The difference between Hegel and Derrida relates to the question of whether the law of law can assume an institutional form. 'For Hegel', as Beardsworth points out, 'the moral world must *articulate in visible form* the necessary injustice of the universality of form'. In the *Phenomenology*, this form is that of a post-revolutionary state which embodies the law of the reversal of law into violence.
 For Derrida, however, this 'law of law' cannot be represented as such, that is, it cannot be formulated as law. By attempting to *formalize the aporia* of law, Hegel repeats the 'necessary injustice of the universality of form' that the law of law was intended to recognize, thereby perpetuating the violence inherent in law: 'Hegel's desire for visibility creates the very opposite of what it intends: continued invisibility and misrecognition.' But if Derrida's *aporia* of law cannot be reduced to a form, it functions nevertheless to perpetuate the form that it always exceeds. Thus, as Derrida argues in *Rogues*, the 'indecidability' of law (its irreducibility to any particular historical instance of its application) constitutes the 'only radical possibility of deciding and making come about' (Derrida, 2005: 92). The *différance* that always defers the decisive (or conclusive) character of every legal decision is endured as an 'impossible ordeal' for the sake of the law itself. The 'right to defer', as Derrida writes in *Rogues*, is subordinated to a sovereign right of decision, a decision which is always exceeded by *différance*, but only in order to establish the (impossible) condition for yet another decision: '[T]he democracy-to-come certainly does not mean the right to defer ... The to-come of democracy is also ... the *hic et nunc* or urgency, of the injunction as absolute urgency' (2005: 29).
7. 'Only war makes it possible to mobilise all of today's technical resources while maintaining the property system. ... [I]f the natural use of productive forces is impeded by the property system, then the increase in technological means, in speed, in sources of energy will press toward an unnatural use. This is found in war ... The most horrifying features of imperialist war are determined by the discrepancy between the enormous means of production and their inadequate use in the process of production (in other words, by unemployment and the lack of markets). (Benjamin, 2008: 42).

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Author biography

Duy Lap Nguyen is Assistant Professor of World Cultures and Literatures at the University of Houston. His current book project explores works by the Vietnamese philosopher Tran Duc Thao and develops a reading of Thao's materialist critique of Edmund Husserl's phenomenology. His second project, entitled *The Postcolonial Present: Redemption and Revolution in Twentieth Century Vietnamese Culture and History*, examines Vietnamese cinema, literature and mass culture from the period of the Vietnam War.