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http://dx.doi.org/10.1080/1535685X.2014.928503

Fragmented Method: Walter Benjamin, Law, and Representation in Joseph S. Jenkins' *Inheritance Law and Political Theology in Shakespeare and Milton: Election and Grace as Constitutional in Early Modern Literature and Beyond*

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Abstract: This review article considers the place of Walter Benjamin's thought in Joseph S. Jenkins' recent book and offers some broad reflections on the possibilities of Benjaminian legal scholarship.

Scholarship on Walter Benjamin and law – on the significance of Benjamin's thinking for the ontology of law, legal method, and the nature of legal scholarship – is a growth industry, a crowded marketplace.[2] The challenge for this industry is, it seems to me, to create a 'dialectical image', a 'flash' of light, capable of transforming legal thought, breaking the link between law, inequality, and injustice by moving law into a closer relationship with their dialectical opposites.[3] Whatever the debates about the phases in Benjamin's thought – the 'early', the 'late', the Marxist, the religious – any attempt to constellate the fragments of Benjamin's thought to say something about law as an intellectual field must,[4] to my mind, be judged by its compatibility with his pursuit of radical transformation in the structure and method of thought and practice itself.

Into this marketplace enters Joseph S. Jenkins' book.[5] I am interested, for the purposes of this piece, in the method by which this book has been written and the book's impact on the method of legal scholarship, not its impact on inheritance or property law. The book is structured into an introduction, three parts each with two chapters, four 'inter-chapter theory signposts' which review or preview the intellectual foundations of the preceding or following chapters, and an epilogue. This fragmented structure of chapters which explore particular texts – *Hamlet*, *Macbeth*, *Paradise Lost* – and 'inter-chapter theory signposts' which situate that exploration in the work of a variety of thinkers from

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Arendt to Machiavelli is, perhaps, fitting in a book which asserts the Benjaminian character of its method.[6] In my view, however, the fragmented method which Jenkins employs means that the book is unable to clearly represent the change in law and legal practice which Jenkins seems to want to bring about. That failure of representation, that failure to constellate the fragments which form the book into a 'mosaic' which the reader can admire, interrogate, and engage with as an 'onlooker',[7] an active reader, searching out the significance and meaning of the text presented to her, represents a failure to realise the potential of Benjaminian legal scholarship.

Ultimately, therefore, this book fails to satisfy the test, set out above, for Benjaminian legal scholarship; the ability to create a 'dialectical image' capable of transforming legal thought. The way in which this book fails to satisfy that test, the fact that the failure can be attributed to the structure of the book and its style of argumentation, says something instructive about what is at stake in Benjaminian legal scholarship and, more broadly, in scholarship which attempts to change law and legal thinking by working at the interface between law and the humanities. If Benjaminian legal scholarship and practice involves the production of 'artifact[s]',[8] whether books, articles, or judgments, this cannot be achieved through a fragmented method or structure. The author must not '*say*' what she wants the reader to understand or know, for fear of constraining the reader's thoughts and depriving her of her freedom as a self-determining 'onlooker', 'a writer…a describer, or even a prescriber'.[9] But the Benjaminian author has an obligation to '*show*',[10] to represent, which cannot be fulfilled if the fragments which form the mosaic, the artifact, are left in a fragmented state.

The challenge of Benjaminian legal scholarship is to disclaim the power of saying to the reader what the text you have authored means and how it should be understood or known, whilst showing the reader what emerges from the mosaic of fragments – texts, cases, and ideas – you have created.[11] Jenkins fails this test in my view, not because he tells the reader what to think but because he fails to show the reader how the book's various philosophical, legal, and literary fragments come together.

Representing Jenkins and Benjamin

Jenkins strives to make a general argument about the connection between law and the humanities through a narrow argument about the nature of inheritance law. The potential significance of this project is immense and it points to potentially fruitful avenues for future scholarship. If successful it would deconstruct the (perceived) divide between

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theory and practice by connecting an area of legal practice – inheritance law – with literary texts – a number of Shakespeare's plays and Milton's *Paradise Lost* – which orthodox understandings of legal scholarship and practice regard as non-legal. Through this connection the narrow argument about inheritance law would demonstrate the case for an interdisciplinary legal scholarship which deconstructs law's boundaries, law's habits, customs, and limits which divide texts, concepts, and phenomena into legal and non-legal materials, with only the former the legitimate concern of legal argument and scholarship. The transformation in legal thought and practice which this project promises is without doubt compatible with Benjamin's ambition to transform thought and practice but everything depends on its execution.

The book begins with this statement: 'This study investigates correlations between the will of God in the Judeo-Christian tradition and the Last Wills of humans, especially dominant males, in cultures where that tradition has developed.'[12] The book's epilogue opens with this statement:

> This epilogue relates the present study to the question of the private property right, including its inheritability, in the United States. U.S. legal academics, including the colleagues with whom they tend to work – in political science, philosophy, and economics, come at this question with an interest in history, but a history of a very different kind from the one elaborated in this book. One aim of this study is to contribute to the current question of private property by appealing to a history that works with different texts (notably Shakespeare and Milton), with the aid of different historiographical methodologies. Since these are texts and methodologies most tended to by humanities academics, this study aims also to demonstrate a contribution at the inter-discipline of law-and-humanities.[13]

These two statements, from either end of the book, do not seem to complement one another, raising questions as to the coherence of the artifact. The first focuses on the interface between a particular religious tradition and the concept of the last will, whilst the second is concerned with 'the current question of private property', treating 'its inheritability', the apparent focus of the book's opening passage, as one aspect of that broader issue.

A further disconnect is apparent in the structure of chapter and 'inter-chapter theory signpost'. Jenkins describes the purpose of the latter as 'to give, from time to time, aerial

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views of this study's structure'.[14] It is difficult to understand why a series of sections which ask the reader to step back from the substantive argument and consider its structure and method are necessary. It is surely preferable for the structure to support the argument being advanced without the reader having to reflect, by reading an 'inter-chapter theory signpost', on the structure and method as something distinct from the argument.

Beyond this point on structure, however, is the more fundamental point that Jenkins' text, and his inter-chapter sections in particular, fail to engage in detail with the work of the thinkers it references. In the first inter-chapter section Jenkins states:

> Indebted to Walter Benjamin and others, this study hypothesizes as follows: that originary moments exert – through language transmissions and related effects on human bodies – valences ("gravitational pulls") sufficient to affect conventions of meaning (cultural conventions as to what is real, natural, and/or true), even for cultural moments distant in space and time.[15]

Jenkins does not tie this reference to Benjamin to any of Benjamin's texts. The casual nature of the reference to 'Benjamin and others' also invites the obvious question 'which others, and how is their work connected to Benjamin's?' Jenkins defends his failure to consider the work of the thinkers he refers to in the main text on the basis that '[i]ssues of concern to specialists are treated in extended footnotes. By placing these more intricate passages "below the line," the book aims to keep its main flow clear and lively.'[16] This is, for me, a denial of the author's responsibility to represent or constellate the fragments, the texts and sources he uses, in order to show the reader the significance of his argument. In this way Jenkins fails to present the reader with a complete artifact and asks the reader to do the hard work alone, cross-referring from main text to endnotes in order to piece the argument together.

Jenkins employs this method to consider Benjamin's 'Critique of Violence' in an endnote to chapter 6, his most extensive consideration of Benjamin's work anywhere in the book. This three page endnote (at pages 145-148) notes Benjamin's distinction between 'law-preserving violence', 'law-creating violence', and 'divine violence'. In the main text Jenkins notes that the endnote 'briefly argues the relevance of "divine violence" to the present study'.[17] This amounts to a request to the reader to dart around the study, piecing together its fragments. This fragmented method leads to a failure of

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representation. Asking the reader, in Benjaminian fashion, to be an 'onlooker', an active participant in the text, does not remove the author's obligation to (re)present 'situations' or arguments 'compellingly' to the reader.[18]

Jenkins' fragmented method is most clearly presented in chapter 6. He explains that the first section of that chapter 'implicitly relies on the analytical force of what I have been calling Benjaminian materialism (described in Chapter 1 as the basis of this study's methodology)'.[19] He goes on to explain that 'this study's critique of Last Will finds ample support in Agamben and Benjamin'.[20] The connections which form the mosaic, the artifact, are never presented to the reader. The mosaic, the artifact, is only referred to but referring and showing are not the same thing. Jenkins' language here is significant. He notes that 'Benjaminian materialism' was 'described in Chapter 1 as the basis of this study's methodology', rather than asserting that Benjaminian materialism *is* the study's methodology. There is no explanation or representation of what this methodology involves or how it differs from other, perhaps more orthodox legal methodologies. A truly Benjaminian materialism, as I will represent in what follows, depends on representation, on showing the reader the connections between the fragments selected by the author.

Jenkins 'inter-chapter theory signpost[s]' can be contrasted with Benjamin's 'epistemo-critical prologue' to *The Origin of German Tragic Drama*.[21] In his prologue Benjamin sets out the method he employs in his study. For Benjamin it is not possible to *know* what German tragic drama is, but it is possible to *represent* German tragic drama.[22] This distinction between something that can be known, that can be captured or 'possessed',[23] and something which can be represented, is represented in the 'idea'. The 'idea' of German tragic drama can be represented but it cannot be known.[24] The purpose of such representation is 'not to carry the reader away and inspire him with enthusiasm', for 'contemplative…representation…can be counted successful only when it forces the reader to pause and reflect.'[25]

Benjamin is, by the method of his own scholarship, offering methodological advice to those who would have their readership 'pause and reflect' on the orthodoxies of established intellectual fields or practices. If your aim is to advance an alternative representation of an existing 'idea', if you would have your readership question their preconceptions, it is essential that you map out the method of your argument – hence Benjamin's 'epistemo-critical prologue'. Without a clear representation of your method the extent to which your study operates as a challenge not only to established

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understandings of a particular field of intellectual activity but also to the ways in which those understandings are produced is unlikely to be perceived by the reader.

It is only by inviting the reader into the text as an 'onlooker', a co-author, working alongside you, the author, as you grapple with, assemble, constellate, and move through the material, the fragments, that the method and its alterity can be conveyed and demonstrated. By demonstrating the alterity of your method, and by performing that method in and through your text, with the reader as co-author, you are empowering the reader to assemble and constellate her own fragments as part of her own representation and, in doing so, you are deconstructing the (perceived) divide between author and reader.[26] You, as author, are offering a complete artifact to the reader, inviting the reader into that artifact in order to understand how it has been assembled, thereby empowering the reader to assemble her own artifacts and, if she wishes, disassemble yours. Something of this trinity of representation, collaboration, and critique is captured in Benjamin's observation that 'the more significant works, inasmuch as they are not the original and, so to speak, ideal embodiments of the genre…fall outside the limits of genre. A major work will either establish the genre of abolish it; and the perfect work will do both.'[27]

Benjamin's *Origin* is not simply an argument for an alternative understanding of the nature of German tragic drama but, much more importantly, a representation of an alternative mode of scholarship which rejects the idea that things are simply to be known or understood.[28] It presents a mode of scholarship which represents fields of intellectual inquiry and practice as 'ideas' to be represented and re-represented through the constellation of fragments;[29] texts, phenomena,[30] 'the rags, the refuse',[31] those things in the world that are excluded from established understandings or orthodoxies.[32]

Jenkins' structure and method are not, in my view, and in the terms outlined above, Benjaminian. The separation of substance and theoretical support into chapter and inter-chapter sections prevents the reader from immersing herself, as an 'onlooker', in the method of the argument; it does not empower the reader to engage in scholarship which challenges the conventional separation between law and the humanities because it does not present the reader with a coherent artifact which explicates its own method of challenging that separation. When Jenkins notes, in the epilogue, that 'this study aims…to demonstrate a contribution at the inter-discipline of law-and-humanities' he has,[33] at least from the point of view of demonstrating a method by which law and humanities concepts and ideas can be fused, failed. Something of that failure is

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conveyed in the fact that he claims only to have 'demonstrate[d] a contribution' and is, apparently, unable to show or represent to the reader the impact or nature of that contribution.

To make a meaningful contribution to this 'inter-discipline' a text which represents and enacts the transformation which this inter-discipline seeks to bring about in law and legal thinking is called for. To write such a text – and this would seem to have been Jenkins' ambition given his dual focus on inheritance law and 'the inter-discipline of law-and-humanities' – a clear statement of methodology, an enactment of that methodology, and a representation of the ways in which that methodology differs from those conventionally employed by the discipline under scrutiny is required. That would be a truly transformatory contribution to the 'inter-discipline of law-and-humanities'. Benjamin offers a template for authors of such transformatory texts in his *Origin*, but Jenkins does not adopt that template and, in my view, the book is the poorer for it. Had Jenkins provided a methodological introduction, his own version of the 'epistemo-critical prologue', the implications of his 'contribution' to the relationship between law and the humanities would, I suspect, have been more clearly represented. As it stands, the text amounts to a general argument for the exploration of legal concepts and structures, such as the last will, through literary texts, yet something much more significant and compelling was promised and possible.

This is all the more regrettable given the promising 'flash' of light in one fragment of text towards the end of the book.[34] Jenkins notes that 'theater is a particularly potent medium for the undercutting of divine right claims, since both the actor and the one who claims divine right must be concerned with projecting an appearance.'[35] Still focussing on 'divine right', he goes on to note a connection between Shakespeare's plays and 'Benjamin's claims that baroque theatre tends to perform the "dysfunction" of sovereignty, rather than a transfer from one functioning sovereignty to another'.[36] Focussing on Shakespeare's *Tempest*, Jenkins notes that:

> Prospero…aspires to pass down a law of "weak masters"…a law made by "elves" and those who leave no footprints…This would be a law that forces nothing on those who receive it. It would be more like a poem presented for followers consideration than a Last Will enforced.[37]

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This idea of a law 'more like a poem presented for followers consideration than a Last Will enforced', a law of representation and performance rather than control and enforcement, is potentially hugely significant and original. Moreover, this representational form of law, as an ontology of law, a way in which law exists, and a method of legal practice, can be grounded in and developed through Benjamin's work.[38] In *Origin*, as discussed above, Benjamin contrasts tragedy and *trauerspiel*. The former presents something complete, controlling and final to an audience, in much the same way that conventional understandings of a court's judgment present that judgment as a complete achievement which deals with the case.[39] The latter, *trauerspiel*, does not offer this kind of closure or resolution, as Benjamin makes clear in a passage which fuses the theatrical with the legal:

> The language of the pre-Shakespearian *Trauerspiel* has been aptly described as a 'bloody legal dialogue'…The legal analogy may reasonably be taken further and, in the sense of the mediaeval literature of litigation, one may speak of the trial as the creature whose charge against death – or whoever else was indicted in it – is only partially dealt with and is adjourned at the end of the *Trauerspiel*.[40]

Jenkins does not, however, develop this poetic, artistic concept of law, leaving the reader with only the fragment of the passage quoted above.

This book's fragmented method, for all that it points and hints at the possibility of a Benjaminian approach to law and legal scholarship, leaves the reader with fragments. It fails to constellate those fragments to produce an artifact, a representation, or, the greatest prize, a 'dialectical image'. In that sense I agree with Jenkins that he has 'demonstrate[d] a contribution at the inter-discipline of law-and-humanities', but it is an incomplete, fragmentary, fragmented contribution. For me, the message of Benjamin's scholarship is that out of fragments the author constructs artifacts or representations as 'the master of the *ars inveniendi*…a [wo]man who could manipulate models with sovereign skill'.[41] The impact of that message on legal scholarship is still to be realised.

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[1] University of Southampton, School of Law, Centre for Law, Ethics and Globalisation. The ideas concerning the method of Benjaminian legal thought and scholarship in this article are based on my PhD thesis. I am currently working on a book version of that thesis. I am grateful to Dr. Ralph Wilde and Professor Catherine Redgwell for their support as supervisors and to UCL's Graduate School for financial

support. I am grateful to Dr. David Gurnham (Southampton) for reading and commenting on a draft of this piece.

[2] Consider the following, non-exhaustive, selection of recent scholarship as an illustration of the extent of scholarship on Benjamin and law: Panu Minkkinen, '"Here I stand, I can do no other: Politics, Violence, and Ends in Themselves' 25 Law and Literature 226 (2013); Andrew Benjamin, 'Morality, Law and the Place of Critique: Walter Benjamin's The Meaning of Time in the Moral World' 12(3) Critical Horizons 281 (2011); Ariella Azoulay, 'The Loss of Critique and the Critique of Violence' 26 Cardozo Law Review 1005 (2006); Joseph Jenkins, 'Heavy Law / Light Law: Walter Benjamin, Friedrich Nietzsche, Robert Bork, Duncan Kennedy' 17 Law and Literature 249 (2005); Benjamin Morgan, 'Undoing Legal Violence: Walter Benjamin's and Giorgio Agamben's Aesthetics of Pure Means' 34(1) Law and Society 46 (2007); Matthew Abbott, 'The Creature Before the Law: Notes on Walter Benjamin's *Critique of Violence*' 16 Colloquy 80 (2008); Marc de Wilde, 'Meeting Opposites: The Political Theologies of Walter Benjamin and Carl Schmitt' 44(4) Philosophy and Rhetoric (2011) 363

[3] Walter Benjamin, *The Arcades Project*, Howard Eiland and Kevin McLaughlin tr., (Cambridge Massachusetts, London: The Belknap Press of Harvard University Press, 2002), 462 (N2a,3): 'It's not that what is past casts its light on what is present, or what is present its light on what is past; rather, image is that wherein what has been comes together in a flash with the now to form a constellation. In other words, image is dialectics at a standstill. For while the relation of the present to the past is a purely temporal, continuous one, the relation of what-has-been to the now is dialectical: is not progression, but image, suddenly emergent. – Only dialectical images are genuine images (that is, not archaic); and the place where one encounters them is language. Awakening.'; On Benjamin's concept of the dialectical image see Max Pensky, 'Method and Time: Benjamin's dialectical images' in David S. Ferris ed., *The Cambridge Companion to Walter Benjamin* (Cambridge: Cambridge University Press, 2004) 177.

[4] The concept of the 'constellation' is central to Walter Benjamin's 'Epistemo-Critical Prologue' to *The Origin of German Tragic Drama*, trans. John Osborne, (London, New York: Verso, 1998) – see 34: 'Ideas are to objects as constellations are to stars…They do not contribute to the knowledge of phenomena, and in no way can the latter be criteria with which to judge the existence of ideas.' See also Theodor Adorno, 'Notes on Philosophical Thinking' in Theodor W. Adorno, *Critical Models: Interventions and Catchwords* (Henry W. Pickford tr., Columbia University Press, 2005) 127, 131, apparently expanding on Benjamin's concept: 'Truth is a constantly evolving constellation, not something running continuously and automatically in which the subject's role would be rendered not only easier but, indeed, dispensable. The fact that no philosophical thinking of quality allows of concise summary, that it does not accept the usual scientific distinction between process and result…renders this experience palpably clear' – footnotes omitted. On the concept of the fragment see the quotation from Benjamin in note 7 below.

[5] Joseph S. Jenkins, *Inheritance Law and Political Theology in Shakespeare and Milton: Election and Grace as Constitutional in Early Modern Literature and Beyond* (Farnham: Ashgate, 2012).

[6] Jenkins, ibid. refers to 'Benjaminian Materialism at 4, 'Benjaminian historical materialism' at 6 (it is not clear whether this is a distinct concept from 'Benjaminian Materialism'), and refers to Benjamin at numerous other points throughout the text. Most significantly, at 31, Jenkins refers to 'Benjaminian materialism' as 'this study's primary methodology' (the original text at 31 is in italics).

[7] Benjamin, *Origin*, *supra* note 4 above, 28-9: 'Just as *mosaics* preserve their majesty despite their fragmentation into capricious particles, so philosophical contemplation is not lacking in momentum….The value of *fragments* of thought is all the greater the less direct their relationship to the underlying idea, and the brilliance of the representation depends as much on this value as the brilliance of the *mosaic* does on the quality of the glass paste. The relationship between the minute precision of the work and the proportions of the sculptural or intellectual whole demonstrates that truth-content is only to be grasped through immersion in the most minute details of subject-matter.' And see 119: 'As is suggested by the open theatre and the fact that the performance is never repeated identically, what takes place is a

decisive cosmic achievement. The community is assembled to witness and to judge this achievement. The spectator of tragedy is summoned, and is justified, by the tragedy itself; the *Trauerspiel*, in contrast, has to be understood from the point of view of the onlooker. He learns how, on the stage, a space which belongs to an inner world of feeling and bears no relationship to the cosmos, situations are compellingly presented to him.'

[8] Walter Benjamin, 'One-way Street' in Marcus Bullock and Michael W. Jennings eds., *Walter Benjamin: Selected Writings: Volume 1, 1913-1926* (Cambridge Massachusetts, London: The Belknap Press of Harvard University Press, 2004) 444, 449: 'children are particularly fond of haunting any site where things are being visibly worked on…In waste products they recognize the fact that the world of things turns directly and solely to them. In using these things, they do not so much imitate the works of adults as bring together, in *the artifact produced in play*, materials of widely differing kinds in a new, intuitive relationship' – emphasis added; Theodor W. Adorno, Gretel Adorno and Rolf Tiedemann eds., *Aesthetic Theory,* trans. Robert Hullot-Kentor, (London, New York: Continuum, 2004), 236 connects 'artifact' with 'artwork': 'The concept of an artifact, from which "artwork" is etymologically derived, does not fully comprise what an artwork is…In art the difference between the thing made and its genesis – the making – is emphatic: Artworks are something made that has become more than something simply made.'

[9] Walter Benjamin, 'The Author as Producer' in Michael W. Jennings, Howard Eiland, and Gary Smith eds., *Walter Benjamin: Selected Writings: Volume 2, 1927-1934*, trans. Rodney Livingstone, (Cambridge Massachusetts, London: The Belknap Press of Harvard University Press, 2005), 768.

[10] Benjamin, *Arcades*, *supra* note 3, 460 (N1a,8): 'Method of this project: literary montage. I needn't *say* anything. Merely show. I shall purloin no valuables, appropriate no ingenious formulations. But the rags, the refuse – these I will not inventory but allow, in the only way possible, to come into their own: by making use of them', emphasis in original, and 473 (N9,8): 'Being a dialectician means having the wind of history in one's sails. The sails are the concepts. It is not enough, however, to have sails at one's disposal. What is decisive is knowing the art of setting them.'

[11] See Benjamin, *Origin*, *supra* note 4 above, 29: 'If representation is to stake its claims as the real methodology of the philosophical treatise, then it must be the representations of ideas. Truth, bodied forth in the dance of represented ideas, resists being projected, by whatever means, into the realm of knowledge', and see 27: 'It is characteristic of philosophical writing that it must continually confront the question of representation.'

[12] Jenkins, *supra* note 5, 1.

[13] Ibid. 201.

[14] Ibid. 19.

[15] Ibid.

[16] Ibid.

[17] Ibid.

[18] Benjamin, *Origin*, *supra* note 4, 119: 'the *Trauerspiel*, in contrast, has to be understood from the point of view of the *onlooker*. He learns how, on the stage, a space which belongs to an inner world of feeling and bears no relationship to the cosmos, *situations* are *compellingly presented* to him.'

[19] Jenkins, *supra* note 5, 140.

[20] Ibid.

[21] Benjamin, *Origin*, *supra* note 4, 27.

[22] Ibid. 28: 'If philosophy is to remain true to the law of its own form, as the representation of truth and not as a guide to the acquisition of knowledge, then the exercise of this form – rather than its anticipation in the system – must be accorded due importance.'

[23] Ibid. 29: 'Knowledge is possession. Its very object is determined by the fact that it must be taken possession of – even if in a transcendental sense – in the consciousness…For the thing possessed, representation is secondary; it does not have prior existence as something representing itself.'

[24] Ibid. 38: 'In the sense in which it is treated in the philosophy of art the *Trauerspiel* is an idea' and see 38-9: 'The attempt to define ideas inductively – according to their range – on the basis of popular linguistic usage, in order then to proceed to the investigation of the essence of what has been thus defined, can lead nowhere', and 39: 'it is only with the greatest reservation that the philosopher may adopt the habitual tendency of ordinary thinking, which is to make words into concepts embracing whole species in order to be more sure of them.'

[25] Ibid. 29.

[26] Benjamin reflects on the deconstruction of this divide between author and reader in 'The Author as Producer', *supra* note 9.

[27] Benjamin, *Origin*, *supra* note 4, 44.

[28] See Beatrice Hanssen, 'Philosophy at Its Origin: Walter Benjamin's Prologue to the Ursprung des deutschen Trauerspiels' 110 Modern Language Notes 809 (1995), and in particular 810: 'Meant as a decisive contribution to the methodological debates that dominated the nineteenth and early twentieth centuries, Benjamin's introduction advanced a "Platonic theory of science"…which was to provide the foundation for philosophy, the philosophy of history and philosophical aesthetics.'

[29] Benjamin, *Origin*, *supra* note 4, 34: 'Ideas are to objects as constellations are to stars…They do not contribute to the *knowledge* of phenomena, and in no way can the latter be criteria with which to judge the existence of ideas'

[30] On phenomena as the basic unit of reality, the 'mediating role' of 'concepts' which 'enable phenomena to participate in the existence of ideas', and the function of ideas in 'the representation of phenomena' see Benjamin, *Origin*, *supra* note 4, 34.

[31] Benjamin, *Arcades*, *supra* note 3, 460 (N1a,8).

[32] Benjamin, *Origin*, *supra* note 4, 29: 'The value of fragments of thought is all the greater the less direct their relationship to the underlying idea'.

[33] Jenkins, *supra* note 5, 201.

[34] On the importance of a '"flash" of light' to Benjamin's concept of the 'dialectical image' see note 3 *supra*.

[35] Jenkins, *supra* note 5, 177.

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[36] Ibid. 178.

[37] Ibid.

[38] In my PhD thesis, and the book version of the thesis on which I am currently working, I argue for an allegorical-representational theory of international law based on Walter Benjamin and Theodor Adorno's work.

[39] See Benjamin, *Origin*, *supra* note 4, 131-2: 'In tragic poetry the ancient curse which has been passed down from generation to generation, becomes the inner, self-discovered possession of the tragic character. And it is thus extinguished'. See also 119: 'As is suggested by the open theatre and the fact that the performance is never repeated identically, what takes place is a decisive cosmic achievement. The community is assembled to witness and to judge this achievement. The spectator of tragedy is summoned, and is justified, by the tragedy itself', and see 137: 'tragedy ends with a decision – however uncertain this may be'.

[40] Ibid. 137.

[41] Ibid. 179.