*Ficus benjamina*: the figleaf of aura and the decline process of law

Ricardo Spindola Diniz

University of Luxembourg

# Introduction

Admittedly, the concept of aura has received considerable attention among the array of words composing Walter Benjamin’s framework, to the point that allusions to its conceptual saturation became themselves rather common in the literature. That notwithstanding, but also considering the impressive philological investigations pursued over the wide range of connotations of Benjamin’s use of it, encompassing from kabbalah to Ludwig Klage’s work,[[1]](#footnote-1) so far as I’m aware, the connections brought forth through the genitive tethering figleaf and aura remain completely unexplored. In my assessment, these are essential if one aims to depart from Benjamin’s considerations about works of art towards what could be called a philosophical history of the sense-perceptions of law.

The first three sections are dedicated to ground the appositeness and to identify the implications of employing Benjamin’s conceptual constellation concerning the aura of works of art to grasp how one experiences legal phenomena as such, i.e., the experience of the aura of law. The first section highlights how an inclination to this transposition may be read in Benjamin’s choice of words to designate the work of aura, exploring how these words appear to connect and secure to interrogation the sense-perception of law, the images of justice whose experience conditions the possibility of law, the most important word being enfeoffment, constitutive of a guiding thread throughout this piece. At first, I attempt to show how these words “conspire,” as it were, to render the aura of law apprehensible in a rather “impressionistic” style, in reference to what appears to me as two exemplary, metaphorically related loci of what could be termed as the Western idea of law. On the one side, the definition of a legal rule that one finds in the Digest of Justinian. On the other, the opening statements of what is considered by legal historians as one of the most impressive works of the School of the Glossators, the *Quaestiones de iuris subtilitatibus*. Because of these first approximations, the first section ends with a delineation of what could be considered the mechanism of aura in general, building upon a strategic reading of two uncontestable references to Benjamin’s endeavor, namely, Kant and Freud, in a way that emphasizes how the concept of aura relates matters of lordship and domination to the manners through which we come to perceive ourselves, as being-in-common.

To develop and conceptualize this connection, but also to support it in reference to history is the task of the second section. It is in the second section, moreover, that the concept of figleaf is introduced. As far as I’m aware, Benjamin employed it only once. Yet, the place and way he did it are suggestive of its force to understand how the aura of law operates. Admittedly, he did so in reference to fashion. Nevertheless, in this section, I propose that what goes under the rubric of fashion in Benjamin’s work concerns ultimately the embodiment of a body politic, and the particular temporal structure conditioning this embeddedness, one and the other, the modes of presentation of power and their temporalization being thoroughly relevant to what the law is about.

Moreover, the relationship between liturgy, legal reasoning, and fashion both latent in Benjamin’s investigation on these matters and openly articulated in the events, characters, and documents I again present due to what appears to my eyes as their exemplarity, read in the manner and along the lines of the late representatives of what was once called *Verfassungsgeschichte*, allows to go from Benjamin’s immediate concerns towards what could be termed as the origin of the liturgical signature underpinning the mise-en-scène, the performance of legal interpretation. These historical constellations, offering most of the historical archive of this investigation, are circumscribed to the upheavals of the twelfth century, but also, in a more limited way, its pre- and post-history. Their exemplarity stems ultimately from the history of their recent reception, namely, the fact that contemporarily and in a widespread fashion, the whole in which they are posited is interpreted as containing the first steps for the emergence of the modern legal system.[[2]](#footnote-2)

In a certain sense, the first and second sections run parallel to each other, as the two sides of the genitive connecting figleaf and aura, as the figleaf of aura, and I feel compelled to ask for the reader's patience in following these two equidistant lines of inquiry. For reasons of space and purpose – our organizers emphasized how we should work *on* law *with* Benjamin, and not, if I may, *on* Benjamin *in allusion to* the law –, instead of supporting the intertwinement of the two preceding lines of inquiry with the kinds of philological proof that could be found in Benjamin’s oeuvre, – how the crisis of aura and the rise of fashion are both related to the decline of sexual desire, for instance[[3]](#footnote-3) – the third section strives to think this entanglement taking for its point of departure one remark of Benjamin that, I contend, can only be fully developed in reference to the law, namely, that words also have their aura. This is pursued in three moments, each of which deserves, I believe, to be briefly outlined.

First, drawing the first knot between figleaf and aura, I propose that words attain their aura when they are forced to refer to something that remains presupposed, as medial representations, as signs to what is signaled, which is obviously another word, even if a word incarnated, an absolute metaphor. As it will become clear in the third moment, I already anticipate, advancing the thoughts early sketched in the attempt to delineate the mechanism of aura, that what remains necessarily presupposed and nonrelational is the sovereign. The sovereign word, a word that commands, and in the name of which actions are effectuated as if this is the nature of things, relates to its interpreters in the time of contemporaneity, akin to what happens with fashion. Further, this being the second moment and knot, legal interpretation can be assessed as the attentiveness, whose gaze displaces and, hence, condenses around a particular word a multitude of other words, as a court of servants surrounding a prince. Legal interpretation binds life to law through the remission and transformation of any normative question as a textual question, a process that is tantamount to a reduction to meaning. The consecration of meaning, for its turn, takes place precisely as the positioning of a figleaf, or rather, an image of action, any and each action being only the consequences, the performance of a certain *nomina iuris*. Finally, at its third moment and conclusive knot, developing structurally what was hinted through the concatenation of historical phenomena at the end of the second section, legal interpretation is conceptually grasped in what Benjamin designated as the language-cult. The language-cult, Benjamin proposed, emplaces language as a “Jacob’s ladder.” Exploring the historical index of this simile, I use its connotations and implications as a guiding threat to capture how legal interpretation and its constitutive fiction of unambiguous meaning are undergirded by a liturgical signature, something that sustains the particular “symbolic fruitfulness” of legal concepts, and renders legal documents as “legal monuments.”

The fourth and final section stands apart from the first three. Whereas, as outlined above, their main focus consists of conceptual elaboration, notwithstanding the efforts to link, and even develop its framework in and from historical fragments, this section applies the motifs and insights attained in the first three to complete the transposition of Benjamin’s conceptual constellation concerning the phenomenon aura to the domain of law. It connects the first’s decay, dissipation, and destruction to the latter’s process of decline, due to the famous dialectics between the violence that posits and the violence that preserves a certain order of law. To my mind, this connection here pursued both shows the concreteness of Benjamin’s otherwise apparently obscure contention that the positioning of a legal order entails, immediately, its process of decline, and how to read this process in and, indeed, as history. Hence, its second aim is to offer a philosophical-historical reading of historical sources which, within the armature heretofore constructed, may appear as testimonies of the desire for the decline process of the legal order that was first established with Charlemagne’s coronation, that of the constitutional monarchy, the preservation of which found one of its most important and durable expressions in legal interpretation, bequeathing the programs underlying the modes of presentation according to which the language-cult of law is performed up to this day.[[4]](#footnote-4) However, to demonstrate this continuation, and to counterpose the possibility of its discontinuity is, evidently, a matter for future investigation.

# 1. The aura of law

To quote now in direct fashion, as one may read in all the three existing versions of *Das Kunstwerk im Zeitalter seiner technischen Reproduzierbarkeit*: “What is aura properly? A singular weave in time and space: a unique appearance of a distance, as near as it may be. Respiting on a summer afternoon[,] a mountain-range in the horizon or a branch ensues, its shade being thrown over the respiter – that is the aura, to breath these mountains, these branches.”[[5]](#footnote-5) “To experience the aura of an appearance,” Benjamin writes in *Über einige Motive bei Baudelaire*, “is, namely, to enfeoff [*belehnen*] it with the power to strike back with a glimpse.” At a footnote, he adds that “[t]his enfeoffment [*Belehnung*] is the source-point of poetry. There the human, the animal, or an unanimated [thing], from the poet thus enfeoffed, its glimpse strikes, it pulls these in the distance; the glimpse of nature, to such an extent awakened, dreams and the poetized trails its dreams.”[[6]](#footnote-6)

As underscored above, I decided to translate *belehnen* as “to enfeoff” and *Belehnung* as “enfeoffment.” *Belehnen*, the Grimm Brother’s dictionary registers, means *jure beneficiario tribuere*, to endow, or, more properly, as it is a legal action that harkens back to the feud, to enfeoff a plot of land, a service, a dignity.[[7]](#footnote-7) *Belehnung*, for its turn, as a *nomen actionis*, indicates the assignment or endowment of land, goods, a service, on determined conditions. Translations and interpretations available of Benjamin’s Baudelaire essay usually disregard the legal sense burdening these words, something that, perhaps, it is to blame on why Benjamin’s thoughts on aura remained somehow disconnected with the reception of his work within legal and political theory. Nevertheless, what this connection actually designates? What does it mean for poetry, or art in general, could we add, to have its source-point in the enfeoffment of things, the fact that things are given without counting, fitting into an authoritative domain, within which they are revealed as assigned to their proper place?

The meaningfulness enwreathing Benjamin’s word of choice reminiscences of a well-known interpretation of the origin of the work of art. In Heidegger’s word, a work of art discloses a thing’s truth, which, in the case of a tool, such as peasant’s shoes, would be its “tool-being,” which consists of its “reliability.”[[8]](#footnote-8) [*Verläßlichkeit*] Reliability, what grounds the readiness-at-hand of a tool or equipment, as the analytic of *In-der-Welt-Sein* in *Sein und Zeit* indicates, remains always in the background,[[9]](#footnote-9) sustaining what appears as always already in its appliance, in virtue of being-there. For my circumscribed purposes,[[10]](#footnote-10) this comparison reveals how Benjamin’s proposition is far from absurd. Further, it suggests the path to elaborate the concept’s political and legal connotations, the formalization of which could consist of a considerable conceptual contribution, allowing for a more rigorous apprehension of the ways the political is constituted through the displacement of law in the Western tradition – a displacement that, as the lines above suggest, perpetrates an emplacement, constitutive of a world in its reliability, or, rather, familiarity.[[11]](#footnote-11)

Immediately, note the consistent use of demonstrative pronouns whenever the *opus textile* of aura is at work – das *heißt die Aura,* dieser *Berge,* dieses *Zweiges*, but also *zieht es* diesen *in die Ferne*, as if the glimpse of aura itself posited the distance ensuring the passage, as the pulling of a long spin between sense and denotation. This confirms David L. Marshall’s ingenious remark about the deictic origins of “the famous late concept of *Aura*[.]”[[12]](#footnote-12) We should give due consideration to Marshall’s reminder that “deixis had a close (indeed, etymological) relationship to one of the three principal oratorical genres: epideictic – namely, praise and blame as distinct from deliberative or forensic speech. More primordially: *epideixis*, displaying.”[[13]](#footnote-13)

It should be emphasized, however, and essentially, that “[t]he first facet of law, the initial dogma that the subject encounters, is neither text nor letter – the *litera mortua* of the rule – but image, what is more strictly termed *anima legis*, the living and breathing spirit of law, the visible depiction of legitimacy[.]”[[14]](#footnote-14) Peter Goodrich’s statement just quoted allows us to read a twist in David Marshall’s point concerning the primordiality of epideixis. “First,” Goodrich sustains, “there is the apprehension of honor and the recognition of the mediation of such auratic images, such ‘visible words,’ through the rites and ceremonies, solemnizations, and choruses of the institution.”[[15]](#footnote-15) Thus, it may be said that *epideixis* opens the space within which deliberation and judgment can take place. “In more formal terms, the image of justice is the condition of possibility of law.”[[16]](#footnote-16)

# 1.1. Ghosts and mirrors

How does one experience these auratic images, among which the image of justice itself? The experience of aura is a weave in space and time, in Benjamin’s word, the *Gespinst*, or rather, an *opus textile*. *Gespinst*, Peter Fenves has ingeniously remarked,[[17]](#footnote-17) verges on *Gespenst*, on ghosts and specters. That aura has something to do with phantasmagoria obviously didn’t escape the scrutiny of the literature. As Gyorgy Markus’ puts it, “at one place [Benjamin] explicates its meaning by almost directly reproducing the Marxian definition of fetishism.”[[18]](#footnote-18) Markus has in view Benjamin’s contention in the Baudelaire essay that transference [*Übertragung*] is what designates the basis for the experience of aura: “The experience of aura is based, therefore, upon the transference of a cursorily form of reaction in the human society over to the relation of inanimate [things] or nature towards humans. The looked or the believer of being looked strikes the glimpse back.”[[19]](#footnote-19) Conversely, as one reads in the famous fourth section of the first chapter of the first book of *Das Kapital*, the fetish-character inseparable of the “spectral objectivity” which is the commodity stems from its form as value, the fact that the social relationships between producers appear to them under “the phantasmagoric form of relationships between things” being, correspondingly, what Marx names as fetishism.[[20]](#footnote-20)

To the extent that value transforms everything into a “social hieroglyph,” a determination whose secret would be ultimately akin to that of language,[[21]](#footnote-21) one may wonder whether to consider things and words as signs accorded by some sovereign couldn’t be read as the quintessence of fetishism. To sacrifice a *disjecta membra* to the condition of a point of stability is to coin a signifier that is indestructible and unforgettable because eternally repeated. This would be a *stigma indelebile*, or, rather, an absolute metaphor prompting a timeless process of replacement bridging eternity and temporality. Its ultimate consequence is to allow for the reconstruction of “the scene of the signifier as a signified (an ever inevitable process in the logic of the sign),”[[22]](#footnote-22) that is, a scene not of the production of value, but of the consecration of meaning. Through the enfeoffment of meaning, there is an attempt to make sense coincide with denotation, the indication of which appears in the form of a sign, but also of something as a norm.

One can read such articulation into the *locus classicus* of the definition of a legal rule. As it is stated in the famous dictum of D. 50.17.1, *Regula est, quae rem quae est breviter enarrat. Non ex regula ius sumatur, sed ex iure quod est regula fiat*.[[23]](#footnote-23) As Maximilian Herberger has demonstrated, the proposition “rem quae est” does not refer to the essence of a thing, the *regula* is not concerned with the definition of an essence, in the case of which another pronoun would be in hand – *rem* quid *sit* –, but the narration of what it is about.[[24]](#footnote-24) Indeed, this “aboutness” inhabits every legal claim.[[25]](#footnote-25) As such, the rule is nothing but an indication of what appears before the jurist gaze, in the sense of *Auffassung*, a contemplation that gathers and orders what is seen as a state of affairs, in correspondence to what is legally enfeoffed. As an “artwork of epigrammatic condensation,” in Franz Wieacker’s words, its “moving creative power” may allow us to speak of it as an image of action, in which “the full coverage encompassing the decision and the conditions of life it overcomes” persists.[[26]](#footnote-26)

This can be projected in another remark by Wieacker concerning what could be framed as the apparatus of the *regula iuris*. If the uncovering of the manifold ways of using something is a historical act, any contention about the long history of the *regula* touches upon its being as such. Such contiguity may allow one to paraphrase Wieacker, stating that the *regula* itself is “a *mirror* of the primordial confrontation of the legal conscience with the relation of the spontaneous, irrational, and historical towards the intelligible, rational and ideal elements of each positive legal order.”[[27]](#footnote-27)

Although not as thoroughly as it deserves, we must delve upon the historical index, the implications of this simile, as they appear crucial to grasp what one may designate as the aura of law. Besides the obvious resonance with the Pauline verse according to which we yet see only through a glass darkly,[[28]](#footnote-28) “a spectacle of things invisible,”[[29]](#footnote-29) one finds its employment in what is considered to be as one of “the finest fruits of the school of the glossators,”[[30]](#footnote-30) the *Quaestiones de iuris subtilitatibus*. The work represents a discussion between one student, identified as questioner, [auditor] and the corresponding teacher, identified as interpreter, concerning, as the title hints, the subtleties of law. What is of interest is the opening words of the book, dedicated to set the stage where such a disputation occurs. It takes place on a mount, arguably, an *ager vetus*, an ancient and idyllic field,[[31]](#footnote-31) at the shadow of the temple of justice, where, inside, walls of glass are held. Over these walls, there is the inscription through golden letters of the whole of the text of the books of law. Those who attempt to read these letters, as much as they do so beholding the walls with the required ritual attentiveness, that is, not as pages or documents, but as proper monuments, will almost as through a mirror gaze into Justice, dressed in its ineffable dignity, surrounded by a court of virtues, among which Equity guides the hands of its honorable servants, correcting, improving, indeed enlivening out of the letters of the law, the writings of the phantasmagoric pages.[[32]](#footnote-32)

To feel the spirit in language, as it were, is to assume a certain attentiveness towards its inscription. This explains why, again in the Baudelaire piece, Benjamin, quoting Novalis, states how the ability to apprehend truth, perceptibility [*Wahrnehmbarkeit*], is an attentiveness [*Aufmerksamkeit*]. Significantly, Benjamin remarks that this perceptibility is nothing but the aura.[[33]](#footnote-33) However, this is no more than a dream. Indeed, like a dream, it attains a certain timelessness, of the *ager vetus* where the temple of justice is, with its symbols and their familiar gaze. Auratic perception represses the experience of the temple in its ruins, although, paradoxically, it is experienced as the endurance “retriev[ed] […] out of the depths of time.”[[34]](#footnote-34) Correspondingly, ritual attentiveness appears to veil details,[[35]](#footnote-35) the smallest shapes through which real time comes in.[[36]](#footnote-36) An inscription must be read, it cannot be heard immediately. It must be mediated and transmitted through the page. The page transforms even the fog of war, stemmed from the cannons’ firing, into the clouds of the human moral vocation, heaven being transplanted to the earth below.[[37]](#footnote-37)

There is, however, something of an ambiguity concerning the page. The page is always already burned with a dangerous possibility, of its letter resisting to be more than dead letters, black fire on white fire.[[38]](#footnote-38) For that reason, one must always freely use partial representations that secure for the inscription its aura, so that we can see it speaking through our reading. Through condensation, the letters originally displaced are turned into symbols, the pages into glasses, the text, a whole mirror, observing the passerby with a familiar gaze. As I will try to elaborate below, perhaps this could be considered as an outline of the mechanism of aura, at the very least in what concerns the aura of words, something that appears to my mind as crucial to the operation of law.

# 1.2. The mechanism of aura

In the auratic experience, each and every thing surrounding a certain object is transformed into a medial representation contributing to the intensification, which could also be designated as a glorification, of “that which is, was, and will ever be.” Medial representations, according to Freud, are in the service of condensation – *im Dienst der* *Verdichtung*, which, perhaps, Benjamin would have read as the cult of poeticization, in one word, *enarraratio* –, having their condition of possibility in “the free transferability of intensities.”[[39]](#footnote-39) Such a notion is not strange even to Kant, who wrote how the free use of “a manifold of partial representations” accomplishes to represent what no expression of signification can be found for or could completely achieve. And this notwithstanding the fact that – indeed, because of it – such a free use “makes us add to a concept the thought of much that is ineffable,” as it “connects language, which otherwise would be mere letters, with spirit.”[[40]](#footnote-40) For the letter kills, but the spirit gives life. These partial or medial representations may be said as striving to group themselves “around an object of intuition” [*um einen Gegenstand der Anschauung*],[[41]](#footnote-41) and by doing so, in this process of condensation, wherewith “all psychic correlation is converted into the intensity of the representational-content,”[[42]](#footnote-42) they call nothing but the object’s aura.

Pierre Legendre once wrote that what he understands under the rubric of the “Text without subject,” a concept that in the vocabulary being pursued here could be said to designate what the consecration of meaning brings forth, “should be analyzed with the same rigor that Freud, *in The Interpretation of Dreams*, taught us to treat the creation of a subject, with one difference, namely that it should be analyzed in the mode of as if, as if there was a subject.” To do so would be fundamental, as it would be “a question here of placing oneself in the presence of what can properly be termed an act or deed.”[[43]](#footnote-43) That being so, the examples Freud offers in *Die Traumdeutung* of what he denotes as a “principle of presentation” [*Darstellungsprinzips*] are crucial to grasp how aura operates.

The mechanism of aura could be considered as pivoting around the principle of presentation underlying practices such as letterspacing or bolding, which settle a “superior value” to the perception [*Auffassung*] of a text, or the loud and slow speaking of a word. Equally important are the examples that Freud takes from the history of art. In historical sculptures, a similar principle would follow when “the king was imagined as twice or three times bigger than his followers or subjugated foes.” For its turn, the “image-work” at the time of the Romans, Freud notes, achieved “the same end with a subtler medium.” The Emperor was placed “in the middle, highly erect, especial attention being employed into the formation of its shape, his enemies lying at his feet[.]”[[44]](#footnote-44) What is such an end? That of stirring an auratic experience, in which one faces that which she can only indicate, an image of action demanding repetition and glorification, all things being turned into partial or medial representations, ritually surrounding the object as and with a halo.[[45]](#footnote-45) The halo comes from within, framing the transparent souls of the redeemed which, as Saint Thomas has explained, “can be seen with the eyes of the unredeemed.” Surrounded by the halo, the souls of the blessed “are transparent as glass, and the soul rests within this glass-like medium as though it were made of gold.”[[46]](#footnote-46)

Benjamin remarked on one occasion, the register of which gives us the very first appearance of the concept of aura in his work, that everything he said at the time was against the conventional, banal representation the “theosophists” make of it. According to Benjamin’s record, as in fact, this took place during one of his Hashish experiments, he argued that in their infuriating inexperience and ignorance, the theosophists suppose aura as pertaining to only some, and not all things – only the blessed, whereas Benjamin, subscribing to Origen’s doctrine of apokatastasis, the redemption of all souls, contends that all things have their aura.[[47]](#footnote-47) Additionally, they ignore how aura changes thoroughly and fundamentally with each movement made by its thing. Finally, the proper aura would not be as “vulgar mystical books” build and describe it, as consisting of “magical rays,” alike to halos. Rather, what would be distinctive of the aura is the ornament, an ornamental contour that is fixed in the thing or the entity as when it is recessed into a sheath.[[48]](#footnote-48)

Unfortunately, I cannot devote here the length the index of this word, ornament, demands. It must suffice to say that the ornament, the frame, is, in Kant’s Third Critique,[[49]](#footnote-49) and, as Samuel Weber suggests, from then on,[[50]](#footnote-50) what concentrates the aporetic possibility of the emplacement of something as a work of art as such. The ornament emerges as the condition of possibility of the unraveling of form. What the so-called theosophists would have wanted is for the ornament to spread itself thin, to the verge of disappearance, nothing but a halo as it descends and fades as a ray of sunlight.[[51]](#footnote-51) It derives from what it indicates. Nonetheless, in Weber’s words, “its implications quite literally ‘fold it back’ […] into the very heart of what is called ‘form’.” Instead, the ornament “spreads itself thick, into the opacity of a materiality that does not ‘fit in’ with the essential immateriality of the aesthetic form it is called upon to delineate.”[[52]](#footnote-52)

Such essential immateriality does not appear to be constrained to the aesthetical. The legal form also depends on a similar, even if inverse spectral delineation.[[53]](#footnote-53) Arguably, as the expression itself suggests, anything that falls within a horizon of meaning, that is, therefore, reduced to it, assumes this medial character of a husk, assembled into a mechanism, in the Kantian sense I have been employing so far.[[54]](#footnote-54) In its absence, the spirit would be without a body, the horizon without a line, the people without flesh, the law without voice. As Siegfried Kracauer highlighted, in a direction that undoubtfully resonates with Benjamin’s thinking,[[55]](#footnote-55) a “current of organic life,” or rather, as we will see below, an occult dispensation surges, condensing a center of meaning, that hinders on the endowment of its ornaments “with a magic force and burdening them with meaning to such an extent that they cannot be reduced to a pure assemblage of lines.”[[56]](#footnote-56) How this endowment, this enfeoffment of meaning happens, in resistance to its untimely decay, something that is tantamount to the displacement of its center, the dispersion of aura, is what the image of the figleaf allows us to capture. As anticipated in the introduction, I dedicate the second section to such endeavor.

Moreover, however, the image of the figleaf allows us to understand how aura is properly, as Benjamin argued against the theosophists, only when dispersed, that is, only improperly.[[57]](#footnote-57) The aura, as the ornament, “does not emerge out of the interior of what is given [*Gegebenheiten*], but rather appears above them.”[[58]](#footnote-58) Consequently, “the more the coherence of the figure is relinquished in favor of mere linearity,” the more the aura is saturated, “the more distant it becomes from the immanent consciousness of those constituting it.”[[59]](#footnote-59) To think how the saturation of aura is intertwined with the decline process of law, for its turn, will be the task of the fourth section. In between, the third section will explore how law depends on the endowment of some of its words with a magic force, in detriment of others, that is, how words can also have their aura.

# 2. The image of the figleaf

Although meaning apparently does not decay, this appearance itself can be fragmented, or disintegrated. Arguably, this was what Benjamin hoped to show through fashion as the canon for the whole endeavor of his unfinished magnum opus. Perhaps what the child finds on the coattail of her mother’s dress, what she holds and thrust[[60]](#footnote-60) – instead of only gazing, as the jurist does towards the ineffable dignity dressing the Goddess of Justice –, hints to the stretchability of its fabric, the transience of time. As Benjamin annotated in one of the pages of the convolutes constituting *Das Passagen-Werk*: “Fashion posits its figleaf always over the place upon, where the revolutionary nakedness of society finds itself. A small displacement and…”[[61]](#footnote-61) What we can understand under the rubric of fashion has, as it seems to be always the case with Benjamin, an indexical character that is worth exploring.

Any figleaf obviously implies Genesis, 3:7, the figleaf being what covers the nakedness of Adam and Eve after they have eaten from the tree of knowledge. One should have also in mind the so-called “fig-leaf campaign,” pursued by the Vatican during the sixteenth century,[[62]](#footnote-62) a highly illustrative example of the reception history of works of art, of what Benjamin designated as how the traditional context embedding a work of art is something “thoroughly lively, exceedingly changeable.”[[63]](#footnote-63) Moreover, the figleaf condenses the “theological signature of clothing” in Western culture, to employ Giorgio Agamben’s words. Such signature would underlie the fact that the temporal structure of fashion is marked by contemporaneity, the experience of time that happens in the form “of an ungraspable threshold between a ‘not yet’ and a ‘no more.’”[[64]](#footnote-64)

Obviously, it is hard not to think here of how time passes before the law. After all, as I will attempt to formalize below, law operates imposing a likewise “pseudo-distinction” between, to use now Thanos Zartaloudis’ words, “an alleged before that always-already belongs to the past: a ‘life’ (before the law) and a dictated form (law’s prose; a form of life) that always-already comes too later, after the fact.”[[65]](#footnote-65) In a more prosaic sense, think of how legal scholars divide their materials between landmark and forgettable decisions, ratio decidendi and obiter dicta, meaningful legal concepts and surrounding partial words. Always ravenous to code the newest, hottest ruling or piece of legislation, the lawyer attends less to its letters than to its word as it constitutes a word of power, magnetically reciting in new fashion the books of law as if they came from the distant past. To borrow a phrase: “Change appears eternal, even while society remains static. Its revolutionary gesture is thereby reduced to the sheer novelty of interpretations: Fashion masquerades as politics.”[[66]](#footnote-66)

One particular important connotation of the term appears in Benjamin’s essay dedicated to Eduard Fuchs, whose work as a materialist historian focused, among other things, precisely on the history of clothing. As Benjamin mentions this particular contribution and how it appears as what best suits Fuchs’ concerns as a historian – that is, the historical, the social, and the erotic –, he comes to highlight Fuchs’ definition of fashion. This definition, Benjamin adds, reminds one of Karl Kraus, whose words, according to the first, grasped as none other the substance of law.[[67]](#footnote-67) “Fashion, thus it is said in the *Sittengeschichte*, indicates ‘how it is intended to pursue the commercium of public morality.’”[[68]](#footnote-68) Fashion, Benjamin contends in this same context, but also throughout the convolutes, is a crucial instrument of domination. In one of his finest formulations: “The rulers will secure their position with blood (police), with cunning (fashion), with magic (pomp).”[[69]](#footnote-69) Anything but mere clothing, Benjamin designates through the concept of fashion the whole fabric of a polity’s mode of presentation, its mise-en-scène.

Most decisively, perhaps, we should have in mind the role the figleaf assumes for Kant. In *Mutmaßlicher Anfang der Menschengeschichte*, Kant’s allegorical engagement with the Book of Genesis,[[70]](#footnote-70) the Königsberg philosopher writes how the *Feigenblatt* would be “the product of a far and substantial externalization of reason,” indeed, the very first step of its development, the deprivation of the sensations of an object through a profoundly and lasting negation – a process of desemanticization, thereof,[[71]](#footnote-71) – being crucial for the dominion [*Herrschaft*] of reason over desire, and, therefore, for “the formation of humanity as an ethical creature.”[[72]](#footnote-72) In a word, as *Geschlecht*, in the sense of sexual difference, but also of the continuance of generations, and, thus, the constitution of humanity itself. As Kant states in another of his historical-philosophical writings, “the first page […] is the only beginning of all true history.”[[73]](#footnote-73) Thus, following Peter Fenves’ gloss, we may say that the figleaf “marks the decisive moment when world-history can first be said to take place; having replaced the voice of God, the *Blatt* places itself on the margins of an imaginative abyss,”[[74]](#footnote-74) laying the ground for the constancy wherein something as meaning can be projected, but also reduced to.

To still speak in Kantian terms, the figleaf, notwithstanding, or maybe because of its supplementary character, outlines the program to any mechanism, that is, of any embodiment of meaning, what Kant designated as *hypotyposis*. Hence, one could even advance that the figleaf is the archetype of the sign, something that “takes place after the emergence of speech, and yet it dominates speech to such an extent that it alone can be said to be articulated.”[[75]](#footnote-75) Thus, the figleaf can be read as the designation of the ensemble of mechanisms – in Peter Fenves words, “the operation of reason but also [of] sexuality and[,] if there is any difference here[,] linguisticity,”[[76]](#footnote-76) that is, the operations of law – engendering the displacement of desire which is tantamount to the condensation of domination, one and the other being, arguably, two poles of the constitutive process of political embodiment.

Such achievement may deserve to be described as a consecration, or rather, a coronation, the ointment of a king, *mutatio vestis solennis*. In Freud’s term of art, an *Einkleidung*.[[77]](#footnote-77) As Derrida remarks, the *Einkleidung* itself no longer belongs, however, “in the realm of decidable truth: exhibited/dissimulated according to an abyssal structure […]. The realm of decidable truth is invaded by powers of dissimulation.”[[78]](#footnote-78) Read in this direction, Freud’s examples discussed in the last section suggest, as paradoxical as it may be, that an original displacement or shiftment [*Verschiebung*] conditions through a certain belatedness the possibility of condensation [*Verdichtung*] around the nonrelational, and, hence, its indication. Thus, to paraphrase the apposite words of a medievalist,[[79]](#footnote-79) *dominion originates in the displacement that makes an inscription look like the voice of authority*. To make something look like, to perpetrate such a transference is simply the work of the figleaf of aura. That this work pivots, essentially, on displacement is what the image of the figleaf allows us to grasp.

# 2.1. The *opus textile* of law

Let me attempt to formulate an illustration, whose force may well show the thrust of Benjamin’s endeavor, on the one hand, and what this has to do with the law, but also the aura of law, on the other.

Owing to Harold Berman’s seminal work,[[80]](#footnote-80) it has become a commonplace in the legal literature to harken back to the eleventh century, when the clash between the Pope and the Emperor prompted a chain of events, later known as the Investiture Controversy, decisively contributing to what some have designated as the renaissance of the law in the West,[[81]](#footnote-81) or, in Berman’s perhaps oxymoronic term, a legal revolution. However, as fierce opponents as the vicars of Christ and God could show themselves to be to one another, their struggles, I would like to suggest, never opened up the sort of “revolutionary nakedness” that is of interest here. In Ernst Kantorowicz’ words, “[m]utual borrowings and exchanges of insignia, political symbols, prerogatives, and rights of honor had been carried on perpetually between the spiritual and secular leaders of Christian society.” Between the imperial purple and the pontifical shoes, among other props and fabrics, the bearers of the two swords of Christendom, and later, the bodies politic themselves each of them embodied, cross-dressed as each other to the point that “finally the *sacerdotium* had an imperial appearance and the *regnum* a clerical touch.”[[82]](#footnote-82)

Truth be told, “[p]ower is conveyed through visible signs[.]”[[83]](#footnote-83) Appearing is constitutive of the political space, which, further, as a field of appearances, depends not only on the words and deeds of its members, whose action in concert bestows a sense of permanence, and, even more, permanence as the making of sense, as the establishment of a horizon of meaning, a mise-en-sens. As the word itself suggests, a body politic must be embodied, it needs a shape, a mise-en-scène. Hence, it also pivots on what Benjamin attempted to grasp under the rubric of fashion, and that can be contiguously called, following Judith Butler’s suggestion, as its modes of presentation or media. These “media ensembles,”[[84]](#footnote-84) so to speak, assume, thus, “the form of a regulatory structuring of the field of appearances that establishes who can be seen, heard, and recognized. The legal domain overlaps with the political field.”[[85]](#footnote-85)

The kernel of the matter has been phrased in an outstanding way by Walter Ullmann: “Words could have different significations, but liturgical vehicles should (and on the whole did) have only one unambiguous meaning[.]”[[86]](#footnote-86) What bodies of pages could be read as attempting to express through a manifold of letters and inscriptions, liturgical means – such as the coronation oil, for instance, which Ullmann frames remarkably as a medium[[87]](#footnote-87) – “impressively and effectively demonstrated.”[[88]](#footnote-88) It is hardly a surprise, then, this being the example I have in mind, that when the pontifical rule was confronted with the upheavals of an enduring and aggravating constitutional crisis, encompassing one of the most crucial legal doctrines of the Middle Ages, namely, the doctrine of the two swords,[[89]](#footnote-89) but also the seat itself of the Apostolic See of Rome, one of its most brilliant political thinkers framed the question as concerning nothing but the Pope’s clothes. *De vestium pompa resecanda, et zelo pontifici necessario* is the title of the second section of the fourth book of Bernard of Clairvaux’s one-of-a-kind *speculum paparum*,[[90]](#footnote-90) *De consideratione*. The section in its entirety is dedicated to discussing in all its implications the pontifical struggle with the commune of Rome,[[91]](#footnote-91) which, since its emergence in 1144 and until the near end of the twelfth century, has, again and again, expelled the vicar of Christ from its walls, and, in-between one expulsion and another, achieved to reestablish the Roman Senate,[[92]](#footnote-92) coming to demand the papal renouncement of all secular power [*gladii potestate*] and of the apostolic estate to the renewed *respublica*.

# 2.2. Liturgical reading

Yet, as we will see below, words themselves can operate as liturgical means, as soon as a hieratic moment in language is introduced. It should be noted, therefore, that Saint Bernard stood at a threshold, described by Ernst Kantorowicz as a period of transition from an early christocratic-liturgical imagination of rulership to a late theocratic-juristical idea of government.[[93]](#footnote-93) Kantorowicz himself, however, is careful to note how between one and the other a certain functionality remained operative. Indeed, it could even be said that this transition brought to fruition, with its transposition from the domain of ritual to that of documents, early developments perhaps started with the intensification of the cult of images within Eastern Christendom, precisely amidst the time Justinian’s famous codification was pursued, that is, on the second half of the sixth century.[[94]](#footnote-94) Again according to Kantorowicz, “the general ability of ‘viewing liturgically’ slacked relatively early in the West[,]” imagery in general being “not of the same moment nor were representations of the liturgy proper as frequent in the West as they were in the East. Narrative pictures predominated, as it were, in agreement with the famous statement of Gregory the Great: ‘quod legentibus scriptura, hoc idiotibus… pictura.’”[[95]](#footnote-95)

Later, during the time of Charlemagne’s epochal coronation at the very beginning of the ninth century, in the aftermath of an intense clash between those that increasingly came to understand themselves as the Western, proper Roman-Catholic clergy and its eastern, idolatrous and decadent counterpart,[[96]](#footnote-96) such a “slack” obviously underwent a process of intensification contributing to the emergence of a desire and hope for a Roman renovation. The thought and struggle of *renovatio* undoubtfully engendered the subsequent legal renaissance itself.[[97]](#footnote-97) In their confrontation with the Byzantine emperors, the Western vicars of God and Christ required unambiguous proof of their standing, certification of the validity of their pleading for renewal. In this connection, it appears to me as one important fact that this particular articulation of the difference between East and West pivoted, among other things, but crucially on what could be designated as the main media liturgically operating the regime of images embodying a body politic, that is, whether the texture of garments or texts sustains the main stage of the polity’s mise-en-scène.

The ideal image, indeed, the figleaf animating the desire for renovation harkened back to the time and traits of Constantine’s emperorship, quoting it as fashion quotes the past. Mediating this bygone era and the present situation, before all the liturgical props and imperial garb, stood a page, however, a document, the famous, apocryphal donation of Constantine,[[98]](#footnote-98) whose historical effects are at the center of Bernard of Clairvaux’s admonition to the pope. Although the prelates’ flocks turned from sheep into wolves in the context of the communal revolts, the Pope, Bernard urges, should not despair “of their turning back again into sheep[.]” Indeed, he should either deny that he is the shepherd over these people or show that he is: “You will not deny it, lest he, whose chair you fill deny that you are his heir. I mean, of course, Peter, who never, so far as can be ascertained, paraded himself decked with gems, or robed in silks; he was not covered with gold, he did not ride on a white steed, he was not surrounded by soldiers, nor fenced off from his flock by noisy attendants. […] In all this painted pomp you are not Peter’s successor, but Constantine’s.”[[99]](#footnote-99)

Precisely in reason of its superficiality, these liturgical borrowings and their correspondent practices played a crucial role, and especially in relation to legal reasoning, as Saint Bernard’s treatise demonstrates. Consider, conversely, that, centuries after the rise of the commune of Rome, one of the most vicious attacks against the horizon of meaning constitutive of the Christian monarchy, the anonymous author of the *Vindiciae contra tyrannos*,[[100]](#footnote-100) one fine jewel of the Humanist jurisprudence and of the peasants’ revolts of the sixteenth century, falls short of escaping the auratic pull, the *Katzenjammer* of its mise-en-scène. When it comes to the very practical, legal question of delineating an image of action to the performance of popular resistance against the decadent reign of tyranny, the author frames the question as follows: “Will it be lawful for Herdonius the Sabine, Eunus the Syirian, or, perhaps, Spartacus the gladiator – for, I say, any private individual – to call the slaves to freedom, to rouse the subjects to arms, and finally to fight hand to hand with the prince, if tyranny is oppressing?”[[101]](#footnote-101) To answer, as Daniel Lee puts it, a “surprisingly, and notoriously, no[.]”[[102]](#footnote-102) Even if by extraordinary appointment, the people must always do “by the agency of those to whom it has transferred its authority and power,” [[103]](#footnote-103) the nobles and magistrates, their power is based, in Ralph Giesey’s words, “on their participation in the coronation.”[[104]](#footnote-104)

Absolute metaphors such as coronation – but also marriage, and tutelage[[105]](#footnote-105) – brought forth the horizon of meaning of the Christian monarchy, outlining the shape of its world, the embodiment of its body politic. As the figleaf is an externalization of reason, these words may be considered to be externalizations of meaning. In them, comparably to what happens today, within the epoch of the spectral materiality of Capitalism, under the rubric of legitimacy, efficiency, and optimization,[[106]](#footnote-106) life is emplaced as a domain that appears arranged in virtue of what it should be, the nature of things. That notwithstanding, these words do seem, sometimes, to conspire against their own enfeoffment,[[107]](#footnote-107) desiring for a tiny displacement which allows one to see, as Benjamin has famously framed it, that the documents of culture of which they are the traces, their *integumentum*,[[108]](#footnote-108) are also documents of barbarism.[[109]](#footnote-109) The figleaf is, therefore, entirely ambivalent. The two next sections are dedicated to discuss how this ambivalence originates, between its coming to be and its going-away.

# 3. The aura of words

“Words can also have their aura.”[[110]](#footnote-110) To this remark about the auratic character words may have, Benjamin introduces a quotation from Karl Kraus, suggesting that the renegade editor of *Die Fackel* has written about it when he stated that “[t]he nearer one looks a word, the farther it looks back.”[[111]](#footnote-111) But what does this mean? Having in mind Benjamin’s contention that every word Kraus wrote consists in a contribution to the language of the order of the trial, everything unfolding around and from Kraus – without exception, and necessarily – being within the sphere of law,[[112]](#footnote-112) perhaps the best example that I can come up with, to make sense of such aphorism, must necessarily come once more from legal history. Let me advance beforehand, however, what would it mean for words to operate liturgically.

What the auratic word demands from the beholder as an interpreter in a lasting and enforceable way is its increment through repetition. A repetition that, in carrying the image-text’s valence of being, should be determined to effect an increase of being.[[113]](#footnote-113) In the words of Gregory the Great: *Scriptura sacra aliquo modo cum legentibus crescit*.[[114]](#footnote-114) The text is not the object of interpretation, but rather the subject, whereas the interpreter is the instrument, the servant,[[115]](#footnote-115) or rather “the prisoner of the text,”[[116]](#footnote-116) through which the text lives. Ultimately, just as the host, the interpretation is determined to disappear, whenever the word holds. The text, and not its interpreter, is sovereign. The sovereign text demands that language abandons itself, that it displaces itself if it wishes to enter in relation to what is nonrelational – that is, to value and its sovereign form. In what concerns heads and tails, Marx remarks of how “jurists long before the economists represented gold as a mere sign,” doing so “in sycophantic service to royal violence.”[[117]](#footnote-117) In fact, the sovereign is the nonrelational par excellence. It is nonrelation, “or it is not at all,” as Jacques Derrida reminds us. Its nonrelationality, or, to employ the classical coinage, its indivisibility, but also its silence, “excludes it in principle from being shared, from time and from language. From time, from the temporalization that it infinitely contracts, and, thus, paradoxically, from history.”[[118]](#footnote-118)

The sovereign word, the text in an eminent sense, is there as a total mediation, in which one and the other, image-text and beholder are coincident or contemporaneous with one another. As Werner Hamacher has phrased it, “[a] time with this kind of synchronicity, barred from the differentiation of past, present and future, can only be called ‘a completely improper temporality,’ because it precludes the separation, distance, and freedom that first make ‘proper time’[.]”[[119]](#footnote-119) The temporal structure of what is contemporaneous, contemporaneity, as hinted above, stands for the bygone revelation just as the concept of situation stands for what would be properly present in the instant as the blink of an eye, breaking out from historical transience, and perpetrating the isolation of the word, which is, tellingly, always the word of the father, of fatherly authority, hence, of a supranatural, rather than spiritual, character.[[120]](#footnote-120)

It should go without saying, this chain of words appears to capture quite well the time of fate. Benjamin notates in a fragment titled *Zur Problem der Physiognomik und Vorhersagung* how “the time of fate is the time which anytime can be made to be coincident (not present) with. It stands under the order of guilt, determined in its context. It is an unindependent time and it is given in it neither present, nor past, nor future.”[[121]](#footnote-121) We find it almost entirely integrated to *Schicksal und Charakter*, but, crucially, in reference to the artist, the judge, and the soothsayer.[[122]](#footnote-122) Besides the artist, who stands at the threshold of the primeval world, the world of myth, Benjamin starkly brings together the last two, both “beholding fate where invariably” they will, blindingly dictating it to humans and things, through whatever is reliably at hand.[[123]](#footnote-123) From cards to planets, but also legal words, the “empty phrases” or *dicta* that secure dominion over things. Language falls into myth, and it becomes law, or rather, because language and law exclude one another,[[124]](#footnote-124) the “mythical origin” of law.

# 3.1. Words, force, and power

Celsus, who still had at his hands not codices, but papyrus scrolls at the beginning of the second century of our era,[[125]](#footnote-125) could say confidently that to know the laws is not to attend to their words, but their force and power.[[126]](#footnote-126) In stark contrast stands, for instance, Hugo Donellus, who wrote in the middle of the sixteenth century, probably having at his table a printed edition in codex-format of the *Corpus Iuris Civilis*, that to interpret the law is to determine its *mens legis*, that is, what the words express, the force and power of words being in their signification itself.[[127]](#footnote-127) Between one and the other stands, as indicated above, the renaissance of legal science, Roman law, and Justice itself being framed as texts from then on, as the narrative image opening the *Quaestiones de iuris subtilitatibus* forcefully demonstrates. In front of the *Corpus Iuris*, the glossators, and their successors, surmounting the tools of dialectics, *divisio* and *definitio*,[[128]](#footnote-128) dedicated themselves to its enhancement, anticipating the completeness of the text as a prior condition to its understanding, that is, to enter in relation with it in terms of a whole. To quote Vismann’s words: “The utensils of the powers of literacy, the realia of the law, have been banned to a back room, and there we find that which endows the law with its aura.”[[129]](#footnote-129)

One of the most comprehensive and significative examples of the employment of these techniques, which gives, to my eyes, a striking illustration of how legal conscience emerges through the positioning of an essential distance between the interpreter and the legal word, the nearer one looks into it, the farther it looks back, is Johannes Bassianus’ *abor actionum*. Bassianus impressive attempt to organize in terms of genera and species, trunks and branches, all the dicta concerning “actio” of the *Corpus Iuris Civilis*, comprehended a grade of 180 arrays, each array being divided according to twelve letters representing each circle – from a to m –, and four marking points – from one (.) to four (::) – for its inner groups. As it seems, the tree ends up being a whole forest, something that reminds Wieacker’s apt observation about how legal concepts have the “fruitfulness of symbols.”[[130]](#footnote-130) The words themselves appear to relate with one another before the lawful gaze, calling for each other in order to consecrate one among them as a point of reference, bringing the coincidence of sense and denotation, alike a court and its emperor involved in a ceremony of coronation, through which the whole of existence can be enfeoffed, and an image of action can be outlined, the applicability of a legal norm. [[131]](#footnote-131)

An image of action is nothing but the auratic word that ceases interpretation[[132]](#footnote-132) and demands to be repeated. At the beginning of any legal reasoning stands a controversy – the *quaestio facti* –, that must be framed as stemming from the very texture of law – that is, as a *quaestio generis*, what genus, that is, what legal institute rules over the case, and then as a *quaestio nomini*. Following and augmenting Cicero’s *De Inventione*,[[133]](#footnote-133) the glossators derived an array of possibilities determining the reduction of any question of law to a question concerning its words. This means that the controversy must ultimately consist of either the absence of harmony between the wording and sense of a dictum (*ex scripto et sententia*), the apparent contradiction between distinct dicta (*ex contrariis legibus*), the ambiguity of a dictum (*ex ambiguo*), a gap in its fabric that must be resolved in reference to another legal statement (*ex ratiocinatione*), the reference of a dictum being unclear (*ex definitione*), or the dissonance between written law and equity. Finally, one is now ready to face the *quaestio actionis*, who must act, in relation to whom, and with what cause, as the performance of the *nomina iuris*[[134]](#footnote-134) earlier distinguished and defined.

As it will become clear below, such performance does not necessarily entail as its form subsumption. Gerhard Otte has convincingly contended that the glossators worked with typological, rather than classifying concepts, only the latter being of the kind that is subsumable. That notwithstanding, as Otte himself emphasizes, the Glossators’ working tools, especially the *distinctio*, weren’t disconnected from the problem of the applicability of a legal norm, rather operating to “cover” it.[[135]](#footnote-135) Indeed, by proceeding as such, instead of facing dissemination head-on, they cohere with the commitment of their time in its “overriding interest in stabilizing signification.”[[136]](#footnote-136) In Jesse Gellrich’s words, “[t]erms differ manifestly in their simultaneous secondary meaning – their consignification; but they never lose possession of the primary stem from which they derive.”[[137]](#footnote-137) As the maxim has it, *nomina sunt consequentia rerum*.[[138]](#footnote-138)

Correspondingly, there was hardly the need yet for the uncoupling between the dogmatic, systematic interpretation of the legal institutes – which, to my mind, broadly corresponds to what was pursued under the *quaestio nomini*, and that still proceeds up to this day under very similar assumptions as regards to language, being constitutive of what could be defined as the currency of law –, on the one hand, and their historical development in virtue of their application to a concrete case,[[139]](#footnote-139) on the other, a rather ingenious later, but in no circumstances the only possible solution to frame dissemination as indeterminacy, deporting its effects to a domain that, while outside of law, continues to belong to it, still akin, however, to an enfeoffment.

# 3.2. The ladder of interpretation

It does not appear inappropriate, all things considered, to frame the jurists’ *sacerdotium* as a language-cult. The language-cult, Benjamin affirms, engenders language according to the “cosmic up and down,”[[140]](#footnote-140) the movement “of that which endures as one and the same in every alteration and articulation of life’s phases,”[[141]](#footnote-141) and that has in incarnation its essential schema, as the quotation of a verse from Stefan George makes it rather clear: “*den Leib vergottet und den Gott verleibt*,” the body is deified and God is embodied. From this perspective, in Benjamin’s words, language is “solely a Jacob’s ladder with ten thousand word-rungs,”[[142]](#footnote-142) a very perspicuous allegory of what Bassianus’ *arbor* may be considered as its symbol, Benjamin’s allegory grasping rather well how the introduction of a “hieratic moment” in language effects its transformation into recitation [*Hersage*], which operates as a sovereign saying [*Herrsage*], the medium of seercraft [*Seherschaft*] and domination [*Herrschaft*].[[143]](#footnote-143) Something that can be considered, accordingly, as nothing but the apocryphal substance of law.

The image of the Jacob’s ladder is often read as a simile of both political-theological and theosophical, hierarchical and hieratic undertones. Within the Christian tradition, in some anagogical readings that harken back to Philo Judaeus, who, tellingly, discussed it in his book dedicated to the matter of dreams,[[144]](#footnote-144) the ladder was read as symbolizing the cosmological route one’s soul must do in order to fulfill its task of contemplating God. Further due to the possible allusion to it in John 1:51, it was not uncommon to interpret Christ as this very same ladder, connecting Heaven and earth, on which the angels of God ascend and descend. Obviously, both readings often were pursued together, an example of which can be found in John Crysostom’s Homilies on the Gospel of John.[[145]](#footnote-145) Foremost, its details and the circumstances of its appearance in the Book of Genesis were consistently interpreted as pivoting on the meaning and validity of dreams and prophecies,[[146]](#footnote-146) and, therefore, as insinuating the more general question on the sense of the divine words that we find, for instance, already articulated through hierarchical and hieratical motifs in Pseudo-Dionysius’ *De Coelesti Hierarchia*.[[147]](#footnote-147) That is, the question on the meaning of the Word that in reason of a process of desemanticization remains “semantically opaque, although its formal structure, referred to by the paths and the depths, is mystically attainable.”[[148]](#footnote-148)

For our purposes, what is of the greatest interest is how both connotations are constitutive of the hermeneutic pursuance of what Jesse Gellrich identifies as “the stabilization of signification.”[[149]](#footnote-149) In Daniel Boyarin’s formulation, “[t]he problem of the Son’s knowing of the Father and the question of how the Father can be made known to humans is a Christian formulation of a general fundamental problem in epistemology and language theory, and also a brilliant Christian solution to that problem.”[[150]](#footnote-150) Both problem and solution, of whether a true interpretation is possible, but also how to transmit and communicate it, in one phrase, how to reduce language to meaning, encountered in the motifs of Jacob and his ups and downs a Christian outline to the understanding of language as a whole, in the model of a “linguistic hierarchy that descends from the absolute Verbum to the lower manifestations of the written and spoken, internal and external word.”[[151]](#footnote-151)

As it is easily conceivable, such a model proved its worth especially in face of the turns of speech always threatening signification, the very concrete exegetical question on the presence and meaning of metaphor in Scripture. And to such an extent that, eventually, Christ himself came to be considered as *rerum metaphora*, the condition of possibility for all metaphors, words being, therefore, desemanticized, when they come into contact with Christ.[[152]](#footnote-152) Arguably, such a process of desemanticization can be considered as a necessary and sufficient condition to bring the state of affairs Hugh of St. Victor described in his *Didascalion*, namely, that “[t]he divine deeper meaning can never be absurd, never false. Although in the sense, as has been said, many things are found to disagree, the deeper meaning admits no contradiction, is always harmonious, always true.”[[153]](#footnote-153) To paraphrase Gregory the Great, although all words are equal by nature and birth, there is “an occult dispensation” [*dispensatio occulta*] imposing to the diversity that tends towards vice an ordinance that is lawful and divine. [*Ipsa autem diversitas, quae accessit ex vitio, recte est divinis judiciis ordinata*][[154]](#footnote-154)

A similar “occult dispensation” can be observed underpinning the construction of “the metaphysical superworld of the jurists,” in the transition from a christocratic-liturgical imagination of rulership to a late theocratic-juristical idea of government, to employ once more Ernst Kantorowicz’ vocabulary. One can clearly notice it underpinning one most impressive illustration of the relationship between interpreter and the *Corpus Iuris Civilis*, from one illustrious representative of the Glossators. Not unlike the innumerous provinces the Roman Empire has subjugated, by being submitted to the study of the arcana iuris, Azo suggests, commenting the preface of Justinian’s *Institutiones*, in his own *Summa Institutionum*, the rudest of souls, whose eyes are not yet prepared to ascend into the domains of law, although burdened by diffidence and through intensive work, can be imperially led to acquiring the knowledge of the elements that compose and govern the whole of the world.[[155]](#footnote-155)

Therefore, beyond the fact that *dispensatio*, as Agamben remarks, came to acquire much earlier the meaning of “exception” in “the field of the canon law of the Byzantine Church,” where “the theological meaning of mysterious divine praxis undertaken for the salvation of humankind coalesces with the concept of *aequitas* and *epieikeia* originating from Roman law, and comes to signify the dispensation [*dispensa*] that relieves one from a too rigid application of the canons[,]”[[156]](#footnote-156) the hierarchical and hieratical understanding of language constitutive of the force of *dispensatio* itself may be read as engendering one central assumption of legal conscience: the definability of all legal concepts, definition being understood, to rephrase Gerhard Otte’s words in accordance with the theoretical framework here advanced,[[157]](#footnote-157) but also in line with Azo’s inventive gloss, as the ascension through the clarification of words to an unambiguous meaning, an image of action, not unlike, indeed as the obverse of the absolute Verbum at the center of Biblical exegesis and Christian liturgy.

Such similitude didn’t escape the pious eye of Friedrich Carl von Savigny, who, standing before and beside the revolutionary nakedness of his time,[[158]](#footnote-158) argued, in one letter dating from 1799, that to the extent we experience the law, we do it as a factum, posited exterior to us, and demanding a certain action. And this in the very concrete sense, I would add, that “the imperative defines the proper verbal mood of law, […] insofar as the decree of the norm, otherwise void in itself, always has as its object the behavior or action of an individual external to it.”[[159]](#footnote-159) The kind of will that fulfills this command, Savigny conjectures, would happen in a way quite similar to what takes place in the Eucharist. By saying the words of institution, we do not so much perform as we are performed by the effectivity of God. As a sacrament, its value does not derive from the mere material bestowal or act, but from its very exercise as the expression of the fulfillment of the law. In the sacrament of language, the eternal comes into time and the temporal goes into eternity.[[160]](#footnote-160) The will is in us, Savigny proposes, and yet, it must harmonize with the form of a factum, in the passing of which the disposition is fixated, being transformed into an attitude. The sacrament effectuates what it signifies, a coincidence of sense and denotation, the performance of having-to-be that if absent or denied, Savigny contends, would turn any interpretation in the domain of practical reason impossible.[[161]](#footnote-161)

Legal representations, apparently in the independence of the status of their technological embeddedness,[[162]](#footnote-162) to the extent that one can already speak of the legal rendition of something *as* something, always operates rendering what is presented as enfeoffed, that is, both as the expression of a command, but also as the nature of things[[163]](#footnote-163) – something that could be captured by the form of the sacrament of Eucharist, as suggested above, but also by the image of the sovereign saying that determines its own disappearance, holding the scales of law merely as an invisible hand.[[164]](#footnote-164) At the bottom of law’s Jacob’s ladder, there is a controversy, which, confronted with the legal word, at first posited imperatively, as the sign of command, will be transferred to the textuality of the law itself, the corresponding and consequent action being, therefore, at the ladder’s end, as a sacrament, effectiveness under the sign. In other words: “[e]very law is thereto determined, being ascertained as the nature of a legal relation, therefore an intention (be it plain or composite) is pronounced, wherewith the existence of each legal relation comes to be secured against error and caprice. […] This is the commercium of interpretation, that we may define as the reconstruction of the inherent intention of the law.”[[165]](#footnote-165)

According to one register of his lectures on “legal methodology,” dating back to 1812, Savigny glossed briefly: “Interpretation – its object, legal monuments[.]”[[166]](#footnote-166) “The sources are,” he explained, “henceforth, historical monuments, which arise immediately from a certain living legal situation, and in which the [legal situation] itself is mirrored; from them alone the likewise perception [*Anschauung*] is obtained.”[[167]](#footnote-167) Such approach parallels, if not altogether informs, the way the relationship between the law and its origin is posited at the opening pages of the *System des heutigen römischen Rechts*, as Savigny states that the “invisible emergence” of law reaches back to the limits of documental history. Its “original generation,” Savigny contends, has its proof in another, not documental kind of testimony, something that is in accordance with the object’s nature, in which lies “the general, constant recognition of positive law” – i.e., the legal tradition.[[168]](#footnote-168) The legal tradition is felt like an “inner necessity,” a feeling that speaks definitively “out of the ancient pronouncement of the godly origin of right or law.”[[169]](#footnote-169)

From such a standpoint, legal documents can be considered as monuments, according to which the ancient testimonies are confirmed. As Gadamer once remarked, in the form of scripture and the holy book, the recounted primordial history emerges in a documental form, in the full sense of the word, that is, as a primordial document [*Urkunde*] in the sense that sanctioned, valid documents have.[[170]](#footnote-170) As a monument, the document acquires a symbolic character. Again, Gadamer’s observations are sound as ever: “The symbolic does not simply point towards a meaning, but rather allows that meaning to present itself. The symbolic represents meaning. In connection with this concept of representing one should think of the concept of representation in secular and canon law. Here […] what is represented is itself present in the only way available to it.”[[171]](#footnote-171)

Thus, the whole purpose of interpretation is to level and base the soil for the lifting of those majestic moral buildings, the monuments of law. To level the ground and rise a tabernacle around it conditions the stability of its reference, its meaning. It is *there*. Interpretation serves. And by serving, it should secure a safe ground. As Kant himself has written, “[t]he law must always come to be considered as the ground.” Yet, “[t]his remembrance is in such a delicate contraption, as the determination of the moral principles is, where so the tiniest mismeaning distorts the attitudes, of their gravitas.”[[172]](#footnote-172) To interpret, one must read, and reading, in its treasure hunting, opens all sorts of pathways through error and caprice, to wit, the tiniest mismeanings of catachresis and dissemination, the kinds of which could have been opened by moles, threatening the soil’s security.[[173]](#footnote-173) The ground turns out to be an abyss, the tabernacle, an empty space, the occult dispensation sustaining a word’s aura, only the positing of a figleaf, the liturgical fiction of unambiguity.

# 4. Monuments in ruins, worm-eaten manuscripts

If my argument so far holds, we may consider, just for a moment, that to speak of documents as monuments can be more than a mere metaphor, at least in what concerns the law. Would it be the case that we experience the regalia of law, its textuality, as we experience the “build-work”? In the second to last section of the artwork essay, in all its three versions, Benjamin begins its second paragraph remarking how buildings accompany humanity since its pre-history.[[174]](#footnote-174) The page, for its turn, as noted above, marks the beginning of all history. In reason of its duration, architecture’s “law of reception” would be instructive and significant to any attempt of registering the way the masses relate to works of art, as its reception takes place not through composure [*Sammlung*], which demands attentiveness, but through distraction, forcing not the congregation of aura, but its dispersion [*Zerstreuung*]. Could it be that interpretation relates to reading just as composure and dispersion contradict each other? In contrast as to how a traveler composedly visualizes a famous monument or jurists interpret books of law, but, perhaps, alike listeners hear a story,[[175]](#footnote-175) and also as readers devour pages,[[176]](#footnote-176) buildings are received “through use and through perception. Or rather: tactually and optically.”[[177]](#footnote-177) What would it mean to experience words tactually and optically? Especially, can legal words, the stuff of legal monuments, be received as such? As delineated in the introduction, to wonder about the possibility of such conspiration, in which legal words denounce the monuments they are the elements of as documents of barbarism, revealing in a tiny displacement the revolutionary nakedness of society is the goal of this last section. To do so will both demand the completion of the transposition of Benjamin’s conceptual net to the domain of the law, and, moreover, some careful historical reading to support the pertinence of the present endeavor.

When one contemplates the black letter of a textual body, obviously we are not in front of any dispersion of aura, the opposite is the case. The closer one looks, the farther the words look back, beyond anyone’s reach, governing the whole world. However, distract your eyes and hands to the margins, either of a phrase, to its tropes and shiftments, or a page, and suddenly, just as in medieval manuscripts, they suddenly appear as full of traces, fingers, and ornaments. As one medieval historian observes, “[m]argins are another world altogether. […] Margins do things to texts. They call attention, through pointing fingers and flourishes, to important passages. They are a good place to write in corrections or alternative readings, or to point out the use of a specific rhetorical figure.”[[178]](#footnote-178) In sum, what the folio page registered is that the consecration of meaning requires “the participation of different hands, different minds, different psyches. Sight and touch, corporeal presences underlie the architecture of the manuscript folio.”[[179]](#footnote-179) It must be noted, therefore, that already in manuscript culture, in which “a series of human emotions, attitudes, and states of mind or body that leave their mark on the text in ways unknown in the modern print medium,” one recognizes “a sort of mindless mechanical reproduction that comes to resemble, in its own way, the printing press itself.”[[180]](#footnote-180) The folio with its margins, as a technological device, registers and reveals, just as the camera and the psychoanalytic session,[[181]](#footnote-181) something like a textual unconscious. To paraphrase Jonathan Culler’s unprecedented account of this, the interpreter “who claims to stand outside the text and analyze it seems to fall into the text and to play out a role in its dramas. What is revealed in this transference is the *mise-en-acte de l’inconscient*, a textual unconscious[.]”[[182]](#footnote-182)

The margins of the page register how much interpretation depends on reading, just as action depends on gesture, and conscience on desire. What underlies the possibility of this register appears to be repetition as iterability, that is, as a structural possibility, in a word, reproducibility. Following a direction of reading, one Samuel Weber has incisively argued for,[[183]](#footnote-183) it can be sustained that what Derrida has written about this resonates with what Benjamin aimed to show, namely, that “these effects[,]” the effects of action, conscience, and interpretation, “do not exclude what is generally opposed to them term by term, but on the contrary presuppose it in dissymmetrical fashion, as the general space of their possibility.”[[184]](#footnote-184)

There is evidence of the awareness of both dimensions implicated in the technical reproducibility of the folio just described, and of the concern in the stabilization of signification, that is, to secure the effect of interpretation in relation to reading. In applying the late medieval version of the Aristotelian theory of causality, theologians began to distinguish between a primary efficient cause and a secondary, or instrumental efficient cause at work on Scripture, God being its author and its writers – from Moses to Paul – instruments, because “[w]here is a craftsman (*artifex*) who directs and guides a work and another who works with his hands in accordance with rules conveyed from the craftsman, the latter is not said to be the *auctor* of the work but the former.”[[185]](#footnote-185) The distinction between primary efficient cause and instrumental efficient cause was at the heart of the doctrine of the efficacy of sacraments. The priest was considered to be an “animate instrument,” whose paradoxical status appears when one considers that in the ministry of the mystery, Christ and priest, *opus operatum* and *opus operantis*, can coincide, as Agamben has noticed, “only on condition of being distinguished” and “can be distinguished from it only on condition of disappearing into it.”[[186]](#footnote-186)

The fact that the conceptual equipment supporting the doctrine of sacraments was applied first to the writing of Scripture, then to its interpretation as well, and from the Good Book downwards, as different modes and degrees, to other kinds of books, confirms how liturgical interpretation came to be. Indeed, as one reads in Chaucer’s *The Canterbury Tales*, “[g]losynge is a glorious thyng, certeyn.”[[187]](#footnote-187) In fact, as John Dagenais tells us, “the very idea that the coming of Christ ‘fulfills’ the historical events recounted in the Old Testament founds the model of ‘surplus’ or ‘gloss.’ Christ is the gloss who acts out the events already contained, in potential, in the Old Testament. He adds the ‘surplus’ to their *aliquid minus*. Without this surplus, in the view of Christian thinkers, this text is incomplete.”[[188]](#footnote-188)

Having this in mind, it is understandable that in what concerns biblical exegesis, medieval reading ended being, in Jesse Gellrich’s judgment, “determinate and fixed,” appearing “like a catechism of official instruction rather than a harvest of plurivalent possibilities on an indeterminate text.”[[189]](#footnote-189) Christ has already completed it. Thus, the interpreter must only, and, indeed, only can reenact this fulfillment, like the performance of a sacrament. Only defective texts, such as poetry and philosophy, that came into being “negatively, charged, wanting[,]” could set the stage for the moment of fulfillment and depletion, the pulse of life that is of essence to reading – and also to the decline process of law, as I will argue shortly –, leading “to understanding and action in the unfinished realm of human endeavor.”[[190]](#footnote-190) Both extremes are important if we are to assess the truth-content of one considerably impressive testimony of the place of law within this conundrum.

# 4.1. At Justinian’s table – on one rare case of legal allegoresis

The document in question consists of a prologue to a *Summa Codicis*, a commentary to the nine first books of Justinian’s *Codex*. The prologue, as an authority on medieval literature explains, a writing scheme that was transposed from literature to theology – but also, as it is the case at hand, to law – between the eleventh and the twelfth centuries serves “as an introduction to, and a preparation for, the *explication de texte* which followed.” In this preparation, “the commentator attempted to get to the heart of the problems of interpretation raised by his authoritative text, summarizing the methods of analysis which would be used throughout the commentary, and outlining the doctrinal issues to be considered in the course of the analysis.” Moreover, the prologue allowed the interpreter an occasion “to reiterate those received interpretations of the text which seemed most appropriate to him, and to amplify such traditional doctrine with some ideas of his own.”[[191]](#footnote-191)

Having in mind such usages and practices, one can appreciate Placentinus’ decision, whose inclination towards poetical expression has already been demonstrated by Hermann Kantorowicz,[[192]](#footnote-192) of exploring the medium of the artistic prologue in full allegorical mode.[[193]](#footnote-193) In comparison to the preface of his master, Rogerius, to his own *Summa Codicis*, Placentinus’ choices appear as even more striking. Rogerius, for his part, employs the form of the artistic prologue in clear traditional fashion.[[194]](#footnote-194) He identifies the work to be commented, bringing it to circumscription through the identification of its four causes, and identifying the proper place of his own commentary, in relation to the other kinds of interpretation available, those of the prince, of custom, and of the judge, and the types of questions each kind of interpretation is more suited to settle. He concludes by emphasizing that notwithstanding the manifold of interpretations, the final cause, of either the law, the *Codex,* or of its interpretations, is the *utilitas omnium communis*,[[195]](#footnote-195) his treatise being, therefore, also on its service.

Once Placentinus thought that it would be sufficient to perfect the *Summa* of Rogerius. Yet, the jurist tells us, he came to conclude that it is impossible to consummate what one has not begun. As we just saw, this is, nevertheless, precisely, the purpose of gloss and commentary. Thus, what to say of the commented work, Justinian’s *Codex*? Unfortunately, as eagerly as one attempts, with a multiplicity of words, to hold the attention of those who are legally insatiable for justice, much easier is to gain their scorn, as they hardly, if ever, leave the “golden table” of *domini Iustiniani*, who satiates those that sit with him and that noddingly ruminate to what is ministered. His garden is fertile, replete with vineyards, his storehouse, full. From the compression of his grapes in his wine cellar, it is Placentinus' task, however, to produce and mature a wine that is, at the same time, strong and sweet, old and new. To do so, however, is to treat of sacred words, and one must clean *his* hands[[196]](#footnote-196) accordingly if one wishes to serve their exposure.

One must notice how the liturgical motif, – which, again, confirms how legal interpretation is underpinned by a liturgical signature – the cleansing of hands in order to deal with sacred words, stands side-by-side with the scene of the feast. As Mikhail Bakhtin has masterfully noticed in his classical study on Rabelais, “[a] carnival atmosphere reigned on days when mysteries and *soties* were produced.” Indeed, this atmosphere was so widespread that it “pervaded such agricultural feasts as the harvesting of grapes (*vendange*) which was celebrated also in the city.”[[197]](#footnote-197) The medieval feast is, therefore, Janus-faced: “[i]ts official, ecclesiastical face was turned to the past and sanctioned the existing order, but the face of the people of the marketplace looked into the future and laughed, attending the funeral of the past and present. The marketplace feast opposed the protective, timeless stability, the unchanging established order, and ideology, and stressed the element of change and renewal.”[[198]](#footnote-198)

Evidently, the situation-image Placentinus puts forward in his preface, whose professional name derived from his city of birth, Piacenza, in contrast to the customary image of action of legal reasoning,[[199]](#footnote-199) refers to the harvest of grapes, and to the life of the marketplace. Why Placentinus decided to reconstruct the ambivalence of the feast at the opening pages of his commentary to Justinian’s *Codex*? Instead of having his deeds at the center of the picture, Justinian appears surrounded by those who are thirst for justice, in a situation where he clearly is not in imperial control, but must perform as if that was the case. For this reason, he continuously serves wine to those around him, perhaps in the hope of escaping being eaten, in outstanding grotesque-realistic fashion. One tiny displacement, of the kind that would make the wine spill, and the crowd could be awakened of such spell. It does not appear absurd to suggest that Placentinus, whose task is to regenerate the wine through his readings, – regeneration being in itself another constant motif of the feast, according to Bakhtin[[200]](#footnote-200) – would be delighted to miss the Emperor’s cup, leaving him to handle it empty to the next peasant – because, who, if not the peasants, as Kafka’s *Vor dem Gesetz* shows forcefully, are thirst for justice?

Francesco Calasso has convincingly shown how “political sentiments” played a decisive part in the glosses and comments of Placentinus, especially in what concerns the dicta that were posited over and framed a crucial dimension of the struggles between Frederick Barbarossa and the Lombardian communes.[[201]](#footnote-201) Of notice is, for example, his reading of Ulpian’s *quod principi placuit legis habet vigorem*.[[202]](#footnote-202) Placentinus argued that as what belongs to the prince does it in a vicarious, that is, transferred way – in allusion, we may suppose, to the *lex regia*,[[203]](#footnote-203) – his judgments, when admissible, are not, however, equal to the law. In fact, the law commands his desire[[204]](#footnote-204) – *quod* being read, therefore, not as declined in the accusative, but in the nominative case, making room for a slightly misreading of the play between the dative (*principi*) and the genitive (*legis*), a very evocative example of how tiny the displacement can be. In the place of “what pleases the prince has the force of law,” Placentinus is emphatically reading “that which pleases the prince, the law has force over it.”

Be that as it may, such struggle constitutes another part of the very complex drama surrounding the communes’ “sleepwalking” emergence – to borrow Chris Wickham’s expression[[205]](#footnote-205) – between emperors and popes briefly discussed above in reference to Saint Bernard’s *De consideratione*. As Placentinus’ work suggests, here as well, the garb of legal words was thoroughly operative. For instance, in the Diet of Roncaglia in 1158, Frederick Barbarossa’s bold maneuver to either impose or recover the imperial domain over the Italian city-states, the ideal image of the *renovatio* and the auratic words of Roman law were, if not decisive, as the jury appears to be still out on this,[[206]](#footnote-206) at least formative of the event’s documental registers.[[207]](#footnote-207) In fact, Placentinus’ peers, the “miserable Bolognese,” in his own words,[[208]](#footnote-208) apparently attended, conceding their learned stamp to Barbarossa’s tax and jurisdictional ambitions vis-a-vis the *libertas* of the communes, which Placentinus expressly endowed with claims of ancestry and eternity.[[209]](#footnote-209)

Although a more detailed discussion of this and the succeeding events, leading up to the constitutional aftermath of the Battle of Legnano (1176) in the Peace of Constance, is beyond the scope of this contribution, it appears to me as appropriate to describe this chain of events that goes from Roncaglia to Constance as a “clash of legitimacies,”[[210]](#footnote-210) implicating the “closest collision” between transience and eternity, the temporal hallmark, according to Benjamin, of an epoch’s inclination towards allegory as a mode of expression. Indeed, Benjamin underscored that notwithstanding the experience of the “most evident devastation,” as the kind one has inescapably before his eyes in face of war, one learns more about the transience of things, caring to redeem them in the eternal, something that has in the allegorical one of its “most strong motifs,” when change confronts those “legal norms endowed with a claim of the eternal.” It is there, it seems, in shifts of time as these that change becomes visibly consummated, that real time comes in through the smallest of shapes. There, Benjamin concludes, “where transience and eternity closest collide together[,]” “allegory is most permanently located[.]”[[211]](#footnote-211)

In general, and in line with the intuition behind Benjamin’s consideration of late-antiquity and Christian allegory,[[212]](#footnote-212) *allegoresis* was, to recall the already mentioned Hugh of St. Victor, the *aedificium scripturae* of Sacred Scripture.[[213]](#footnote-213) It secured the soil for the edification of the meaning of the text, understood as a monument. Used as such, *in factis*, as Dante designated the allegory of theologians,[[214]](#footnote-214) allegory is hardly more than a convention of expression, a *ratio dificilis*, in contrast to a *ratio facilis*. However, as the allegory of poets, allegory *in verbis*, allegories appear as what Benjamin contended they are, that is, expressions of convention,[[215]](#footnote-215) of ways of signifying, and, most important, of how convention fails, the rebus of failed signifiers, to slightly paraphrase a perspicuous commentator.[[216]](#footnote-216) In the words of another, whereas the sacred exegetes of the Middle Ages, jurists and theologues alike – in fact, both Christ and Emperor were considered to be *lex animata*, the living law[[217]](#footnote-217) –, “compromised the contingency of the mode to the interests of formal conventions about the inside and outside of the text,” for the sake of the stabilization of signification, “medieval poets felt fewer allegiances to formalities of style and could risk treating the ‘letter alone’ for all it was worth.” In doing so, Jesse Gellrich argues further, instead of assuming the literal sense as deceptive, “insofar as it stem[med] from the etymological connection between *textus* (in the sense of ‘woven cloth’) and *the tunicas pelliceas* (or ‘animal skins’) and *folia ficus* (‘fig leaves’) sewn together by Adam and Eve to hide the shame of their deception after eating the forbidden fruit[,]” the poets could focus entirely on “the surface texture of the text,” the materiality of language in the sense of dissemination, the shiftments of the figleaf, “the randomness and accidence of signifying that marks the dislocations between container and contained, confession and confidentiality, seriousness and humor[.]”[[218]](#footnote-218)

I believe that both the prologue of his *Summa Codicis* and his interpretation of Ulpian’s dictum are sufficient to show how Placentinus meaningfully performed, even if not necessarily always, his legal office allegorically. As I will attempt to formalize below, he was inclined to do so in reason of the decline process of law that had its full contraption in the “clash of legitimacies” encompassing Emperor, Pope, and communes, a decline process that is tantamount to a crisis of aura. The revolutionary nakedness of society laid bare. In circumstances such as these, the figleaf of aura posits itself most evidently in hope of securing a continuity between past and present, a regularity that is crucial for the preservation of the posited legal order. The past is, therefore, felt as recent, whereas its symbols, in their fruitfulness, are distant, and must be held as such. Saint Bernard’s skillful gaze gives us a clear testimony of this.

Conversely, the experience of allegory, as Benjamin has noted, holding as it does to the debris – as a child does to her mother’s dress, the nearest as she can –, is “properly that of an eternal pastness.”[[219]](#footnote-219) In other words, the past is felt as distant, the *translatio imperii* is interrupted. Second, in doing so, and being read as such, these two examples confirm the assumptions developed in the preceding sections concerning how the mechanism of aura operates in the domain of law. Placentinus reads, and in his reading of the legal monuments, he exhibits and expresses the convention supporting the court of law and the rites of its words, that is, the liturgical signature engendering the outline of legal interpretation as a crucial mode of presentation of a body politic in the West. In these two registers, by reading these documents of culture allegorically, by holding near to their debris, Placentinus reads them according to their exhibition-value, instead of paying attention to their cult-value, a well-known distinction that it will be also dealt with below.

# 4.2. The decay of aura and the decline process of law

Much has been written about Benjamin’s theory of allegory. Again, as in what concerns the concept of aura, I’m not aware of any contribution that had paid attention to how definitively it is connected with what, to employ the words of *Zur Kritik der Gewalt*, duly discussed in this section by way of conclusion, may be defined as the decline process of law. Obviously, there are many contributions that intuitively hint at this connection, alluding to the conceptual web linking law, aura, and allegory, and I’ve been especially indebted to them throughout this text. That notwithstanding, never, as comprehensive as my scrutiny of the literature goes, this relation was brought to the forefront. Arguably, this can be done only after thoroughly discussing how the law attains its aura, and how it comes to be subjected to decay.

In light of the preceding discussion, we may state that law must produce the feeling of necessity, the authority of its signifiers. Its text must be felt as fulfilled, the interpretation as determined to disappear, nurturing the sovereign word. Hence, interpretation and commentary may well be the quintessential form of what Benjamin designated in the same essay as *rechtserhaltende Gewalt*, law-preserving violence. However, as Cornelia Vismann has written on the very last page of an essay dedicated to Benjamin and Kraus, the form of commentary is the form that creates the authority of the law, and “is, therefore, [the] only capable [form] of abolishing it.”[[220]](#footnote-220) To create authority is to represent it, in the sense highlighted above through Hans-Georg Gadamer’s words, that is, in the sense of *repraesentatio*. As Benjamin himself carefully phrased it, the law-positing violence [*rechtsetzende Gewalt*] is represented [*repräsentiert*] in the law-preserving one. In representing it in its duration, nevertheless, by suppressing the hostile counter-violences, the law-preserving violence ends up indirectly weakening the law-positing violence. This would be the “law of oscillation” [*Schwankungsgesetz*] governing the formation of violence either as law-positing or as law-preserving violence.[[221]](#footnote-221) In Hamacher’s elucidative explanation: “Every positing and every law is thus subjected to a more powerful law that demands that it exposes itself to another positing, and another law. This more powerful law is the law of historical change and internal structural transformation[.]” Historical duration itself would be, Hamacher further remarks, “a category of positing and its decay.”[[222]](#footnote-222) To read an older Benjamin against his younger self, impressive as this is, it would remain to be shown how this law of oscillation, real time, comes in through the smallest of shapes, that is, how the decline process of law takes place, not only ideally, but concretely.

To quote Benjamin’s words, admittedly in a somewhat decontextualized fashion – perpetrating the transposition we have been rehearsing, from the domain of art to that of law –, the fact that the inclination of an epoch to allegory as a mode of expression relates to the status of its assumed eternal legal norms “says something about how the magnitude of the auratic saturation of human perception has been subjected to oscillations [*Schwankungen*] in the course of history.” Such oscillations, he admits, need much clarification, the hypothesis being that an era, an epoch inclined to allegorical expression “has experienced a crisis of aura.”[[223]](#footnote-223)

Arguably, the preceding sections did nothing but this – it both contributed to this clarification, and to show how “real time” comes in. Would there be any shape smaller than a letter, a point, a comma, in sum, a trace? The dialectics between law-positing and law-preserving violence is inscribed in the materiality of language itself. From this perspective, law-preserving violence is, essentially, the enterprise of stabilizing signification, to contain, reframe, and even cover dissemination. The image of the figleaf allows one to grasp how this covering happens both temporally and linguistically, and also what is the political purpose of this process. The figleaf reveals the outline of political embodiment because, through the suppression of dissemination, it entails the sensation of permanence which is the kernel for the self-presentation of any political community.[[224]](#footnote-224) As it happens, the covering itself is not subjected to its own articulation, and in critical circumstances, the discontinuity between law-preserving violence and law-positing violence, the failure of convention, may appear. Permanence appears as duration. Here, the demise of the status of legal norms, on the one hand, and what Benjamin annotated as the crisis of aura, on the other, intertwine, as indicated above. Indeed, it may be said that their entanglement is inscribed in Benjamin’s felicitous expression itself, *Schwankungsgesetz*.

Infuriating as his reading of Benjamin can be for some, Derrida got that much right: “It belongs to the structure of fundamental violence that it calls for the repetition of itself and founds what ought to be conserved, conservable, promised to heritage and tradition, to be shared.”[[225]](#footnote-225) One could even venture to say that law-positing violence, its moments being so terrifying that “in their very violence” they present themselves as “uninterpretable or indecipherable[,]”[[226]](#footnote-226) becomes ascribable only in reason of a “retrojective projection” carried out by law-preserving violence.[[227]](#footnote-227) Commentary consecrates its text of reference, legal action, the *nomina iuris* under whose authority they are performed. In a word, law-preserving violence conditions the reception of law-positing violence. This reception, as suggested above, does not deviate that much from the canon of architecture, whose reception is allegorically torn between collection and dispersion,[[228]](#footnote-228) to the extent that one can talk of legal documents as monuments in a rather unmetaphorical sense. Therefore, the law of oscillation determines an oscillation within law-preserving violence itself, an oscillation that could be described making use of the distinction between cult-value and exhibition-value, semblance and play, and, why not, interpretation and reading.

In the artwork essay, Benjamin introduces this polarity, to be precise, the confrontation between these two poles, as a reading key to the history of art. First, consider that in the second version of the essay, this discussion comes just after what Peter Fenves characterizes as an “underlined but unexplained passage,” the awkwardness of which would have remained unexplained. In the passage in question, Benjamin contends that “[a]t the very moment in which the criterion of genuineness fails to apply to the production of art, the entire social function of art rolls over. Into the place of its founding in ritual, its founding in another praxis has to step: namely, its founding in politics.”[[229]](#footnote-229) It should be noted that what is perfectly translated as “genuineness” within the domain of art is the word *Echtheit*. *Echtheit* is said of a writing, of a painting, but also of the ethical law, in its purity and *Echtheit*. Thus, *Echtheit* means also *auctoritas* and *integritas*. Thus, we may be allowed to rewrite Benjamin’s statement. At the very moment in which the criterion of authority fails to apply to the production of law, the entire social function of law rolls over. Into the place of its founding in ritual, its founding in another praxis has to step: namely, its founding in politics.[[230]](#footnote-230)

Second, having in mind the rewriting just proposed, observe that cult-value derives from the artistic practices being buried in the wombs of ritual, whereas their emancipation from these wombs creates the opportunity for the exhibition of their products. This exhibition is founded, we can suppose, in politics. Moreover, the passage between both poles is described by Benjamin in terms of a displacement [*Verschiebung*], the quantitative shiftments between one and the other corresponding to the breaking of a qualitative transformation in the nature of art,[[231]](#footnote-231) and hence, if my attempt to transpose his conceptual constellation has been successful, in the nature of law, between document as a monument and, say, document as a coloring book. The law which is not an object of cult, that is not enacted as a magical, liturgical instrument, but only is an object of exhibition, this is the law as merely an object of study and play.

Of course, there is considerable and very insightful literature about and for a minor jurisprudence that rather than worshiping the law, plays with it.[[232]](#footnote-232) Centuries before one began to write about a minor jurisprudence, however, in admittedly ambivalent ways, the masses had indulged themselves in parodying archaic juridical institutions in their feasts,[[233]](#footnote-233) much of their repertoire of situation-images being mimed in the images of action of officialdom. Placentinus’ prologue appears to me as clear evidence of this. The emergence of these “spaces of play,” Benjamin suggests in a footnote, in which he equates cult-value and exhibition-value with semblance and play, is essentially profited from atrophy of semblance, and, accordingly, the decay of aura.[[234]](#footnote-234) Suddenly, the props, garbs, and words of law become dispersed. In their saturation, one can dance with them, instead of just following their procession. One writes in the margins as if the book of law was a coloring book,[[235]](#footnote-235) one inscribes obscenities on the temple’s walls. In doing so, however, one still contributes to its preservation, even if leading it towards its untimely decay. The mise-en-sens, the horizon of meaning is torn apart, but the mise-en-scène is merely inverted. If Gyorgy Markus is correct in stating that one of Benjamin’s most positive offerings to the present is his idea of a dialectic of ambiguity,[[236]](#footnote-236) something that Benjamin came to develop in consideration to the conundrum of aura, by employing this conceptual web to grasp the field of law, one can investigate how its sustenance, how it is sensed, perceived, and received is subjected to the law of oscillation, how, eventually, even its shape may crumble. The present contribution hoped to have offered, for its turn, something to the armature of future investigations dedicated to the debris of law.

1. I’m most thankful to Carolina Moulin for uncountable readings and invaluable comments on multiple versions of this piece. Many thanks should go to Ari Marcelo Solon also. His highly heterodox teaching and scholarship prompted me to many of the themes, sources, and names constitutive of this article. Therefore, I would like to dedicate it to Professor Solon's 60th birthday.

   Hence, amongst the massive literature available, I found the following studies particularly helpful: Josef Fürnkäs, Aura, in *Benjamins Begriffe*, v. 1, ed. Michael Opitz and Erdmut Wizisla, Frankfurt: Suhrkamp, 2000; Robert Kaufman, Aura, Still, *October*, v. 99, p. 45-80, 2002; Miriam Hansen, Benjamin’s Aura, *Critical Inquiry*, v. 34, n. 2, p. 336-375, 2008; Peter Zusi, Vanishing points: Walter Benjamin and Karel Teige on the liquidations of aura, *The Modern Language Review*, v. 108, n. 2, p. 368-395, 2013. [↑](#footnote-ref-1)
2. Harold Berman is probably the first to articulate this interpretation, in his seminal *Law and Revolution*, Cambridge: Harvard University Press, 1983; Berman’s narrative was consistently received by sociologists, legal theorists, and legal historians, especially those who share an inclination towards the grammar of social system’s theory, including Luhmann himself, see Niklas Luhmann, *Das Recht der Gesellschaft*, Frankfurt: Suhrkamp, 1995; Hauke Brunkhorst*, Critical Theory of Legal Revolutions: Evolutionary perspectives*, New York: Bloomsbury, 2014; Nils Jansen, *Rechtswissenschaft und Rechtssystem: Sieben Thesen zur Positivierung des Rechts und zur Differenzierung von Recht und Rechtswissenschaft*, Baden: Nomos, 2018. [↑](#footnote-ref-2)
3. Walter Benjamin, Das Passagen-Werk, in *Gesammelte Schriften* v. 5, ed. Rolf Tiedemann, Frankfurt: Suhrkamp, 1991, p. 130 [B 9, 1] [B 9, 2], and 457 [J 76, 1]. [↑](#footnote-ref-3)
4. For two articulations of what could be considered as the “vanishing point” to which this research offers some of the historical background, see Ingeborg Maus’ seminal *Justiz als gesellschaftliches Über-Ich: Zur Position der Rechtsprechung in der Demokratie*, Frankfurt: Suhrkamp, 2018; and Miguel Vatter, Liberal Governmentality and the Political Theology of Constitutionalism, in *Sovereignty in Action*, ed. Bas Leijssenaar and Neil Walker, Cambridge: Cambridge University Press, 2019. [↑](#footnote-ref-4)
5. Walter Benjamin, Das Kunstwerk im Zeitalter seiner technischen Reproduzierbarkeit, in *Gesammelte Schriften*, v. 7, ed. Rolf Tiedemann and Hermann Schweppenhäuser, Frankfurt: Suhrkamp, 1991, p. 355. Except when indicated, all translations are my own. [↑](#footnote-ref-5)
6. Id., Über einige Motive bei Baudelaire, in *Gesammelte Schriften*, v. 1, ed. Rolf Tiedemann and Hermann Schweppenhäuser, Frankfurt: Suhrkamp, 1991, p. 646-647, and the asterisk footnote on page 647. [↑](#footnote-ref-6)
7. „BELEHNEN“, Deutsches Wörterbuch von Jacob Grimm und Wilhelm Grimm, digitalisierte Fassung im Wörterbuchnetz des Trier Center for Digital Humanities, Version 01/21, <https://www.woerterbuchnetz.de/DWB?lemid=B03670>, abgerufen am 16.05.2021. [↑](#footnote-ref-7)
8. Martin Heidegger, Der Ursprung des Kunstwerkes, in Holzwege, *Gesamtausgabe*, v. 5, Frankfurt: Vittorio Klostermann, 1977, p. 19. [↑](#footnote-ref-8)
9. Id., *Sein und Zeit*, 11 ed., Tübingen: Max Niemeyer, 1967, p. 83ff. [↑](#footnote-ref-9)
10. Although such a confrontation between Benjamin and Heidegger is way beyond the scope of this piece, to consider the fundamental difference deriving from these respective choices, to which side of the relation one should focus, either the king’s hand or the peasant’s shoes, – although one can read Benjamin as arguing that one can only apperceive the latter through the casual observation [*beiläufigen Bemerken*] and, therefore, dissipation of the first, rather than through its strained attention [*gespannten Aufmerken*] – appears to me as crucial for articulating a possible answer to the admittedly unsurpassable question of the aestheticizing of the political. On the “aestheticizing of the political,” see Peter Fenves, Is there an answer to the aestheticizing of the political? in *Walter Benjamin and Art*, ed. Andrew Benjamin, New York: Bloomsbury, 2005; on Heidegger and Benjamin, see the contributions collected in *Sparks will fly: Benjamin and Heidegger*, ed. Andrew Benjamin and Dimitris Vardoulakis, New York: SUNY Press, 2015. [↑](#footnote-ref-10)
11. For a phenomenological-based analysis of the emergence of legal orders in terms of the establishment of the distinction between the familiar and the strange, see Hans Lindahl, Gadamer, Dialectic and Revolution: Confronting Kelsen and Gadamer on Legal Interpretation, *Cardozo Law Review*, v. 24, n. 2, p. 769-798, 2003; *Fault Lines of Globalization: Legal Order and the Politics of A-Legality*, Oxford: Oxford University Press, 2013. [↑](#footnote-ref-11)
12. David L. Marshall, The intrication of political and rhetorical inquiry in Walter Benjamin, *History of Political Thought*, v. 34, n. 4, p. 702-737, 2013, p. 716. [↑](#footnote-ref-12)
13. Ibid., p. 716-717. [↑](#footnote-ref-13)
14. Peter Goodrich, *Legal Emblems and the Art of Law:* Obiter depicta *as the Vision of Governance*, Cambridge: Cambridge University Press, 2014, p. 25. [↑](#footnote-ref-14)
15. Ibid., p. 133. [↑](#footnote-ref-15)
16. Ibid., p. 25. [↑](#footnote-ref-16)
17. Peter Fenves, (n. 10) p. 64. [↑](#footnote-ref-17)
18. Gyorgy Markus, Walter Benjamin or: The Commodity as Phantasmagoria, *New German Critique*, n. 83, p. 3-42, 2001, p. 31. [↑](#footnote-ref-18)
19. Benjamin, (n. 6). [↑](#footnote-ref-19)
20. Notwithstanding the proximity he pointed out, Gyorgy Markus emphasized how the fetishist-character of commodities “[a]t the most elemental level […] correctly orient the isolated individual in his/her economic activities, so that they are pragmatically effective. Precisely for this reason, they are also constantly confirmed and reinforced by the life-experiences these individuals gain in the overall process of reproduction[.]” Whereas Benjamin’s notions such as “phantasmagoria,” “dream-image,” and “wish-symbol,” all of which appear related to the conundrum we have in consideration, as they would appear to hint at the understanding of commodity as “objectified social sign,” would be hardly reconcilable with Marx, Markus, (n. 18) p. 24-25. [↑](#footnote-ref-20)
21. I’m paraphrasing, and, admittedly, violently reading Marx, along lines that appear to me to resemble Benjamin’s own approach to these passages, *cf*. Karl Marx, Das Kapital. Kritik der politischen Ökonomie, Erster Band, Hamburg 1890, in *Karl Marx Friedrich Engels Gesamtausgabe* v. 10, ed. Internationalen Marx-Engles-Stiftung, Berlin: Dietz, 1991, p. 73; for one example of Benjamin’s radical, allegorical readings of Marx, see Benjamin, (n. 3) p. 497 [K 2 a, 6]. [↑](#footnote-ref-21)
22. Jacques Derrida, The Purveyor of Truth, transl. Willis Domingo et al, *Yale French Studies*, n. 52, p. 31-113, 1975, p. 52-53. [↑](#footnote-ref-22)
23. “A rule is what briefly narrates what a thing is about. The law may not be derived out of the rule, but a rule must arise out of the law as it is,” *The Digest of Justinian*, v. 4, ed. Alan Watson, Philadelphia: University of Pennsylvania Press, 1985, p. 470. [↑](#footnote-ref-23)
24. Maximilian Herberger, *Dogmatik: zur Geschichte von Begriff und Methode in Medizin und Jurisprudenz*, Frankfurt: Vittorio Klostermann, 1918, p. 69-70. [↑](#footnote-ref-24)
25. *Cf*. Peter Fenves, Testing Right – Lying in view of Justice, *Cardozo Law Review*, v. 13, p. 1081-1113, 1991, p. 1104. [↑](#footnote-ref-25)
26. Franz Wieacker, Vom römischen Juristen, *Zeitschrift für die gesamte Staatswissenschaft / Journal of Institutional and Theoretical Economics*, v. 99, n. 3, p. 440-463, 1939, p. 454. [↑](#footnote-ref-26)
27. Ibid., p. 443. [↑](#footnote-ref-27)
28. 1 Corinthians 13, 12. [↑](#footnote-ref-28)
29. Goodrich, (n. 14) p. 133. [↑](#footnote-ref-29)
30. Francesco Calasso, *Medio Evo del Diritto*, v. 1, Milan: Giuffre, 1954, p. 537ff; *Studies in the Glossators of the Roman Law*, ed. Hermann Kantorowicz, Cambridge: Cambridge University Press, 1938, p. 181ff. [↑](#footnote-ref-30)
31. *Cf*. Hermann Kantorowicz, The Poetical Sermon of a Medieval Jurist: Placentinus and His ‘Sermo de Legibus’, *Journal of the Warburg Institute*, v. 2, n. 1, p. 22-41, 1938. [↑](#footnote-ref-31)
32. *Questiones de iuris subtilitatibus des Irnerius*, ed. Hermann Fitting, Berlin : J. Guttentag, 1894, p. 53. Fitting’s attribution of the work to Irnerius, as the title of his choice indicates, has been later debunked, although its authorship remains under debate. Kantorowicz first argued for Placentinus, see Kantorowicz, (n. 30). Calasso, for his turn, proposed that the book should be designated to Azo, see Francesco Calasso, *I Glossatori e la teoria della sovranita*, 2. ed, Milan: Giuffre, 1951. More recently, André Gouron sustained that it came from a “Parisian master,” Alberic, Les « Quaestiones de juris subtilitatibus » : une œuvre du maître parisien Albéric, *Revue Historique*, n. 618, p. 343-362, 2001. [↑](#footnote-ref-32)
33. Benjamin, (n. 6). [↑](#footnote-ref-33)
34. Idem. [↑](#footnote-ref-34)
35. On the importance and sense of the detail in Benjamin, see Samuel Weber, God and the Devil – in Detail, in *Benjamin’s -Abilities*, Cambridge: Harvard University Press, 2008. [↑](#footnote-ref-35)
36. Benjamin (n. 3), p. 1037-1038 [Q°, 21] [“The real time enters in the dialectical image not as a natural magnitude – even less as a psychological one – but as its smallest shapes.”] [↑](#footnote-ref-36)
37. As Peter Fenves had the opportunity to call attention to, the *Blatt*, a page, but also a leaf, as we will discuss briefly, occupies a central place in the whole Kantian philosophy of history. As the folio of a newspaper, in which “the learned public” [*gelehrtes Publikum*] reads about the uprisings in a neighbor nation, the *Blatt* transforms tragic occurrences [*Begebenheiten*] into something that properly appears, revealing oneself, – and, we may add, attaining a certain aura – that is, into an event [*Eräugnen*] indicative of humanity’s progress, Peter Fenves, *A Peculiar Fate: Metaphysics and World-History in Kant*, Ithaca: Cornell University Press, 1991, p. 134ff. The *Blatt* as a medium conditions the possibility of transforming “everything into auto-affection, [of] assimilat[ing] everything by idealizing it within interiority,” Jacques Derrida, Economimesis, transl. by Richard Klein, Diacritics, v. 11, n. 2, p. 2-25, 1981, p. 16. [↑](#footnote-ref-37)
38. Just as the pages of *Die Fackel*, Karl Kraus’ infamous journal, which, according to Benjamin, “are full of war and pestilence, of mudercries and pain, of fire and water calamities, everywhere disseminated by the ‘Newest Zeitung.’ A Zeitung in this sense, in the meaning that the word has in Shakespeare, is the ‘Fackel.’ Full of betrayal, earthquakes, poison and fire out of the mundus intelligibilis,” Walter Benjamin, Karl Kraus, in *Gesammelte Schriften*, v. 2, ed. Rolf Tiedemann and Hermann Schweppenhäuser, Frankfurt: Suhrkamp, 1991, p. 355. Arguably, what *Zeitung* means in Shakespeare relates to what it means, for instance, in Luther and Melanchthon, ripeness, what rains from heaven and it is fruitful, or rather, the lights that will be in the feast of heaven, beings to sign [*zeichen*] and ripe [*zeittungen*], as allegory relates to symbol and metaphor. In sum, a word that means the profanation of the “beautiful fruit broken off from the tree,” of the dissipation that comes to being with the decay of aura. On *Zeitung*, before it came to designate newspapers, see „ZEITUNG, f.“, Deutsches Wörterbuch von Jacob Grimm und Wilhelm Grimm, digitalisierte Fassung im Wörterbuchnetz des Trier Center for Digital Humanities, Version 01/21, <https://www.woerterbuchnetz.de/DWB?lemid=Z03956>, abgerufen am 01.04.2021. [↑](#footnote-ref-38)
39. Sigmund Freud, *Die Traumdeutung*, Studienausgabe, v. 2, Frankfurt: Fischer, 1982, p. 566. [↑](#footnote-ref-39)
40. Immanuel Kant, *Kritik der Urteilskraft*, 4. ed., ed. Karl Vorländer, Leipzig: Felix Meiner, 1913, p. 171. [↑](#footnote-ref-40)
41. Benjamin, (n. 6) p. 644. [↑](#footnote-ref-41)
42. Freud, (n. 39) p. 565. [↑](#footnote-ref-42)
43. Pierre Legendre, Parenthesis: The Text without Subject, in *Law and the Unconscious: A Legendre Reader*, ed. Peter Goodrich, transl. Peter Goodrich et al, London: Palgrave Macmillan, 1997, p. 67. [↑](#footnote-ref-43)
44. Freud, (n. 39) p. 565-566. [↑](#footnote-ref-44)
45. Ludwig Klages, one of Walter Benjamin’s sources to the thinking of aura, recurrently employed *Nimbus*, which can be translated as halo, as his term of art to designate aura. In Klages’ words, “[t]he image of the demoniac soul is in *Nimbus*, that is, in an illuminating cloud which encircles it; about which we, today still, speak at times of the ‘halo’ of a personality and, more clearly, of a “illuminating beauty,” Ludwig Klages, *L’anima e lo spirito*. Transl. to the Italian by Remo Cantoni, Milan: Meltemi editore, 2019, p. 186. See also Giampiero Moretti, Nimbus. Nota sulla questione dell’<<aura>> in Ludwig Klages. *Rivista di estetica*, v. 52, p. 149-159, 2013. In *La comunità che viene*, Giorgio Agamben dedicates one entire chapter to the notion of “halo.” The halo is, according to him, and in reference to a short treatise on halos by Saint Thomas, “this supplement which adds itself to perfection – something like a vibration of that which is perfect, only an irradiation of itself off its limits. […] The *halo* is not a *quid*, a property or an essence that adds itself to beatitude: It is an absolutely inessential supplement,” *La comunità che viene*, Torino: Giuliu Einaudi, 1990, p. 37-38. Importantly, Agamben opens this chapter discussing a parable on the messianic kingdom shared between Gershon Scholem, Walter Benjamin, and Ernst Bloch, about how a rabbi, “a true cabalist,” used to say that to bring the kingdom of peace, one wouldn’t need to destroy everything, and to begin anew, but only “to displace a little” [*basta spostare solo un pochino*, Agamben rendition of Bloch’s *ein wenig zu verrücken*] this or that, ibid., p. 36; Ernst Bloch, *Spurren*, Frankfurt: Suhrkamp, 1985, p. 203. As it already should be clear, displacement is a key-word to grasp the rapport between figleaf and aura, around which this conceptual effort rests upon. [↑](#footnote-ref-45)
46. Manfred Schneider, The Dream of Transparency: Aquinas, Rousseau, Sartre, in *Transparency, society and subjectivity: Critical perspectives*, ed. E. Alloa and D. Thomä, London: Palgrave Macmillan, 2018, p. 89. [↑](#footnote-ref-46)
47. *Cf*. Fürnkäs, (n. 1). [↑](#footnote-ref-47)
48. Walter Benjamin, Protokolle zu Drogenversuchen, in *Gesammelte Schriften*, v. 6, ed. Rolf Tiedemann and Hermann Schweppenhäuser, Frankfurt: Suhrkamp, 1991, p. 588. [↑](#footnote-ref-48)
49. Kant, (n. 40) p. 65ff. [↑](#footnote-ref-49)
50. Samuel Weber, *Mass mediauras: form technics media*, ed. Alan Cholodenko, Stanford: Stanford University Press, 1996, p. 23-24. [↑](#footnote-ref-50)
51. See Richard Klein, Kant’s sunshine, *Diacritics*, v. 11, n. 2, p. 26-41, 1981. [↑](#footnote-ref-51)
52. Weber, (n. 50) p. 24. [↑](#footnote-ref-52)
53. On this parallelism between art and law, in terms of distinct trajectories, see Johan van der Walt, Law, Utopia, Event: A Constellation of Two Trajectories, in *Law and the Utopian Imagination*, ed. Austin Sarat, Lawrence Douglas, and Martha Merill Umphrey, Stanford: Stanford University Press, 2014, but also Thanos Zartaloudis, Ars Inventio, Poetic Laws: Law and Literature – The And, *Cardozo Law Review*, v. 29, n. 5, p. 2431-2459, 2008. [↑](#footnote-ref-53)
54. Kant, (n. 40) p. 157. [↑](#footnote-ref-54)
55. On Kracauer and Benjamin, see Miriam Hansen*, Cinema and Experience – Siegfried Kracauer, Walter Benjamin, and Theodor W. Adorno*, Berkeley: University of California Press, 2011; and Carlos Machado, Notas sobre Siegfried Kracauer, Walter Benjamin e a Paris do Segundo Império – pontos de contato, *HISTÓRIA*, v. 25, n. 2, p. 48-63, 2006. [↑](#footnote-ref-55)
56. Siegfried Kracauer, *The Mass Ornament: Weimar Essays*, transl. and ed. Thomas Levin, Cambridge: Harvard University Press,1995, p. 76. [↑](#footnote-ref-56)
57. Giorgio Agamben has recently analyzed the landscape, along with the body and language, as examples of “inappropriables.” The fact that Benjamin’s recurring designation of aura consists of a description of a landscape allows one to read Agamben’s investigation as concerning the dissipation of aura as its proper mode of being, see Giorgio Agamben, *The Use of Bodies*, transl. Adam Kotsko, Stanford: Stanford University Press, 2016, p. 82ff. [↑](#footnote-ref-57)
58. Kracauer, (n. 56) p. 77. [↑](#footnote-ref-58)
59. Ibid., p. 76. [↑](#footnote-ref-59)
60. Walter Benjamin, (n. 3) p. 494 [K 2, 2]. [↑](#footnote-ref-60)
61. Benjamin, (n. 3) p. 1215. [↑](#footnote-ref-61)
62. *Cf*. Leo Steinberg, *The Sexuality of Christ in Renaissance Art and in Modern Oblivion*, Chicago: University of Chicago Press, 2014, p. 186. [↑](#footnote-ref-62)
63. Walter Benjamin, (n. 5) p. 480. [↑](#footnote-ref-63)
64. Giorgio Agamben, *What is an apparatus? and other essays*, transl. David Kishik and Stefan Pedatella, Stanford: Stanford University Press, 2009, p. 48-49. [↑](#footnote-ref-64)
65. Zartaloudis, (n. 53) p. 2435. [↑](#footnote-ref-65)
66. Susan Buck-Morss, *The Dialectics of Seeing: Walter Benjamin and the Arcades Project*, Cambridge: The MIT Press, 1989, p. 339. [↑](#footnote-ref-66)
67. Benjamin, (n. 38) [↑](#footnote-ref-67)
68. Id., Eduard Fuchs, der Sammler und der Historiker, in *Gesammelte Schriften* v. 2, ed. Rolf Tiedemann and Hermann Schweppenhäuser, Frankfurt: Suhrkamp, 1991, p. 498 [↑](#footnote-ref-68)
69. Id., (n. 3) p. 194 [E 5 a, 7]. [↑](#footnote-ref-69)
70. On Kant as an allegorist, see Peter Fenves, *Late Kant: Towards another Law of the Earth*, New York: Routledge, 2003, p. 73-74. [↑](#footnote-ref-70)
71. On this notion of “a process of desemanticization,” see Giorgio Agamben, *State of Exception*, transl. Kevin Attell, Chicago: The University of Chicago Press, 2005, p. 37. [↑](#footnote-ref-71)
72. Immanuel Kant, Mutmaßlicher Anfang der Menschengeschichte in *Kleine Schriften zur Geschichtsphilosophie, Ethik und Politik*, ed. Karl Vorländer, Leipzig: Felix Meiner, 1913, p. 53. [↑](#footnote-ref-72)
73. Id., Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht., in *Kleine Schriften zur Geschichtsphilosophie, Ethik und Politik*, ed. Karl Vorländer, Leipzig: Felix Meiner, 1913, p. 19. [↑](#footnote-ref-73)
74. Fenves, (n. 37) p. 138, note 32 [↑](#footnote-ref-74)
75. Ibid., p. 181. [↑](#footnote-ref-75)
76. Ibid., p. 179. [↑](#footnote-ref-76)
77. Ibid., p. 249. [↑](#footnote-ref-77)
78. Derrida, (n. 22) p. 39. [↑](#footnote-ref-78)
79. Jesse Gellrich, *Discourse and Dominion in the Fourteenth Century: oral context of writing in philosophy, politics, and poetry*, Princeton: Princeton University Press, 1995, p. 18. [↑](#footnote-ref-79)
80. Berman, (n. 2). [↑](#footnote-ref-80)
81. See, among others, Calasso, (n. 30), Percy Ernst Schramm, Kaiser, Rom und Renovatio, 3. ed., Darmstadt: Wissenschaftliche Buchgesellschaft, 1962, p. 275ff; Kenneth Pennington, The Big Bang: Roman Law in Early Twelfth Century, *Rivista internazionale di diritto commune*, v. 18, p. 43-70, 2007. [↑](#footnote-ref-81)
82. Ernst Kantorowicz, *The King’s Two Bodies: A Study in Mediaeval Political Theology*, Princeton: Princeton University Press, 1957, p. 193. [↑](#footnote-ref-82)
83. Goodrich, (n. 14) p. 49. [↑](#footnote-ref-83)
84. For the concept of “media ensembles,” see Bernard Stiegler, Technologies of memory and imagination, transl. Ashley Woodward and Amelie Berger Soraruff, *Parrhesia*, v. 29, p 25-76, 2018. [↑](#footnote-ref-84)
85. Judith Butler, *Notes toward a performative theory of Assembly*, Cambridge: Harvard University Press, 2015, p. 40-41. [↑](#footnote-ref-85)
86. Walter Ullmann, *The Carolingian Renaissance and the Idea of Kingship*, New York: Routledge, 2010, p. 100 [↑](#footnote-ref-86)
87. Ibid., p. 92 [↑](#footnote-ref-87)
88. Ibid., p. 95. [↑](#footnote-ref-88)
89. On the doctrine of the two swords, see Otto von Gierke, *Das* *Deutsche Genossenschaftsrecht. III: Die Staats- und Korporationslehre des Alterthums und des Mittelalters und ihre Aufnahme in Deutschland*. Berlin: Weidmannsche Buchhandlung, 1881, p. 528, esp. note 22. [↑](#footnote-ref-89)
90. For a useful review of the literature on De Consideratione, see Elizabeth Kennan, The ‘De Consideratione’ of St. Bernard of Clarivaux and the papacy in the mid-twelfth century: a review of scholarship, *Traditio*, v. 23, p. 73-115, 1967. [↑](#footnote-ref-90)
91. On the commune of Rome, see Romedio Schmitz-Esser, Erneuerung aus eigener Kraft? Die Entstehung der Römischen Kommune im 12. Jahrhundert, in *Rom – Nabel der Welt. Macht, Glaube, Kultur von der Antike bis heute*, ed. Jochen Johrendt und Romedio Schmitz-Esser, Darmstadt: wbg Academic, 2010, 67-85. I’m thankful to Professor Schmitz-Esser for sending me a digital version of his contribution. [↑](#footnote-ref-91)
92. On the significance of the renovation of the Roman Senate at the time and its implications to the understanding of the role the desire of *renovatio* played in the communal uprising in Rome, see Emanuele Conte, Roman Public Law in the Twelfth Century: Politics, Jurisprudence, and Reverence for Antiquity, in *Empire and Legal Thought: Ideas and Institutions from Antiquity to Modernity*, ed. Edward Cavanagh, Nijhoff: Brill, 2020, p. 189-212; Donald Kelley, Clio and the Lawyers: Forms of Historical Consciousness in Medieval Jurisprudence, in *History, Law, and the Human Sciences: Medieval and Renaissance Perspectives*, London: Variorum Reprints, 1984, esp. p. 30. [↑](#footnote-ref-92)
93. Kantorowicz, (n. 82) 93ff. [↑](#footnote-ref-93)
94. For an informative discussion on the emergence of the cult of images in Byzantine society, with an interesting account of Justinian’s employment of it during his emperorship, see in general Ernst Kitzinger, The Cult of Images in the Age before Iconoclasm, *Dumbarton Oaks Papers*, v. 8, p. 83-150, 1954, esp. p. 125ff. [↑](#footnote-ref-94)
95. Ernst Kantorowicz, Ivories and Litanies, *Journal of the Warburg and Courtauld Institutes*, v. 5, p. 56-81, 1942, p. 76-77. [↑](#footnote-ref-95)
96. See Ullmann, (n. 86). [↑](#footnote-ref-96)
97. Schramm, (n. 81). [↑](#footnote-ref-97)
98. Ibid., p. 23-27. [↑](#footnote-ref-98)
99. Bernard of Clairvaux, *On Consideration*, transl. George Lewis, Oxford: Clarendon Press, 1908, p. 103. [↑](#footnote-ref-99)
100. *Cf*. *Vindiciae Contra Tyrannos*, ed. and trans. George Garnett, New York: Cambridge University Press, 1994. [↑](#footnote-ref-100)
101. Ibid., p. 168. [↑](#footnote-ref-101)
102. Daniel Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, Oxford: Oxford University Press, 2016, p. 154. I’m entirely indebted to Lee’s impressive presentation and discussion of this subject. [↑](#footnote-ref-102)
103. *Vindiciae*, (n. 100)p. 169. [↑](#footnote-ref-103)
104. Ralph Giesey, The Monarchomach Triumvirs: Hotman, Beza and Mornay, *Bibliothèque d'Humanisme Et Renaissance*, v. 32, n. 1, p. 41-56, 1970, p. 51. [↑](#footnote-ref-104)
105. For a survey of these metaphors and their implications in outlining the horizon of action in the Christian Monarchy, see Lee, (n. 102); Ullmann, (n. 86); Kantorowicz, (n. 82). [↑](#footnote-ref-105)
106. *Cf.* Ingeborg Maus, Zum gegenwärtigen Verhältnis von Rechtsideologie und gesellschaftlicher Wirklichkeit, in *Rechtstheorie und politische Theorie im Industriekapitalismus*, Munich: Wilhelm Fink, 1986, p. 227ff. [↑](#footnote-ref-106)
107. On the importance of the notion of conspiration to assess Benjamin’s potential to political theory, and an interesting example of reading performed under this approach, see James Martel, *Textual Conspiracies: Walter Benjamin, Idolatry, and Political Theory*, Ann Arbor: The University of Michigan Press, 2011. [↑](#footnote-ref-107)
108. *Integumentum*, at least during the twelfth century, was a common exegetical *terminus technicus* to designate, alike *cortex* and *involucrum*, the “attractive but lying exterior” of a text, underneath which would lie a hidden truth. See D. W. Robertson Jr, Some Medieval Literary Terminology, with Special Reference to Chretien de Troyes, *Studies in Philology*, v. 48, n. 3, p. 669-692, 1951. [↑](#footnote-ref-108)
109. Benjamin, (n. 68) p. 477. [↑](#footnote-ref-109)
110. Id., (n. 6) p. 647, footnote (\*). [↑](#footnote-ref-110)
111. Id., (n. 38) p. 362. [↑](#footnote-ref-111)
112. Ibid., p. 349. [↑](#footnote-ref-112)
113. About a text’s *Seinsvalenz*, and how this implies an increase of being, see Hans-Georg Gadamer, Von der Wahrheit des Wortes, in *Gesammelte Werke* v. 8, Tübingen: Mohr Siebeck, 1993, p. 54. [↑](#footnote-ref-113)
114. *Cf*. Hermann Beisler, Die Unergründlichkeit des Werkes und die Unendlichkeit der Interpretation, in *Theorie der Interpretation vom Humanismus bis zur Romantik – Rechtswissenschaft*, Philosophie, Theologie, ed. Jan Schröder, Stuttgart: Franz Steiner, 2001, p. 219. [↑](#footnote-ref-114)
115. In Gadamer’s words, both theological and legal hermeneutics are “evidently not forms of domination, but of service. In the service of that, which must be in force, are the interpretations, the application enclosed,” Wahrheit und Methode, in *Gesammelte Werke* v. 1, Tübingen: Mohr Siebeck, 1990, p. 316. [↑](#footnote-ref-115)
116. The expression is Gerhard Ebeling’s, see Gerhard Ebeling, Die Anfänge von Luthers Hermeneutik, *Zeitschrift für Theologie und Kirche*, v. 48, n.2, p. 172-230, 1951, p. 175. [↑](#footnote-ref-116)
117. Marx, (n. 21) p. 88, note 47. [↑](#footnote-ref-117)
118. Jacques Derrida, *Rogues: Two Essays on Reason*, transl. Pascale-Anne Brault and Michael Naas, Stanford: Stanford University Press, 2005, p. 101. Admittedly, Derrida’s words were written in reference to sovereignty’s “indivisibility.” Compare, in this regard, his observation about the importance of “indivisibility” for the notion of the signifier. Thus indivisibility would “correspond in fact to an idealization. […] [A]n ideality (intangibility of a self-identity travelling without alteration) must be implied therein. […] If this ideality is not the meaning-content [contenu de sens], it must be either a certain ideality of the signifier (the identifiable [aspect] of its form inasmuch as it is distinct from its empirical events and re-editions) or the points of stability [point de capition] which pins the signifier onto the signified,” id., (n. 22), p. 84. [↑](#footnote-ref-118)
119. Werner Hamacher, Guilt History: Benjamin’s Sketch ‘Capitalism as Religon,’ transl. Kirk Wetters, *Diacritics*, v. 34, n. 3/4, p. 81-106, 2002, p. 84. [↑](#footnote-ref-119)
120. The supranatural, fatherly undertones of the notion of contemporaneity [*Gleichzeitigkeit*] have been highlighted by Theodor Adorno, in his study on Kierkegaard, see Theodor Adorno, *Kierkegaard: Konstruktion des Ästhetischen*, Frankfurt: Suhrkamp, 1966, esp. p. 70, 313. [↑](#footnote-ref-120)
121. Walter Benjamin, Zur Problem der Physiognomik und Vorhersagung, in *Gesammelte Schriften* v. 6, ed. Rolf Tiedemann and Hermann Schweppenhäuser, Frankfurt: Suhrkamp, 1991, p. 91 [Fr. 64] [↑](#footnote-ref-121)
122. Walter Benjamin, Schicksal und Charakter, in *Gesammelte Schriften* v. 2, ed. Rolf Tiedemann and Hermann Schweppenhäuser, Frankfurt: Suhrkamp, 1991, p. 175-176. One should have in mind, moreover, outrageous as it may sound, that Benjamin’s obsession, whose graphological skills were acknowledged among his circle, with soothsaying has very strict Kantian grounds, and pertaining to the law faculty, above all else. In the second part of Kant’s *Der Streit der Fakultäten*, dedicated to the faculty of law, the whole conflict pivots around the possibility of a history of the future a priori, whether it makes sense to construct history as a continuum, upon which one can define a direction, whether of progress or decay. Such history, Kant expressly admits, would be called “prophetic,” and in a footnote, explains that those who, like the girl from Pythia and the gypsy, muddle into saying it without knowledge or honesty, those are called *Wahrsagen*, soothsayers. The subtle, and yet openly articulated jest is that jurists are nothing more than soothsayers, see Immanuel Kant, *The Conflict of the Faculties* / *Der Streit der Fakultäten*, bilingual edition, ed. and transl. Mary J. Gregor, New York: Abaris Books, 19719, p. 140. For an ingenious reading of the whole part in attention to the details condensed in this footnote, see Fenves, (n. 37). [↑](#footnote-ref-122)
123. Idem. [↑](#footnote-ref-123)
124. Fenves, (n. 25) p. 1104. [↑](#footnote-ref-124)
125. In their kneading and rolling, papyrus scrolls as a media technology were “linked to the purely actual, coextensive law of an imperial administration,” that is, the transmission of spoken commands, whose efficacy was linked “neither to any form of public reading nor to any other form of publication or preservation,” everything depending “on the magistrates’ rather contingent recording practice that decided what was valid at the moment,” Cornelia Vismann, *Files: Law and Media Technology*, transl. Geoffrey Winthrop-Young, Stanford: Stanford University Press, 2008, p. 43, 50. [↑](#footnote-ref-125)
126. D. 1.3.17 [*Scire leges non hoc est verba earum tenere, sed vim ac potestatem*]. [↑](#footnote-ref-126)
127. Hugo Donellus, Commentaria de jure civilli, lib. I, cap. 13.III [proinde verborum vis et potestas in hac ipsa significatione est, eoque in sententia et mente legis, quae verbis exprimitur] in Maximiliane Kriechbaum, Verba und mens in den Interpretationsleren des Humanismus, in *Theorie der Interpretation vom Humanismus bis zur Romantik – Rechtswissenschaft*, Philosophie, Theologie, ed. Jan Schröder, Stuttgart: Franz Steiner, 2001, p. 56-57. [↑](#footnote-ref-127)
128. See, in general, Gerhard Otte, Dialektik und Jurisprudenz, Frankfurt: Vittorio Klostermann, 1971, p. 73ff; David Kästle-Lamparter, *Welt der Kommentare: Struktur, Funktion und Stellenwert juristischer Kommentare in Geschichte und Gegenwart*, Tübingen: Mohr Siebeck, 2016. [↑](#footnote-ref-128)
129. Vismann, (n. 125) p. 28. [↑](#footnote-ref-129)
130. Franz Wieacker, (n. 26) p. 456. [↑](#footnote-ref-130)
131. Otte, (n. 128) p. 92ff. [↑](#footnote-ref-131)
132. As suggested by the famous rule *interpretatio cessat in claris*, a formula that inferred the possibility of the stabilization of signification and determined the corresponding disappearance of interpretation in the interpreted text as its expressive purpose, two obviously important effects which, notwithstanding the evident fallaciousness of its underlying line of thinking (after all, how to distinguish between clarity and unclarity if not through interpretation) and the major assaults it has suffered over the last century, suggest the reason for its persistence in legal doctrine and argument, *cf*. Clausdieter Schott, “Interpretatio cessat in claris” – Auslegungsfähigkeit und Auslegungsbedürftigkeit in der juristischen Hermeneutik, in *Theorie der Interpretation vom Humanismus bis zur Romantik – Rechtswissenschaft*, Philosophie, Theologie, ed. Jan Schröder, Stuttgart: Franz Steiner, 2001, p. 186. [↑](#footnote-ref-132)
133. Otte, (n. 128) p. 160-161. [↑](#footnote-ref-133)
134. On the comprehension of language underpinning the glossators approach to legal words, see Mario Montorzi, Tra retorica ed encyclopedia: L’ontologismo linguistico del giurista medievale, *Rechtsgeschichte*, v. 9, p. 46-58, 2006. [↑](#footnote-ref-134)
135. Otte, (n. 128) p. 97. [↑](#footnote-ref-135)
136. Jesse Gellrich, *The Idea of the Book in the Middle Ages: Language Theory, Mythology, and Fiction*, Ithaca: Cornell University Press, 1985, p. 116. [↑](#footnote-ref-136)
137. Ibid., p. 104. [↑](#footnote-ref-137)
138. I, 2, 7, 2. [↑](#footnote-ref-138)
139. It must be noted that this solution, of distinguishing between the “systematic” and “historical” dimensions of law is not the only one possible, pertaining to the intricacies of the German law-world, a distinction that, to my foreign eyes, would culminate later in the “given” distinction between *Rechtsauslegung* and *Rechtsfortbildung*. See, in this regard, Hans-Peter Haferkamp, Dogmatisierungsprozesse im “heutigen Römischen Recht” des 19. Jahrhunderts, in *Dogmatisierungsprozesse in Recht und Religion*, ed. Georg Essen and Nils Jansen, Nevertheless, Tübingen: Mohr Siebeck, 2011, esp. p. 264, 267. I believe that the “threat of dissemination,” more specifically, the more or less conscious awareness of it within a legal community, something that may be due to developments in literacy, the availability and circulation of texts, and, equally important, the register techniques employed in the documentation and archive of adjudication proceedings, is a considerable fruitful “third-space” to compare different law-worlds. Hence, in reference to the so-called common-law tradition, for example, one should consider how this threat can be read in the debates around judicial discretion. On the notion of “third-space” and on its uses in comparison-at-law, see Pierre Legrand, Foreign Law: Understanding Understanding, *Journal of Comparative Law*, v. 6, p. 67-177, 2011. [↑](#footnote-ref-139)
140. Benjamin, (n. 48) p. 363. [↑](#footnote-ref-140)
141. Hans-Georg Gadamer, Concerning empty and fulfilled time. Transl. by R. Phillip O’Hara. *Southern Journal of Philosophy*, Winter, p. 341-353, 1970. 1970, p. 349. [↑](#footnote-ref-141)
142. Benjamin, (n. 48), p. 359. [↑](#footnote-ref-142)
143. Idem. [↑](#footnote-ref-143)
144. Philo Judaeus, On the doctrine that Dreams are sent from God, in *The works of Philo Judaeus*, v. 2, transl. C. D. Yonge, London: Henry G. Bohn, 1854. [↑](#footnote-ref-144)
145. John Chrysostom, Homily LXXXIII, in *From Nicene and Post-Nicene Fathers*, v. 14, ed. Philip Schaff, transl. Charles Marriott, Buffalo: Christian Literature Publishing Co, 1889. [↑](#footnote-ref-145)
146. Origen, *Homilies on Numbers*, ed. Christopher A. Hall, transl. Thomas P. Scheck, Downers Grove: IVP Academic, 2009, p. 96ff. [↑](#footnote-ref-146)
147. On the influence of this treatise in the sense and shape of the Christian political order, see Ullmann, (n. 86) p. 114ff, Erwin Panofsky, *Gothic Architecture and Scholasticism: An inquiry into the analogy of the arts, philosophy, and religion in the Middle Ages*, New York: The New American Library, 1976. In his commentary to the texts of Pseudo-Dionysius, Paul Rorem offers a very sober and well-informed discussion about their influence, *Pseudo-Dionysius: A Commentary on the Texts and an Introduction to Their Influence*, Oxford: Oxford University Press, 1993. [↑](#footnote-ref-147)
148. Moshe Idel, *Absorbing Perfections: Kabbalah and Interpretation*, New Haven: Yale University Press, 2002, p. 180. [↑](#footnote-ref-148)
149. Gellrich, (n. 136). [↑](#footnote-ref-149)
150. Daniel Boyarin, The Word and Allegory; or, Origen on the Jewish Question, in *Allegorie*, ed. Ulla Haselstein, Berlin: De Gruyter, 2014, p. 41. [↑](#footnote-ref-150)
151. Gellrich, (n. 136) p. 108. [↑](#footnote-ref-151)
152. *Cf*. Joachim Ringleben, Luther zu Metapher, *Zeitschrift für Theologie und Kirche*, v. 94, n. 3, p. 336-369, 1997. [↑](#footnote-ref-152)
153. Hugh of St. Victor, *Didascalion*, transl. Jerome Taylor, New York: Columbia University Press, 1961, p. 149-150. [↑](#footnote-ref-153)
154. *Cf*. Walter Ullmann, *The Individual and Society in the Middle Ages*, Baltimore: The John Hopkins Press, 1966, p. 14, note 25. For a discussion of the importance of this motto, yielding implications to the constitution of “an important principle of government,” being bound to “affect views on the structure of society itself[,] see id., (n. 86) p. 114ff. [↑](#footnote-ref-154)
155. Azo, Summa Institutionum, in *Selected passages from the works of Bracton and Azo*, ed. F. W. Maitland, London: Bernard Quaritch, 1895, p. 9-14. [↑](#footnote-ref-155)
156. Giorgio Agamben, *The kingdom and the glory*, transl. Lorenzo Chiesa and Matteo Mandarini, Stanford: Stanford University Press, 2011, p. 49. [↑](#footnote-ref-156)
157. Otte, (n. 128) p. 114, 119. [↑](#footnote-ref-157)
158. *Cf*. Gerhard Dilcher, The Germanists and the Historical School of Law: German Legal Science between Romanticism, Realism, and Rationalization, *Rechtsgeschichte*, v. 24, p. 20-72, 2016. [↑](#footnote-ref-158)
159. Giorgio Agamben, *Opus Dei: An Archeology of Duty*, transl. Adam Kotsko, Stanford: Stanford University Press, 2013, p. 84. [↑](#footnote-ref-159)
160. Ringleben, (n. 152) p. 347-348. [↑](#footnote-ref-160)
161. Friedrich Carl von Savigny, Beilage zu Brief 23, in *Der junge Savigny: Kinderjahre, Marburger und Landshuter Zeit*, ed. Adolf Stoll, Berlin: Carl Hermanns, 1927, p. 94-95. [↑](#footnote-ref-161)
162. Let me offer a contemporary example to sustain my claim. Consider Helmut Coing’s *Grundzüge der Rechtsphilosophie*. Coing, a well-known, greatly reputed legal historian, dedicates a whole section of this book to discuss the relationship between “natural law and economic order.” In this context, Coing advances the following formulation, about the changing effects between law and economy: “The economic life effects upon the law, as the social life as such. It builds the stuff, of which law has to rule over. Where new economic images of action [*Tatbestände*] develop themselves, new economic interests occur, there emerges new possibilities of conflict, and therewith too the necessity for legal regulation. This regulation must, as we saw, adapt to the nature of things; insofar it is determined by the economic image of action. But in the solution to be adopted value and purposive aspects go into the rule too; which are specifically legal: interests of security, justice, and freedom. Therethrough emerges the legal regulation. The effect of the economy upon the law is not, therefore, a plain causality, rather it is the problem upon which the legal creative-power of the human spirit effects upon,” *Grundzüge der Rechtsphilosophie*, Berlin: De Gruyter, 1950, p. 217-218. A few lines below, Coing offers what he considers a fine historical comparison, revealing of how the legal order was and is meaningful to the flow [*Ablauf*] of the economy, grafting together in the way of fashion, I would add, the “economic constitution” of ordoliberal thinking (he refers expressly to Walter Eucken’s *Die Grundlagen der Nationalökonomie*) and the “state guidance” of the economy by the Roman Emperor during the Principate. Anachronistic as this is, there is in his comparison, I would argue, a clear-sighted intuition about the emplacement of language that engenders the stance of legal conscience, language being technologically dragged, as it were, by these two poles of command and effectivity. At the very least, this working hypothesis would explain why, depending on the gaze of the observer and the sources she has in front of her, the glossators, for instance, did and did not understand law as command. Further, in respect to the sense I employ “technology” here, as the word “emplacement” [*Gestell*] should already suggest, I’m thinking here of Martin Heidegger’s *Die Frage nach der Technik*, and in special Heidegger’s proposal that what technology reveals appears as what is ordered or requested [*Bestellen*], in the pretext for “regulating and securing,” and, hence, as a repertoire, inventory or stock [*Bestand*], Die Frage nach der Technik, in *Gesamtausgabe* v. 7, Frankfurt: Vittorio Klostermann, 2000, p. 16-17. As the German legal term suggests, law would emplace repertoires of deeds, or rather, images of action, as the connection between technology and image thought by Heidegger allows us to propose, see in this regard id., Die Zeit des Weltbildes, in Holzwege, *Gesamtausgabe* v. 5, Frankfurt: Vittorio Klostermann, 1977, p. 75ff, and for a forceful reading entwining Heidegger and Benjamin on these matters, Samuel Weber, Mass Mediauras, or: Art, Aura and Media in the Work of Walter Benjamin, in *Mass Mediauras: from technics media*, Stanford: Stanford University Press, 1996. Without a doubt, Heidegger had in mind *moderne Technik*. That notwithstanding, Giorgio Agamben has recently advanced how the “decisive theological paradigm” underlying modern technology would be that of sacramental liturgy, instead of the creationist paradigm that Heidegger had in mind, a change that allows one to approach much of the medieval epoch as the breeding ground for the transition towards the dominance of the epochal principle of emplacement, in contrast to Heidegger’s focus on Rome and early Christianity. Although Agamben does have many things to say about them as well, to me, they appear to be framed in a similar way as to how Benjamin approached the role of Antiquity and Early Christianity in the emergence of the Western allegory, Giorgio Agamben, (n. 159) p. 59-62, and on Benjamin and Late Antiquity, see below, note 212. Along these lines, consider Patricia Clare Ingham’s *The Medieval New*, which, albeit without any reference to Agamben, presents, in my view, well-documented evidence of the appositeness of this particular point of his, *The Medieval New: Ambivalence in an Age of Innovation*, Philadelphia: University of Pennsylvania Press, 2015. I’m thankful to Nathaly Mancilla and Gustavo Zatelli for discussions on this point. [↑](#footnote-ref-162)
163. Ennio Cortese in his two-volume study about the legal norm in the “classical *ius commune*” demonstrated, albeit using a slightly different, somehow Hegelian-inspired conceptual equipment, than the one I’m proposing here, with an outstanding array of sources, how these two poles, command and the “nature of things,” or, in the words of the Glossators, *voluntas*, on one side, and *mens* and *aequitas*, on the other, are constitutive of the Glossators’ approach to their working materials, Ennio Cortese, *La norma giuridica: spunti teorici nel diritto comune classico*, Milan: Giuffre, 1964, esp. p. 362 [for an impressive summarizing conclusion of his findings]. [↑](#footnote-ref-163)
164. As one may see in one of Adolf von Menzel’s emblems to Frederick The Great’s *Politische Testament*, in the chapter dedicated to the ministration of law. In this chapter, Frederick sovereignly states: “I have myself determined, never in the course of a legal procedure to interfere; since in the courts of justice the laws must speak and the sovereign must disappear,” Frederick the Great, Politische Testament in *Die Werke Friedrichs des Großen in deutscher Übersetzung* v. 7, ed. Gustav Berthold Volz, Berlin: Reimar Hobbing, 1913, p. 118. [↑](#footnote-ref-164)
165. Friedrich Karl von Savigny, *System des heutigen römischen Rechts*, v. 1, Berlin: Veit, 1840, p. 212-213. Savigny consistently translated *mens* and *sententia* as *Gedanken* and *Sinn*, respectively, the reason why I rendered *Gedanken* above as “intention,” *cf*. Ibid., p. 213, footnote (a). In regard to this pair, how they relate, and the role of interpretation, Savigny’s foremost inspiration appears to be Hugo Donellus, see Kriechbaum, (n. 27), and Martin Avenarius, 'Neque id sine magna Servii laude…', Historisierung der Rechtswissenschaft und Genese von System und Methode bei Donellus, *Tijdschrift voor Rechtsgeschiedenis*, v. 74, n. 1-2, p. 61-93, 2006. Alike the quotation from Eduard Fuchs above, I repeated here my choice to translate *Geschäft* as commercium, instead of employing the more usual trade, craft, or business. From my perspective, there are many good reasons for that. First, as the Grimm Brothers’ Dictionary tell us, *Geschäft* is one of these words that undoubtfully secures an aura of its own, pulling a manifold of meanings that range from creation to testament, in the Biblical sense, encompassing even the order of angels, and, tellingly, to the extent that it translates the Latin *negotium*, it does in the specific sense of the effects perpetuated by the words of the sacrament in the Eucharist, *cf*. „GESCHÄFT, n.“, Deutsches Wörterbuch von Jacob Grimm und Wilhelm Grimm, digitalisierte Fassung im Wörterbuchnetz des Trier Center for Digital Humanities, Version 01/21, <https://www.woerterbuchnetz.de/DWB?lemid=G09784>, abgerufen am 01.05.2021; on the political-theological significance of testament during the time of the Reformation, see Gregory Kneidel, The Death of Christ in and as Secular Law, in *Political Theology and Early Modernity*, ed. Graham Hammill and Julia Reinhard, Chicago: The University of Chicago Press, 2012. Secondly, repeating a tradition that goes back to the Fathers of the Church, the early Luther spoke of the relationship between God and humans, in special reference to the redemption of sins taking place in Christ as the words of institution of the Eucharist, as an *admirabile commercium*, in the German of *Von der Freiheit eines Christenmenschen*, *der fröhliche Wechsel und Streit*, which modernizing editions rend usually as *Wechsel und Tausch*, Martin Luther, Von der Freiheit eines Christenmenschen, available at: https://www.freiheit2017.net/fileadmin/mediapool/gemeinden/E\_freiheit20

     17/Freiheit\_PDF.pdf, access in 1 May 2021, p. 7, see also Joachim Ringleben, p. 346ff. [↑](#footnote-ref-165)
166. Friedrich Carl von Savigny, *Vorlesungen über juristische Methodologie*, ed. By Aldo Mazzacane, Frankfurt: Vittorio Klostermann, 2004, p. 260 [↑](#footnote-ref-166)
167. Ibid., p. 258. [↑](#footnote-ref-167)
168. *Cf*. Franz Wieacker in Interventi e comunicazioni nel dibattito, *Quaderni Fiorentini per la storia del pensiero giuridico moderno*, v. 9, 1980, p. 304 [“It may be the case of putting in perspective, in my opinion, the ‘Volksgeist’. Personally, I believe that this is an instrument for constructing the validity of the legal order – of the ‘Rechtsordnung’ – and a question of legitimation, not as the intrinsic law of an ethnic community, but as a cultural tradition. ‘Volksgeist’ – this has been always my conviction – in Savigny means a cultural tradition and, emphatically, that of the jurists.”] [↑](#footnote-ref-168)
169. Von Savigny, (n. 165) p. 15. [↑](#footnote-ref-169)
170. Hans-Georg Gadamer, Ästhetische und religiöse Erfahrung, in *Gesammelte Werke* v. 8, Tübingen: Mohr Siebeck, 1999, p. 149. [↑](#footnote-ref-170)
171. Id., The relevance of the beautiful, transl. Nicholas Walker, in *The Relevance of the Beautiful and Other Essays*, ed. Robert Bernasconi, Cambridge: Cambridge University Press, 1986, p. 34-35. [↑](#footnote-ref-171)
172. Immanuel Kant, *Kritik der praktischen Vernunft*, ed. Karl Vorländer, Leipzig: Felix Meiner, 1915, p. 141. [↑](#footnote-ref-172)
173. Id., *Kritik der reinen Vernunft*, ed. G. Hartenstein, Leipzig: Leopold Voss, 1868, p. 260. For a brilliant interpretation of this allegory, see Fenves, (n. 37) p. 142. [↑](#footnote-ref-173)
174. Benjamin, (n. 5) p. 380. [↑](#footnote-ref-174)
175. Id., Der Erzähler, in *Gesammelte Schriften*, v. 2, ed. Rolf Tiedemann and Hermann Schweppenhäuser, Frankfurt: Suhrkamp, 1991, p. 446. [↑](#footnote-ref-175)
176. On this metaphor and what it reveals about the practice of reading, see in general Werner Hamacher, *Pleroma – Reading in Hegel*, transl. Nicholas Walker and Simon Jarvis, Stanford: Stanford University Press, 1998. [↑](#footnote-ref-176)
177. Benjamin, (n. 5) p. 381. [↑](#footnote-ref-177)
178. John Dagenais, *The Ethics of Reading in Manuscript Culture*, Princeton: Princeton University Press, 1994, p. 36. [↑](#footnote-ref-178)
179. Stephen Nichols, The Image as Textual Unconscious: Medieval Manuscripts, *L'Esprit Créateur*, v. 29, n. 1, p. 7-23, 1989, p. 8. [↑](#footnote-ref-179)
180. Dagenais, (n. 178) p. 17-18. [↑](#footnote-ref-180)
181. Walter Benjamin, Kleine Geschichte der Photographie, in *Gesammelte Schriften*, v. 2, ed. Rolf Tiedemann and Hermann Schweppenhäuser, Frankfurt: Suhrkamp, 1991, p. 371. [↑](#footnote-ref-181)
182. Jonathan Culler, Textual Self-Consciousness and the Textual Unconscious, *Style*, v. 18, n. 3, p. 369-376, 1984, p. 376. [↑](#footnote-ref-182)
183. Samuel Weber, *Benjamin’s -Abilities*, Cambridge: Harvard University Press, 2008. [↑](#footnote-ref-183)
184. Jacques Derrida, Signature, Event, Context, in *Margins of Philosophy*, transl. Alan Bass, Brighton : Harvester Press, 1982, p. 327. [↑](#footnote-ref-184)
185. Alastair Minnis, *Medieval Theory of Authorship: Scholastic Literary Attitudes in the Later Middle Ages*, 2. ed., Philadelphia: University of Pennsylvania Press, 2010, p. 81-82. [↑](#footnote-ref-185)
186. Agamben, (n. 159) p. 64. [↑](#footnote-ref-186)
187. Geoffrey Chaucer, *The Canterbury Tales*, Alma Books, 2020, p. 194 [Line 1793]. [↑](#footnote-ref-187)
188. Dagenais, (n. 178) p. 39. [↑](#footnote-ref-188)
189. Jesse Gellrich, Allegory and Materiality: Medieval Foundations of the Modern Debate, *The Germanic Review*, v. 77, n. 2, p. 146-159, 2002, p. 152. [↑](#footnote-ref-189)
190. Dagenais, (n. 178) p. 38. [↑](#footnote-ref-190)
191. Minnis, (n. 185) p. 41-42. [↑](#footnote-ref-191)
192. See Kantorowicz, (n. 31). [↑](#footnote-ref-192)
193. Piacentino, Prooemium, Summa Codicis, (MS. Par. 4441) in Friedrich Carl von Savigny, *Storia del diritto Romano nel medio evo*, v. III, Torino: Gianini e Fiore, 1837, p. 435. [↑](#footnote-ref-193)
194. Rogerius, Prooemium, Summa Codicis (MS. Tübingen) in Friedrich Carl von Savigny, *Storia del diritto Romano nel medio evo*, v. III, Torino: Gianini e Fiore, 1837, p. 421-424. [↑](#footnote-ref-194)
195. Gaines Post in his study about this *topos* showed how it was connected to “the king’s business,” see *Studies in Medieval Legal Thought: Public Law and the State 1100-1322*, Princeton: Princeton University Press, 1964, p. 340, 378-379. [↑](#footnote-ref-195)
196. As wonderfully discussed by Peter Goodrich, there was the doctrinal understanding that only men were apt to perform the sacraments of law – although exceptions, literary or otherwise, from Accursius’ daughter to Portia, did exist, *Schreber’s Law: Jurisprudence and Judgment in Transition*, Edinburgh: Edinburgh University Press, 2018, p. 113. I’m thankful to Professor Goodrich for sharing with me a digital version of this book. [↑](#footnote-ref-196)
197. Mikhail Bakhtin, *Rabelais and His World*, transl. Helene Iskowlsky, Bloomington: Indiana University Press, 1984, p. 5. [↑](#footnote-ref-197)
198. Ibid., p. 81. [↑](#footnote-ref-198)
199. I take the distinction between image of action and situation-image from Hubertus Kohle, *Adolph Menzels Friedrich-Bilder: Theorie und Praxis der Geschichtsmalerei im Berlin der 1850er Jahre*, Berlin: Deutscher Kunstverlag, 2001, p. 211-219. [↑](#footnote-ref-199)
200. See in general Bakhtin, (n. 197). [↑](#footnote-ref-200)
201. Calasso, (n. 32) p. 106. [↑](#footnote-ref-201)
202. D. 1, 4, 1. [↑](#footnote-ref-202)
203. In respect to Placentinus’ reading of the *lex regia*, but also for a general picture of the Glossators approach to it, see Lee, (n. 102) p. 34-35. As Lee explains, Placentinus denied “any residual lawmaking power in the people.” However, assuming that Kantorowicz is correct in his attribution of the *Quaestiones de iuris subtilitatibus*, in which when the questioner asks the interpreter whether the German emperors should be considered as emperors *de jure*, the interpreter answers negatively, to deny any “residual lawmaking power” is, ultimately, to inoperate the *translatio imperii*, to deny that any new emperors could be legally instituted. [↑](#footnote-ref-203)
204. In Calasso, (n. 32) p. 93 [*idest vicem, nam cum imperator proprie sit vicarius, eius censura, licet non sit lex, legis habet vigorem*]. [↑](#footnote-ref-204)
205. *Cf*. Chris Wickham, *Sleepwalking into a new world: the emergence of Italian City Communes in the Twelfth Century*, Princeton: Princeton University Press, 2015. [↑](#footnote-ref-205)
206. There is a considerable literature on this topic. Among them, for two diametrical opposing perspectives on this particular point, see Kenneth Pennington, *The Prince and the law, 1200-1600*. Berkeley: University of California Press, 1993; Emanuele Conte, Laurent Mayali, Beatrice Pasciuta, Constitution, in *A Cultural History of Law in the Middle Ages*, ed. Emanuele Conte and Laurent Mayali, London: Bloosmbury, 2019, p. 23-43; [↑](#footnote-ref-206)
207. One of the main testimonies of the event consists of Rahewin of Freising’s account of it, in his master’s, Bishop Otto of Freising, work, *Gesta Friderici I*, 3. ed., ed. B. de Simson, Hannover and Leipzig: Impensis Bibliopolli Hahniani, 1912, p. 236-240. Robert Benson has identified all of Rahewin’s references to the Corpus Iuris Civilis, offering a very convincing interpretation of the event, Political Renovatio: Two Models from Roman Antiquity, in *Renaissance and Renewal in the Twelfth Century*, ed. Robert Benson and Giles Constable, with Carol Lanham, Toronto: University of Toronto Press, 1999. [↑](#footnote-ref-207)
208. Calasso, (n. 32) p. 108. [↑](#footnote-ref-208)
209. Ibid, p. 108-109. [↑](#footnote-ref-209)
210. *Cf*. Andrea Gamberini, *The Clash of Legitimacies: The State-Building Process in Late Medieval Lombardy*, Oxford: Oxford University Press, 2018. [↑](#footnote-ref-210)
211. Walter Benjamin, Ursprung des deutschen Trauerspiels, in *Gesammelte Schriften* v. 1, ed. Rolf Tiedemann and Hermann Schweppenhäuser, Frankfurt: Suhrkamp, 1991, p. 397. [↑](#footnote-ref-211)
212. Benjamin conjectured that Antiquity and Christianity determined the “historical armature” for allegorical perception, its “persisting rudiments,” which came to be experienced first only in the early middle ages, where the confrontation between a *phusis* burdened with guilt by Christianity, on the one hand, and the purer *natura deorum* incorporated in the Pantheon of ancients, on the other, began to take place. Benjamin, (n. 3) p. 409; (n 211), p. 400. [↑](#footnote-ref-212)
213. Hugh of St. Victor, (n. 153); see also Henri de Lubac’s classical treatment of this subject, *Medieval Exegesis*, v. 1 The Four Senses of Scripture, transl. Mark Sebanc, Edinburgh: T&T Clark, 1998. [↑](#footnote-ref-213)
214. Dante Alighieri, Il convivio, ed. Fredi Chiappelli and Enrico Fenzi, in *Opere Minori*, Torino : Unione Tipografico-Editrice Torinese, 1986, p. 100ff, esp. p. 104, and the elucidative scholarship on Dante’s allegories by Raffaele de Benedicts, Dante’s Epistola a Can Grande: Allegory, Discourse, and their semiotic implications, *Quaderni d’italianistica*, v. XXXI, n. 1, p. 3-42, 2010, and Richard Hamilton Green, Dante’s “Allegory of Poets” and the Mediaeval Theory of Poetic Fiction, *Comparative Literature*, v. 9, n. 2, p. 118-128, 1957. [↑](#footnote-ref-214)
215. Benjamin, (n. 211) p. 351. [↑](#footnote-ref-215)
216. Ethan Knapp, Benjamin, Dante, and the Modernity of the Middle Ages: or, Allegory as Urban Constellation, *The Chaucer Review*, v. 48, n. 4, p. 524-541, 2014, p. 537. [↑](#footnote-ref-216)
217. The classical study on the upheavals of this *topos* still is Artur Steinwenter, Nomos empsychos: Zur Geschichte einer politischen Theorie, *Anzeiger der Akademie des Wissenschaften in Wien*, n. 133, p. 250-268, 1946. Ernst Kantorowicz‘ discussion of it, specially of its resurgence with Frederick Barbarossa at the Diet of Roncaglia is equally interesting, (n. 82) p. 129ff. [↑](#footnote-ref-217)
218. Gellrich, (n. 189) p. 154, 157. [↑](#footnote-ref-218)
219. Benjamin, (n. 3), p. 439. [↑](#footnote-ref-219)
220. Cornelia Vismann, Two Critics of Law: Benjamin and Kraus, *Cardozo Law Review*, v. 26, n. 3, p. 1159-1178, 2005, p. 1177. [↑](#footnote-ref-220)
221. Walter Benjamin, Zur Kritik der Gewalt, in *Gesammelte Schriften* v. 2, ed. Rolf Tiedemann and Hermann Schweppenhäuser, Frankfurt: Suhrkamp, 1991, p. 202. [↑](#footnote-ref-221)
222. Werner Hamacher, Afformative, strike, transl. Dana Hollander, *Cardozo Law Review*, v. 13, p. 1133-1157, p. 1134-1135. [↑](#footnote-ref-222)
223. Benjamin, (n. 3) p. 461-462 [J 77 a, 8] [↑](#footnote-ref-223)
224. On the “permanence” of political communities, and how it is constructed through the sacrifice of plurality, or, rather, dissemination, see especially Johan van der Walt, *Law and Sacrifice: Towards a Post-Apartheid Theory of Law*, Abingdon: Birkbeck Law Press, 2014, p. 191ff, and Hans Lindahl, *Authority and the globalisation of inclusion and exclusion*, Cambridge: Cambridge University Press, 2018, p. 320ff. [↑](#footnote-ref-224)
225. Jacques Derrida, Force of Law: The “Mystical Foundation of Authority”, transl. Mary Quaintance, in *Deconstruction and the possibility of Justice*, ed. Drucilla Cornell et al, New York: Routledge, 1992, p. 38. [↑](#footnote-ref-225)
226. Ibid., p. 35. [↑](#footnote-ref-226)
227. Hans Lindahl, *Fault lines of Globalization: Legal Order and the Politics of A-Legality*, Oxford: Oxford University Press, 2013, p. 211-212. [↑](#footnote-ref-227)
228. On how allegory both collects and disperses, see Walter Benjamin, (n. 211) p. 364. [↑](#footnote-ref-228)
229. Benjamin, (n. 5) p. 357; I’m employing Fenves’ translation of this passage, see Fenves, (n. 10) p. 67. [↑](#footnote-ref-229)
230. Arguably, Hannah Arendt came to pursue such rewriting herself, notwithstanding her antipathy towards the artwork essay. In *What is Authority*, at the very final period, Arendt states the following: “For to live in a political realm with neither authority nor the concomitant awareness that the source of authority transcends power and those who are in power, means to be confronted anew, without the religious trust in a sacred beginning and without the protection of traditional and therefore self-evident standards of behavior, by the elementary problems of human living-together,” in *Between past and future*, 1. ed., New York: The Viking Press, 1961, p. 141. To the best of my knowledge, only Andrew Benjamin so far had dedicated an essay, and a highly interesting one, to Arendt’s ending statement, see The problem of authority in Arendt and Aristotle, *Philosophy Today*, v. 60, n. 2, p. 253-276, 2016. [↑](#footnote-ref-230)
231. Ibid., p. 358. [↑](#footnote-ref-231)
232. *Cf*. Peter Goodrich, How Strange the Change from Major to Minor, *Law Text Culture*, v. 21, p. 30-53, 2017. [↑](#footnote-ref-232)
233. Agamben, (n. 71) p. 71-72. [↑](#footnote-ref-233)
234. Benjamin, (n. 5) p. 368-369, note 10. [↑](#footnote-ref-234)
235. Walter Benjamin, Über die Fläche des unfarbigen Bilderbuches, in *Gesammelte Schriften* v. 6, ed. Rolf Tiedemann and Hermann Schweppenhäuser, Frankfurt: Suhrkamp, 1991, p. 112-113. [↑](#footnote-ref-235)
236. Markus, (n. 18) p. 41. [↑](#footnote-ref-236)