



Qualis A1 - Direito CAPES

## **Presentation**

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The current health crisis puts a spotlight on the structural inequalities around the world and specially in our country. The pandemic challenges our capacity of analysis, reflection and conceptualization. Now more than ever critical study of Law became important in the search for new social arrangements and alternatives. Looking through this perspective, our section of new articles brings twelve works by national and foreign researchers, with topics ranging from of Law and Economics, Decolonial Studies, Critical Criminology, Critical Theory, *Law Found on the Street*, Socioenvironmental Debates, among other themes from the fields of theory, philosophy, and sociology of the law.

Moreover, considering our current situation, this monthly edition's dossier could not have a more adequate theme to focus on. At the moment that our guest editors came in touch with us to explain their ideas, we could not know that a health crisis of such grave proportions, as well as a deep crisis of democracy not seen since the advent of the 1988's Constitution, would evolve. Thus, in this issue of *Direito e Praxis* Journal (Vol. 11, n. 3, 2020, 31st edition, Sep-Dec) we bring forth a special dossier assembled by **Rafael Vieira** (UFRJ – Federal University of Rio de Janeiro) and **Hannah Franzki** (Bremen University), which marks the reception of works of Walter Benjamin by the critical research on the field of Law. The dossier titled “**Walter Benjamin and the Law**” contains seminal and new articles which tackle Benjamin's works on the judiciary field in Latin America.

Our guest editors achieved a remarkable result gathering articles from renowned and disseminated researchers as Judith Butler, Enzo Traverso, and Michel Löwy. They also were able to bring a set of works from several young and upcoming



names in the field, and even from some commentators on the Brazilian jus-philosophical tradition. In order to advance on the debates on the “exception question”, the dossier also brings translations of Walter Benjamin’s “The Right to Use Violence” (1920) and “Marcel Brion, Bartolomé de las Casas. ‘Padre de los Índios’ ”(1929), from German to Portuguese and Spanish, as well as works from their commentators, like Werner Hamacher. We thank the guest editors for the excellent work and for the confidence placed in our publication. We thank also the translators responsible for enabling the dissemination of such an important material on Walter Benjamin for the research on these topics in Brazil and Latin America.

We also would like to remind that the editorial policies for the different sections of the Journal are available on our homepage and that submissions are always welcome. As always, we thank all the authors, reviewers and contributors for the confidence placed on our publication.

Enjoy the read!

**Direito e Praxis** Team



## Walter Benjamin and the Law / Remembering Walter Benjamin: An editorial regarding the 80 years of his death

### Hannah Franzki

Universität Bremen, Bremen, Germany. E-mail: [franzki@uni-bremen.de](mailto:franzki@uni-bremen.de). ORCID: <https://orcid.org/0000-0003-3883-1056>.

### Rafael Vieira

Universidade Federal do Rio de Janeiro, Rio de Janeiro, Rio de Janeiro, Brazil. E-mail: [r.vieira@ess.ufrj.br](mailto:r.vieira@ess.ufrj.br). ORCID: <https://orcid.org/0000-0001-6662-7007>.

A Walter Benjamin's well-known essay on the Czech writer Franz Kafka is entitled "Franz Kafka: on the tenth anniversary of his death".<sup>1</sup> This is a curious title to say the least. Why return to an author on the anniversary of his death? Why not celebrate his birth instead? Western philosophy, as well as some of the major religions, contemplates death as one of its main themes. Benjamin, coming from a Jewish background<sup>2</sup>, seems to give this kind of gesture of remembering an author on the tenth anniversary of his death a very particular outline. This dense and enigmatic essay has memory as one of its themes in its two final parts. Benjamin identifies in Kafka's work an effort to remind human beings of what they had forgotten, and also of the forgetfulness socially produced in everyday life (BENJAMIN, 1994, p.155,156; GS II, p. 428-429), in an era shaped by the "profound alienation of human beings among themselves and of relationships, mediatized to infinity" (BENJAMIN, 1994, p.162; GS II, p. 436). In words that will recall his well-known thesis IX "On the Concept of History", Benjamin states that "what whistles from the abyss of forgetfulness is a storm", and that we need a "run at galloping pace against this storm" (*Ibid*). It is possible to say that when taking up

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<sup>1</sup> Modesto Carone, the main translator and an important commentator on Kafka's work in Brazil, refers to this essay as one of the main references in the most refined bibliography on the Czech writer from the 1930s, 1940s and 1950s (CARONE, 2011, p.14).

<sup>2</sup> On Walter Benjamin's philosophical perceptions of Jewish theology and religion, see (GAGNEBIN, 2014, p.179-196).



Kafka, Benjamin performs a similar gesture. It is both an effort against forgetfulness, as well as in relation to the dangers he had to face during his time. This text was written in 1934, stricken by the fear of censorship<sup>3</sup>, and its first part would be published in Germany amidst the Nazi-fascist terrors that caused Benjamin's exile.

In this essay, Benjamin also faces two hegemonic interpretations of Kafka's legacy, at that time: the psychoanalytic, which ended up reducing his works to a troubled relationship with his father; and the theological, which diminished the writer's complexities by trapping them into rushed religious metaphors, in which only the theological point of view would be seen (BENJAMIN, 1994, p. 152 e ss; GS II, p. 425 e ss)<sup>4</sup>. Benjamin sought to preserve (or even save) the critical potential of the Kafkaesque narrative, as well as its historical sense, both of which were threatened by the aforementioned traditional interpretations. According to Benjamin, the experience of the "modern citizen of the metropolis" (BENJAMIN, 1993 [1938], p.301) is deeply ingrained in Kafka's texts, and the most adequate space to view and understand this experience would be the world around us: "The stage on which this drama presents itself is the world's theater" (BENJAMIN, 1993 [1938], p.301). Benjamin views Kafka as a critic of modernity and explores the author's parables, tales and romances in search for a better understanding of the reality of his time.

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<sup>3</sup> This essay is written under very particular conditions, since its publication was designed for one of the few Jewish publications still circulating under Nazi-fascism at that time. This promotes a concern that runs throughout the language proposed in the essay, marked, among other points, by the real fear of censorship. Criticism appears in literary language, and Benjamin moves the readers into a tangle of characters, legends, and stories. The author uses the Kafkaesque strategy of leaving dense reflections in passing, trying to insert the political content of the text into passages that cannot always be captured by a first reading. Many of Benjamin's post-33 articles are published in Germany under pseudonyms, in an attempt to escape the established censorship against the journals and magazines to which he was still collaborating. In addition, as mentioned in his own letter to the editor (BENJAMIN, 1966, v.2, p.608), Benjamin was not a member of the Reich Writers' Chamber. This was an institution created by the Nazi government which required the affiliation of all German writers (EILAND & JENNINGS, 2014, p.432), in order to have control and information about the profile of who published in the German press of that time. Scholem's letter to Benjamin of April 19, 1934, exposes a bit the airs of the possibility of censorship that involved the essay, and the objections to this made by the chief editor of the Jewish Journal, Robert Weltsch. Weltsch asked Scholem if Benjamin was not on the list of authors banned from publication, to which Scholem could not answer, since the last article received was in the form of a pseudonym. Weltsch pledges to publish an eventual article on Kafka "unless he receives a direct order prohibiting them". Something that would contribute to his publication, according to Scholem, would be Benjamin's "esoteric style", which would also make it easier for him to escape censorship. (SCHOLEM, 1993 [1934], p.152-153).

<sup>4</sup> Benjamin does not intend to deny the importance of a proper understanding of theology to interpret Kafka, but according to him "only the daringness and levity of Prague's interpretation" (BENJAMIN, 1993 [1934], p.188). Benjamin referred explicitly here to the circle around Max Brod, Kafka's friend and responsible for his assets. The author seeks (even the 1938 letters with Scholem) to link Kafka's characters also to the experience of the modern citizen of the metropolis. The role of theology in Kafka's interpretation is documented mainly in the correspondence of Benjamin with Scholem from 1934, and in the long letter of June 12, 1938. Cf: (BENJAMIN & SCHOLEM, 1993, p. 152-199; p. 297-305).



For Benjamin, to remember Kafka on the tenth anniversary of his death is to put at stake the usual relation between past and present, and confront it with problems of his current time, requiring its transmissibility (BENJAMIN, 1993 [1938], p.304) and its actuality in this process. A similar gesture seems necessary in order to refer to Walter Benjamin today.

But why bring up Benjamin, who died 80 years ago while he was trying to escape the Nazi-fascist armies that were spreading across Europe? Details of his death are heavily debated, and were the point of discussion in countless works, some monuments, and even a documentary<sup>5</sup>. No matter how unique this episode was, such uniqueness is social and historical, and it is also a portrait of the triviality of direct and indirect violence against refugees and pariahs in Europe and other parts of the world (GAGNEBIN, 2007, p. 205). However, beyond the possible points of discussion in his biography, remembering Benjamin is also related to the rescue of the critical potential of his work, as well as of what it still has to say.

Benjamin's texts allow for many ways of thinking about (and acting on) the present times, and this has implications on the Law. His essay on "Critique of Violence", which its first publication will complete 100 years in 2021, has been constantly revisited in order to understand the violence/power/force (summarized by Benjamin in the same German expression *Gewalt*) in regular operation in Liberal States, be it in their external warfare, intern policy operations, or that regularly operating against black people, LGBTQI+ population, immigrants, women and the precariat in general. His texts on fascism may lead us to understand the ascension of fascist forces on the threshold of contemporary state legality in various parts of the world, a phenomenon that has taken a dramatic shape in Brazil. Faced with the rise of authoritarianism, Benjamin's quarrel with Carl Schmitt about the state of exception allows a critical understanding of some of the theoretical foundations of authoritarian thinking, and engagement in non-resigned ways out of the deep crisis of civilization experienced today.

The critical potential of Benjamin's thought is linked to an analysis of certain structural trends of modernity, upon which he focused on. The author invites us to inquire upon the dialectics of change/permanence regarding a set of socio-historical phenomena. Investigating them at the same time requires attention to specificities on

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<sup>5</sup> "Quién mató a Walter Benjamin". 2005. Directed by: David Mauas. 73 minutes. Spanish-Holland.



these processes in the periphery of capitalism, and more precisely in the Brazilian case. If one of the questions raised by his writings is about the presence of the past in the present, a rigorous and critical approach to Brazilian and Latin American social formation is necessary, not to reject Benjamin's thought, but to radicalize its possibilities.

To remember Benjamin's work is to actualize it, and bring it up to the current world's challenges, full of dangers which requires us to intervene in the urgency of the now-time. To remember Benjamin, a member of the Frankfurt School who was more worried about the theoretical-practical framework of the concept of praxis and the class and oppressed struggles (LÖWY, 2011), is at the same time to demand to go beyond thinking, towards a question that goes through the epistemological core of the theory of history (BENJAMIN, 2018, v.2, p.759-807) of his most important (yet unfinished) piece of text, his "Arcades Project".

The interest on the impact of Walter Benjamin's texts in the field of the Law has been rising up in Brazil over the last years, and this Dossier is a systematic effort in order to support the amplification of those discussions. Although the articles assembled here reinforce *Direito e Práxis* Journal's aim to push forward research on Theory and Philosophy of Law, the reception of Benjamin's texts isn't only restricted to this approach. The reception, although unusual, also occurs in some writings involving criminal sociology (MALAGUTI BATISTA, 2003, p. 86 e p.139), criminal law (BATISTA, 2020, p. 216) and constitutional law (BERCOVICI, 2008, p. 343-344). Some new interpretations have used author's texts in order to face problems of judiciary violence in the peripheries of capitalism (ZACCONE, 2015), crossed by the racism that drives the wheels of the penal system. Some papers in this Dossier reflect on the relation between history and the law, on the cities, as well as on the memory – a field of knowledge that frequently makes reference to Walter Benjamin, although this "canonization" of the author's theory over those studies on memory may overstep the critical radicality of his approach and his theoretical-political strictness.

During the arduous selection of articles for the Dossier, we sought to guarantee an even distribution of gender, and that it could rely on articles by young and more experienced authors; reference texts as well as new contributions; perspectives from within and outside the Law; from researches from the Global South and Global North. The dossier puts on display many different outlooks on Walter Benjamin's work, from distinct angles of approach.



We hope you enjoy the reading!

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**Translators which contributed to this issue:** Beatriz Alaíde de Souza Assef, Luiza Leite Cabral Loureiro Coutinho, Alexis Alvarez-Nakagawa, Ana Carolina Brito Brandão, Beatriz Vieira, Bruno Zullo, Glenda Vicenzi, Hannah Franzki, Jade Dalfior, Juliana Serôa da Motta Lugão, Rafael Vieira, Rodrigo Octávio Cardoso.

