

Peace Through Law?

Freud, Einstein, and Kelsen on the Violence of Right

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Abstract: This article scrutinizes Sigmund Freud's *Why War?* (1933) by taking it as the focal point to explore the Freudian conception of violence. According to Freud, violence is intrinsically connected with the constitution of right. What is at stake in Freud's reflections is this very specific dynamic relation of violence and right, being equally important in his dispute with Albert Einstein. The debate between Freud and Einstein is problematized by confronting it with the legal philosophy of Hans Kelsen. Special attention is given to Kelsen's critical review of Freud's *Group Psychology and the Analysis of the Ego* (1921) as a landmark text of Freud's investigation of both man as a social being and the preconditions of human society. It is argued that Freud subscribes to both Einstein's and Kelsen's liberalism in order to radically criticize it. Based on his own conception of right as a temporary incantation of violence, Freud subverts the liberal thesis of *Peace Through Law*.

Keywords: Violence; Right; War; Peace; Freud; Einstein; Kelsen.

We shall be making a false calculation if we disregard the fact that law was originally brute violence and that even today it cannot do without the support of violence.

Einstein, Freud (1933b, 208-9)

1. Introduction

Violence is of all times. As a multi-headed, untamable monster it confronts us with one of the most fascinating aspects of the human condition. The continuous intellectual struggle with this phenomenon, thus, comes as no surprise. Against the backdrop of the Western history of ideas – from Plato and Thomas Aquinas, over Thomas Hobbes and Immanuel Kant, to Hannah Arendt, Jean-Paul Sartre, and Frantz Fanon, amongst others – an often overlooked, but thought provoking reflection on the phenomenon of violence was developed by Sigmund Freud and the psychoanalytic tradition.

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Besides its therapeutic aspirations, psychoanalysis had an explicit culture-critical agenda from the very beginning¹. In his so-called *cultural writings*, Freud developed a radical critique of contemporary society. In these texts, which are generally given much less attention, there is one particular text which draws our attention with respect to the issue of violence, that is, the pamphlet *Why War?*². In what follows, we argue that this text functions as a conceptual lens to reconsider a range of motifs appearing in a series of Freud's texts which were published during or after the First World War³.

The crux of Freud's discussion with Einstein in *Why War?*, we will argue, is Freud's thesis that *violence* is intrinsically linked to the concept of *right*. The latter concept is neither mentioned nor clarified in his cultural writings. We will argue, more specifically, that, according to Freud, the socio-anthropological condition is fundamentally characterized by violence. Moreover, right, as a central institution regulating social order, is presented by Freud as the cultural institution *par excellence*. As one of "the origins of our great cultural institutions", Freud says, right is both the expression and the incantation of violence⁴.

Freud's coupling of violence and right is discussed at the level of both constitutional law and international law respectively. These two legal orders are scrutinized from a legal-philosophical perspective by re-contextualizing Freud's implicit discussion with Hans Kelsen. At that time, this Viennese legal philosopher – member of the *Viennese School* – was one of the main representatives of the utopian-liberal view articulated by Einstein and criticized by Freud. By no means, in this context, can the choice for Kelsen as a point of reference for the at that time dominant liberalism be called a coincidence. Kelsen was not only one of the founders of legal positivism and the father of the Austrian constitutional law (1919), he was equally one of Freud's trustees⁵. From this perspective, Freud's views on

¹ See, e.g., Rose (1997) and Makari (2010).

² Einstein, Freud (1933b [1932]). Given the fact that the reading of this correspondence has a central place in this contribution, the text *Why War?* (Einstein, Freud 1933b [1932]) will be referred to with the page numbers between brackets.

³ One can refer here mainly to *Thoughts for the Times on War and Death* (1915b), *Group Psychology and Analysis of the Ego* (1921c), *The Future of an Illusion* (1927c), *Civilization and Its Discontents* (1930a [1929]) and *New Introductory Lectures to Psycho-Analysis* (1933a [1932]).

⁴ Freud (1913j, 185).

⁵ Under the influence of his fellow jurist Hans Sachs, Hans Kelsen (1881-1973) participated to the meetings of the Vienna Psychoanalytic Association (Mühlleitner, Reichmayr 1997, Rose 1998). Whether or not he can be considered an official member of the Association (Jablonek 1998, 382), Kelsen regularly participated to meetings from 1911 onwards (Nunberg, Federn 1974). A few years later, he became intrigued by

violence, war and peace cannot be adequately understood without reading them as a critique of Kelsen's legal-philosophical conception of the liberal state of law. Moreover, the broader philosophical relevance of Freud's theses becomes apparent when reading them in their critical relation to Kelsen's legal-philosophical perspective. Against the backdrop of the liberal optimism regarding civilizational progress, Freud sheds a light on the human desire *toward perpetual peace* in order to, subsequently, unmask it as illusory hope. Before analyzing *right and violence* as the genuine stake of *Why War?*, one must first take a step back in order to reconstruct the particular historical context of Einstein's and Freud's exchange of thoughts.

2. A Letter from Einstein

Besides published books and articles, Freud's complete works also consist of an impressive collection of letters. Freud did not only correspond with a wide range of pupils and colleagues in the broad medico-psychiatric field, but also with renowned contemporaries, such as Arnold Zweig, Thomas Mann, and Romain Roland⁶. No doubt most appealing is the correspondence with Einstein. From the twenty letters exchanged by the two scientists from 1926 onwards, the remarkable exchange of views during the summer of 1932 asks for our specific attention⁷. The two letters were finally published together as a pamphlet (1933)⁸. However, due to its provocative title

Freud's *Group Psychology and Analysis of the Ego* (1921) (Métall 1969). In 1922, Kelsen presented a critical reading of this text to the Vienna Association (Kelsen 1924).

⁶ See Freud (1961).

⁷ In real life, Einstein and Freud met only once, in Berlin (on December 29, 1926), at the home of Freud's son Ernst. Several months earlier, however, the correspondence started with a letter from Einstein at the occasion of Freud's seventieth birthday. It continued until shortly before Freud's death (Grubrich-Simitis 1995, Forrester 2005). Einstein wrote Freud (in 1930) to convince him to give a talk about Zionism (Gay 1989, 541 note 2), but also (among others in 1931 and 1936) at the occasion of Freud's birthday (Freud 1961, 428, Roudinesco 2014, 463). The twenty letters are part of the Sigmund Freud Papers (Library of Congress) and the Albert Einstein Archives (The Jewish National Library and Hebrew University, Jerusalem) (Tögel 2009, 81 note 1 and 83 note 6). The original manuscript of Freud's piece of *Why War?*, however, does not belong to these collections, but is part of American private property (Grubrich-Simitis 1996, 88 note 9). When Eisler established the Sigmund Freud Archives in 1951, Einstein, *inter alia*, was awarded an honorary membership of the board of directors (Roudinesco 2014, 524).

⁸ The German version was published in 1933, simultaneously in French (translation: Blaise Briod), English (translation: Stuart Gilbert) and Dutch (translation: E. Street), as the second volume in the series of the Parisian *International Institute of Intellectual Cooperation*. Because of Hitler's coming to power (in January 1933) the text was

and the Jewishness of its authors, the text was banned and consigned to the national-socialist index immediately – and thus at risk of disappearing between the cracks of history.

Leon Steinig, the secretary of the League of Nations (the forerunner of today's United Nations), founded in 1919 by Woodrow Wilson, had a hard time to persuade the seventy-six years old Freud to write an open answering letter to Albert Einstein⁹. Alongside prominent intellectuals, such as the Polish-French physicist Marie Curie and the French poet Paul Valéry, Einstein was part of the *International Institute of Intellectual Cooperation* (the forerunner of the Unesco), chaired by the French philosopher Henri Bergson. The commission's outspoken pacifist program was aimed at encouraging supranational intellectual cooperation. It was intended to function as an antidote against a fragile inter-war Europe, plagued by nationalism (also in Spain and Italy, e.g.). The Versailles Treaty marked the end of both the German Empire and the Austrian-Hungarian double monarchy. At the time of the inauguration of the Weimar Republic and of an autonomous Austria, Hungary, Czechoslovakia and Yugoslavia, the Europe of nation states became a genuine powder keg. Germany and Austria were under permanent revolutionary and civil war threat, which was even increasing after the Great Depression (1929). Against this backdrop, Einstein wanted to act against the prevailing indifference towards emerging fascism. He was recognized as a leading promotor of internationalism. In favor of an open exchange and public debate, Einstein chose Freud to be his interlocutor.

Although the correspondence was dismissed as “a tedious and sterile discussion”¹⁰, Freud was thoroughly acquainted with the problem Einstein had put forward. The latter raised the question “Is there any way of delivering mankind from the menace of war” as “the most insistent of all the problems civilization has to face”¹¹. The challenge which was formulated here, however, was not only relevant given the broader context of the League of Nations and its pacifist ambition, as a supranational organization, to promote *no more war*. It also appealed to Freud, who was puzzled by the contrast between the barbarism of war and the grandeur of Europe-

printed in only 2000 copies per edition. Freud gave a presentation copy for Benito Mussolini to Edoardo Weiss (Roudinesco 2014, 444-447).

⁹ Freud (1961, 414-415). For his commitment to world peace, Wilson was awarded the Nobel Prize for Peace in 1919. Together with William Bullitt, Freud wrote a psychoanalytic study (1930) about the life of Wilson. This study, with an introduction by Freud, was only published in 1966 (Freud, Bullitt 1967, xi-xvii).

¹⁰ Jones (1957, 187).

¹¹ Freud (1933b, 199).

an culture at that time. Despite his apparent disinterest in the manuscript, Freud decided on the title *Why War?*, denouncing Einstein's suggestion *Right and Violence*. Freud's choice, alluding to one of his former texts on "the disillusionment of the war"¹², however, could make us oblivious to the unique character of this text. It may confirm the reader's first impression that Einstein's letter rather served as an opportunity for Freud to merely reformulate his earlier thoughts on this topic.

In what follows, Freud's account of violence is further scrutinized. Special attention will be given to Freud's emphasis on the essential connection between *violence* and *right*. For, as will be argued, this very connection indicates that Einstein's title suggestion *Right and Violence* was in fact articulating the genuine argument of Freud's analysis. But what exactly was at stake for Freud?

3. The Paradox of Right and Violence

Although Einstein sets out the beacons for a "frank exchange of views", it is Freud who, proverbially, sets the liberal cat among the pigeons (199). Freud's gesture implies a reaction against Einstein's assertion that a "supranational organization", that is, "a legislative and judicial body", can provide a possible answer to the central question: "Is there any way of delivering mankind from the menace of war?" (199-200). Both Einstein's question and answer evoke the spirit of a then popular expression of liberalism. In terms of a means-to-an-end rationality – Einstein also refers to "the advance of modern science" (199) –, a rationalist universal world order is presented there as the ultimate guarantee for international peace. Following this strain of thought, international law serves as the ultimate means to achieve social world peace.

In fact, Freud's reply implies a thorough critique of what Einstein – based on his liberal principles – considers "a fact with which we have to reckon", that is, that "law and might inevitably go hand in hand" (200). For Freud, Einstein's apparently neutral position is not at all obvious. Moreover, he makes it the crux of his argument. Freud argues as follows: "You begin with the relation between Right and Might [*Richt und Macht*]. There can be no doubt that that is the correct starting-point for our investigation. But may I replace the word 'might' by the balder and harsher word 'violence' [*Gewalt*]?" (203-4). Thus, what at first glance may seem a

¹² Freud (1915b, 275-88).

subjective preference, in fact immediately reveals a crucial disagreement between Einstein and Freud.

Upon closer inspection, Freud's rephrasing of Einstein's thesis does not imply a mere conceptual substitution of *might* by *violence*. It rather implies the introduction of *violence* as a new, third concept¹³. In fact, Freud is confronting Einstein with a hiatus in his argument, because the omission of violence already seems to be a symptom of Einstein's liberal ideological bias. According to a then prevailing version of liberal ideology, violence was considered an anomaly which should to be eliminated. The rationale of Einstein's argument already explicitly reveals its position regarding a fundamental issue, the so-called *paradox of right and violence*. What paradox is in question here?

Traditionally, one is tempted to assume that the legitimacy of right can be found in its neutralization of violence. This is also the liberal tradition's view which is represented here by Einstein. According to the liberal perspective, violence is opposed *against* right and state. That violence is threatening presupposes that it needs to be combatted and eliminated. The paradox of right and violence consists in the fact that – in the name of right and state – violence is used to eliminate or prevent the use of violence in the community. The lawful use of violence in the name of right, however, equally implies violence. An elimination of violence is impossible since right presupposes violence. Thus, violence is not merely opposed to right, but is the foundation of right. In other words, a community needs right to regulate violence, but, therefore, it is at least (partly) dependent on violence.

It goes without saying that Einstein's position is in line with the liberal conception of right and violence – including the associated *might* –, which was dominant in the Interbellum. *Right* and *violence* functioned as *antitheses* [*Gegensätze*] (204). Freud's intervention aims at unmasking Einstein's thesis, which was presented to be an established fact, overlooking and eliminating the aforementioned paradox. Freud leaves no doubt that he himself is defending the alternative position. He contends that right is closely related to violence, moreover, "that the one has developed out of the other" (204). For Freud, right does not imply the elimination of violence, as Einstein suggests, but its legitimate emanation. As opposed to Einstein, Freud believes that violence and right mutually imply one another.

¹³ The German concept *Gewalt* means both *violence* and *authority* or *established power*. On the etymological ambivalence and the conceptual the concept *Gewalt*: see De Launay (2014). *Macht* or *Autorität* are words commonly used to indicate *authority* or *established power*.

er. How should we understand this statement? And what are its implicit assumptions? In what follows, it will be argued that, in fact, the Freudian link between *violence*, *right*, and *might* assumes an additional element, that is, *community*. Therefore, it must be clarified what exactly Freud understands by the process of socialization.

4. Violence, Socialization, and Right

In the tradition of modern social contract thinkers like Jean-Jacques Rousseau, John Locke, and Thomas Hobbes, Freud is painting *chiaroscuro*. Contemporary society is understood by its contrast with an original *state of nature*. The latter is a fictional construction which is situated in mythical prehistory. However, Freud's sketch is not at all congruent with the paradisiac situation of *le bon sauvage*, as described by Rousseau. On the contrary, it rather displays a similarity with the Hobbesian state of *war of every man against every man* [*bellum omnium contra omnes*]. According to Freud, this original state of nature can be described adequately in terms of *brute violence* [*rohen Gewalt*] and associated with the image of primitive man. In this way, Freud promotes brute violence to be the proto-societal *fait primitif*. This brute violence corresponds with the image of a heterogeneous horde of man or a chaotic multitude of individuals, as depicted by Hobbes' *man is a wolf to man* [*homo homini lupus*]¹⁴. This proto-societal chaotic state is contrasted with the unity established by the process of socialization.

With the transition from the mythical primal horde towards a fraternal community, Freud argues in *Totem and Taboo* (1912-13) that right emerged first¹⁵. This implied an initial cultural accomplishment, because, from then onwards, right regulated the coexistence of a large number of people within the context of a community. Freud goes even further as he considers this socialization as "by far the most important thing" in "the process of human civilization"¹⁶. In *Why War?*, he specifically talks about

¹⁴ Freud (1930a, 111).

¹⁵ For a detailed contextualization of *Totem and Taboo* (1912-13a): see Westerink (2013).

¹⁶ Freud (1930a, 140). Freud argues: "I scorn to distinguish between culture and civilization". By *culture* he understands "all those respects in which human life has raised itself above its animal status and differs from the life of beasts" (Freud, 1927c, 5-6). Or, also: "We shall therefore content ourselves with saying once more that the word civilization describes the whole sum of achievements and the regulations which distinguish our lives from those of our animal ancestors and which serve two purposes – namely to protect men against nature and to adjust their mutual relations" (Freud, 1930a, 89).

a “community of interests” [*Interessengemeinschaft*] in which conflict and differences are not settled by the use of brute violence, but by the foundation of right (205). The model for this community of interests which Freud has in mind here, is the modern state of law. With regard to the state, Freud earlier declared – following Max Weber – that it “desires to monopolize” violence, “like salt and tobacco”¹⁷. For Freud, state and right do not represent a dualism, but a unity¹⁸.

Before the unity of state and law are further clarified, the question must be answered of how, according to Freud, the state and its internal legal order are related to the aforementioned brute-violent state of nature. To clarify this relationship, two perspectives which simultaneously structure Freud’s ideas on the subject need to be taken into consideration, these are, a *developmental* and an *anthropological perspective* on the interrelatedness of right and violence.

The *developmental perspective* questions *the origin of right*. In Freud, this coincides with the question of the process of socialization, and more in particular, the genesis of the state. After all, according to Freud, there was “only one” path “that led from violence to right or law”, that is, via the process of socialization. The latter implies that “the superior strength of a single individual could be rivalled by the union of several weak ones”. The increasing progression of a disparate multitude of weak individuals – as opposed to the violence and the right of the strongest – to a unity, reveals a tipping point or a threshold where violence transforms into might. The latter is manifested in right. “Violence could be broken by union”, Freud asserts. The unity of the initial heterogeneous group of weak ones allows violence to express itself as might. “[T]he power of those who were united now represented law in contrast to the violence of the single individual”, Freud argues. He refers to the motto, borrowed from Sallust: “*L’union fait la force*” (205)¹⁹. Only this kind of power constitutes right. Freud maintains that “right is the might of a community” (205). Thus, violence does not necessarily imply right, but, the other way around, right is violence by definition, more in particular, organized, institutional “legal acts of violence” (205).

¹⁷ Freud (1915b, 279).

¹⁸ In doing so, he follows the lead of Hans Kelsen, as will be argued immediately.

¹⁹ Aside from the famous monograph *Catiline’s Conspiracy* (*De Catilinae Coniuratione*), the Roman historian Sallust (86-35) also wrote the impressive *The Jugurthine War* (*Bellum Iugurthinum*). The French proverb cited by Freud dates back to the latter work, though it might be rather associated by Freud with regard to both the context and the motto of the United Provinces (1588-1795). Nevertheless, it is also the motto of the Kingdom of Belgium and the Republic of South Africa.

Does the transformation of brute violence into right imply that violence is finally banished? Because of Freud's association of both terms, the opposite can be assumed. Indeed, Freud's developmental line of research, which is reconstructing the development of right from brute violence, coincides with *an anthropological perspective*. The latter reconsiders the structural dynamics between right and violence. Though the outlined transformation of violence into right expressed in right implies a *sublation* [*Aufhebung*] of the initial brute violence, in no way a radical elimination of violence is implied. On the contrary, as Freud points out: "It [right] is still violence, ready to be directed against any individual who resists it" (205). According to Freud, right thus implies *legitimate* or *legal* violence, which is exerted by and referring back to a community. According to Freud, right always implies violence, though, at the same time, the former never completely coincides with the latter: "[I]t works by the same methods and follows the same purposes [as violence]. The only real difference lies in the fact that what prevails is no longer the violence of an individual but that of a community" (205). Thus, "the essentials" of right imply "violence overcome [*Überwindung*] by the transference of power [*Übertragung der Macht*] to a larger unity, which is held together by emotional ties between its members" (205).

Despite the triumph over violence by the establishment of right, for Freud the latter remains essentially violent and dynamic. The inauguration of right is not an accomplished fact. The constituted right both continues to structurally refer to its origin in violence and is the continuous realization of the culturally transformed violence. It not only derives its legitimacy from the community, using its power in this way, but also its inherent fragility. In order to understand the vicissitudes of right, the community and its constitutive preconditions regarding prevailing right need to be taken into account, Freud suggests. Freud's societal view is rooted in his anthropology. What image of man does Freud's account of the human possibility of socialization presuppose?

5. From Antisocial Animal to Social Being

In order to understand his position towards socialization as a process of civilization, Freud's anthropological views need further consideration. In his premises, the human individual is basically understood from the

perspective of his original disposition towards aggression²⁰. According to Freud, it is “certain that we spring from an endless series of generations of murderers, who had the lust for killing in their blood, as, perhaps, we ourselves have to-day”²¹. This can be illustrated by Freud’s view of hatred as of the ego’s initial relation to the external world²². The foreign other initially unleashes our hostility and hatred, Freud assumes. The interaction with his peers “reveals man as a savage beast to whom consideration towards his own kind is something alien”²³. Freud’s pessimistic interpretation of “the nature of the emotional relations which hold between men in general” is illustrated with a reference to both Arthur “Schopenhauer’s famous simile of the freezing porcupines”²⁴ and Thomas Hobbes’ “*Homo homini lupus*”²⁵.

The human individual appears both as an anti-social and anti-cultural animal. The renunciation of instinctual life which enables coexistence, implies an individual sacrifice and induces the experience of a structural *discomfort* [*Unbehagen*] *in culture*. For Freud, culture equals instinctual hostility. Cultural integration advances human possibilities, but equally restricts the individual’s instinctual life. The triumph over fundamental hostility, unfolding in the cultural process of socialization, thus appears as a genuine task. Given the individual’s aggressive disposition, the following question can be raised: what is the necessary precondition for the process of socialization, according to Freud?

In *Why War?*, *Totem and Taboo*’s familiar oedipal scheme – with individuals finding themselves united in the shared (negative feelings of) fear, guilt, and helplessness after the murder of the mythical primal father – fades to the background. The enigma of socialization is reassessed by applying the central mechanism of *Group Psychology and the Analysis of*

²⁰ The Freudian thesis of a non-reactive, original aggressiveness is present from *Three Essays on the Theory of Sexuality* (1905d) onwards – with the notion of the *instinct for mastery* [*Bemächtigungstrieb*] – undoubtedly the most explicitly referred to by the notion of the death instinct in *Beyond the Pleasure Principle* (1920g). Despite the fundamental assumption of a non-sexual aggression, Freud always equally presupposes the sexual instinct or Eros (De Vleminck 2017). It can be argued that Freud distinguishes between the concepts of *aggression* and *violence* in the sense that *violence* is limited to the intersubjective manifestation of aggression in the social register (versus a disposition towards aggressiveness in individual psychology). Generally, this distinction is totally neglected in psychoanalytic literature (see Yakeley, Meloy 2012, e.g.).

²¹ Freud (1915b, 469).

²² Freud (1915c, 139).

²³ Freud (1930a, 112).

²⁴ Freud (1921c, 101).

²⁵ Freud (1930a, 111).

*the Ego*²⁶, that is, *identification*. The latter is understood here as the social bonding of the individual with society which relies on both the possibility of libidinal investment in objects and the strength of these particular “emotional ties” [*Gefühlsbindungen*] (208). Despite Freud’s reference to Plato’s Eros, what is at stake is, in fact, the human possibility to idealize an object to such an extent that it becomes one’s individual ideal. In this way, idealized *objects* – persons, but also objects and ideas – can become part of, or even completely coincide with, the individual’s *Ego-ideal*. If a large group of individuals shares the same objects as its ego-ideal, the group becomes united in its bondage to this object. Accordingly, the process of socialization is based on “one psychological condition”, that is, identification (205). In the case of every single individual’s identification with – and, thus, submission to – one and the same ideal, all individuals become equal. As such, they establish a community. The resulting sense of community does not eliminate hostility, according to Freud²⁷. For, the community always implies a majority which is established against one or many foreign minorities. Hostility also prevails among peers – the brothers of the primal horde. No one is allowed to consider himself as an exception with regard to the submission to the ideal. Moreover, besides social inclusion, the process of socialization also includes social exclusion. The community’s hostility towards elements which are both external and thus foreign to the community equally establishes the cohesion of the group itself in its hostility toward an *outside*²⁸. Likewise, Freud writes, the Russian Communists “are armed today with the most scrupulous care” and are united in “hatred of everyone beyond their frontiers” (212).

The above-mentioned “unity of the majority must be a stable and lasting one”, Freud argues (205). Once the community is established, its continuity is depending on its own “recognition of a community of interests”. Subsequently, this realization also (re)confirms and strengthens the sense of community amongst the members of the united group. The established mutual emotional ties and the group members’ awareness of them, provide an additional guarantee for the unit’s permanency. Besides its consolida-

²⁶ See Freud (1921c).

²⁷ Freud links it to the phenomenon called “the narcissism of the minor differences” (Freud 1921c, 101, Freud, 1930a, 114, Freud 1939a, 91).

²⁸ This implies a twofold manifestation of the death instinct, this is, its internal versus its external manifestation (May 2015). Freud’s discussion of the death instinct in the correspondence with Einstein (209-211) is not further elaborated in this contribution. On the death instinct: see De Vlemminck (2016).

tion, the thus effected unity also implies “the true source of its strength”, Freud argues (205).

Freud’s optimism regarding the potential of identification as a ground for social cohesion, including the state’s establishment in terms of a community of interests, can be linked to Hans Kelsen’s critical review of Freud’s *Group Psychology and the Analysis of the Ego*²⁹. In this extended review, Kelsen argues that Freud, like Gustave Le Bon, William McDougall, and Wilfred Trotter – but also Émile Durkheim and Georg Simmel –, is engaging in a so-called “hypostatization” of the group³⁰. On the one hand, Kelsen praises Freud’s assumption of individual psychology as the basis of the so-called *group psychology* [*Massenpsychologie*]³¹. Freud is right in denouncing the mass psychologists and sociologists of his time, Kelsen acknowledges. For, the mass is incorrectly pre-supposed to be a separate and autonomous research topic³². This type of collective psyche [*Volksgeist*] is compared by Kelsen with “the metaphysical character of Hegel’s objective spirit”³³. On the other hand, Freud’s critique is considered not to go far enough. Despite his rejection of a separate collective soul, Freud’s conception of the modern state remains grounded in an autonomous organic unit. This substrate is considered a *fiction* by Kelsen. According to Kelsen, Freud is defending an unjustified transition from social unit to state unit. The latter unit, Kelsen argues as opposed to Freud, is exclusively established by pure and positive right. According to Kelsen, the unity of the state relies on a legal unit and not on a social unit which of its own (*per se*) would coincide with the legal unit of the state, as Freud seems to assume.

²⁹ In Freud’s collected works, the only explicit reference to Kelsen (and his critique) can be found in a 1923 footnote to *Group Psychology and Analysis of the Ego* (1921c): “I differ from what is in other respects an understanding and shrewd criticism by Hans Kelsen (1922) [of the present work] when he says that to provide the ‘group mind’ with an organization of this kind signifies a hypostasis of it – that is to say, implies an attribution to it of independence of the mental processes in the individual” (Freud 1921c, 87 note 2).

³⁰ Kelsen (1924, 38). For his critique of social psychology in *Group Psychology and Analysis of the Ego* (1921c), Freud relies on (the 1912 German translation of) Le Bon’s *The Crowd* (1895), McDougall’s *The Group Mind* (1920) and Trotter’s *Instinct of the Herd in Peace and War* (1916). Unlike Kelsen, Freud does not mention Simmel’s *Sociology* (1908) and Durkheim’s *The Rules of Sociological Method* (1918). See: Stäheli (2011) and Jonsson (2013).

³¹ For the translation of the German *Masse* by the English *Group*: see Surprenant (2003).

³² Among other aspects, Freud contests sociology’s autonomous and peculiar status: “For sociology too, dealing as it does with the behaviour of people in society, cannot be anything but applied psychology. Strictly speaking there are only two sciences: psychology, pure and applied, and natural science” (Freud 1933a, 179).

³³ Kelsen (1924, 7).

Despite the social foundation of the state unit, the latter also results in a legal unit, Freud argues. For Kelsen, the primacy of right ensures the stability of the state, whereas the latter stability is different for Freud – given its sociological foundation. The question can be raised: given their establishment on the foundation of violence, how stable are both Freudian state and right?

6. The Fragility of the State and Its Monopoly of Violence

As it turns out, the theoretical optimism regarding the state's social cohesion, which Kelsen attributed to Freud, needs further nuances. Of course, Freud is aware that not every single individual is inclined to transfer its individual power and interests to the community of interests. From the very moment of resistance, the individual places itself outside the ruling community of interests³⁴. But, how many of these individuals can a state cope with?

Reasoning in terms of *the unity of the majority*, Freud acknowledges that a community can never be a *completely* homogeneous unity. Similar to Kelsen, Freud does not believe in a people's will à la Rousseau. Despite the state's unity, the community of interests "comprises elements of unequal strength" "from the very beginning", Freud writes. Even though the fundamental inequality of different groups may not be conflictual in itself, the constructed unity will give rise to conflict immediately. "[M]en and women, parents and children – and soon, as a result of war and conquest, [...] victors and vanquished, who turn into masters and slaves" become opposed elements of unequal power (206). From this perspective, state unity – in terms of a community of interests – always implies the conflictual interaction between the dominant majority and its opposing elements – whether or not the latter are united as minorities. Obviously, Freud's conflictual state view has particular consequences.

Of course, the concept of a conflict-driven state has immediate implications for the status of right. "The justice [*Recht*] of the community then becomes an expression of the unequal degrees of power obtaining within it; the laws are made by and for the ruling members and find little room for the rights of those in subjection", Freud argues (206). This implies that violence is monopolized by the state conceived as a community of interests in favor of the majority in conflict with the minorities. In favor of the

³⁴ Earlier, Freud already indicated that "every individual is virtually an enemy of civilization" (Freud 1927c, 6).

ruling majority, violence is transformed into right. The potential violence of the minority is violently suppressed by the right of the majority. The applied right is experienced by the oppressed as a *violent* repression, it seems. The right is foreign to them and, in that sense, it is not experienced as *their* right. This tension continuous to fuel the conflict and makes right inherently fragile.

The fact that, for Freud, the state's legal unity is founded by its social unity implies that the stability of right is structurally put to the test. However, legal uncertainty, which is connected with the conflictual legal principle, to a certain extent also implies legal plasticity. In other words, a potential crisis equally holds possibilities. Freud argues that "from that time forward there are two factors at work in the community which are sources of unrest over matters of law but tend at the same time to a further growth of law" (206). This also means that right is threatened from two sides, that is, "by certain of the rulers" and "by the oppressed members of the group". There is a risk that some of the rulers would attempt "to set themselves above the prohibitions which apply to everyone". For Freud, the effective realization of this possibility implies the end of right, as it entails a relapse to "a dominion of violence" by an individual or a minority against a majority. But the threat of legal uncertainty also comes from the minority. In view of its unequal treatment by right, the minority of "oppressed members of the group" will "make constant efforts to obtain more power" and recognition. This will result in "changes that are brought about in that direction recognized in the laws", in the pursuit of "equal justice for all" (206).

"[W]ithin a community", "a real shift of power" can be initiated by a contingent "number of historical factors", Freud argues (206). When right does not "adapt itself to the new distribution of power" or when "the ruling class" is unwilling to accepted the imposed right, "rebellion and civil war follow", Freud argues (206)³⁵. This condition implies "a temporary suspension of law and new attempts at a solution by violence, ending in the establishment of a fresh rule of law" (206). For Freud, civil war functions as a model to reflect on the situation of a temporary suspension of right in a modern state. Civil war seems to imply a reawakening of the brute violence which we encountered in the state of nature's *war of all against all*.

Yet, legal development is not exclusively understood by Freud as driven by internal conflict. Legal modifications can also be the result of some-

³⁵ During the years of the interbellum in Europe (1918-1939), Freud was quite familiar with insurrections and (the threat of) a civil war.

thing “invariably peaceful”, Freud holds. This is the case when they have their origin “in the cultural transformation of the members of the community”. For, also the community’s unity is work in progress, as Freud’s view on *cultural progress* suggests. And, subsequently, these evolutions also contribute to legal development. Freud holds an evolutionary view on the development of constitutional law, defined in terms of an effectuated peace enforcement. The interconnection between right and social peace again touches a Kelsenian theme.

However, Freud supports the Kelsenian scheme only to immediately refrain from it. His reasoning is implicitly articulated in the discussion with Kelsen. Following Kelsen’s lead, Freud thinks of the state as coinciding with right. Where Kelsen maintains that the state’s unity is established by right, Freud argues that the unity of the state is endorsed by right at the expense of the minority. Kelsen fundamentally conceives right as the result of a compromise in which the minority is represented, whereas Freud defines the minority by its continuous attempts to undermine state and right. More radically than Kelsen, Freud considers both state and right as essentially conflictual. Both Kelsen and Freud, however, believe that state and right guarantee the cultural achievement of human coexistence. Conflicts of interest are regulated by right. Moreover, the “probability that a peaceful solution will be found” will be favored by the fact that the community lives on the same territory, making both the necessity and the common concern for peace “inevitable”. Factual circumstances thus necessitate a future realization of peace. But is this constitutional peace able to suppress all violence?

Thus far, it became clear that Freud not only encountered violence in the sense of *brute violence*. Violence is present in constitutional law defined as an incantation of violence, but it is also at work in civil war which puts constitutional law to the test. In what follows, it is argued to what extent Freud resumes the scheme of *Group Psychoanalysis and the Analysis of the Ego*³⁶ – “this work [...] shows a way from the analysis of the individual to an understanding of society”³⁷. On this occasion, Freud moves away from the focus on the individual state to that of the community of states. Within this international community, war violence appears against the backdrop of international law. Again, the underlying discussion with Hans Kelsen is informative. Also in Kelsen’s work there is an immediate link between constitutional law and international law. After all, Kelsen considers the

³⁶ See Freud (1921c).

³⁷ Freud (1961, 342).

relation between (internal) constitutional law and international law as a structural interaction between two legal orders of the same legal system. For, Kelsen's legal positivism presupposes the unity of national and international law (monism), *a priori* conceiving national citizens (subjected to constitutional law) as subjects of international law³⁸. The question arising, is the following: what is, according to Freud, the relation between violence and right, in light of the process of international socialization?

7. From War to Peace Through International Law

After the issues of *war of all against all* and *civil war*, Freud tackles the problem of war violence, at Einstein's request. State war was presented by the latter as an avoidable eruption of international conflict. Based on his aforementioned analysis of constitutional law, however, Freud now develops an international perspective on right and violence. On the one hand, in line with his abovementioned research strategy, he reiterates his adherence to the Kelsenian monism. On the other hand, he tends to criticize the primacy of international law – which is also defended by Einstein's liberalism and at work within the aforementioned monism. Contrary to Kelsen, Freud presupposes the primacy of sovereign nation state and, correspondingly, develops a critique of the then popular account of liberalism³⁹.

Freud starts from the perspective of the sovereign state. The conflict model defining the sovereign state is equally applicable to the interrelation of the individual states. Freud acknowledges that “conflicts [*Konflikte*]

³⁸ See Kelsen (1920a and 1926).

³⁹ Freud always held a politically neutral position. When Max Eastman asked him “What are you politically?”, Freud answered: “Politically I am just nothing” (Eastman 1962, 128). At the same time, however, we are also familiar with his confession to Arnold Zweig: “I am a liberal of the old school” (Freud, Zweig 1970, 21). Apparently, Freud's alleged liberalism did not keep him from thoroughly criticizing it. Freud's arguments, however, are in accordance with the then popular expression of anti-liberalism, defending the primacy of the nation state's absolute sovereignty (including the primacy of the national constitutional law). Remarkably enough, Freud's arguments resemble those of another important legal philosopher of that very same interwar period, notably Carl Schmitt (1888-1985). Although any explicit reference to Schmitt is absent in Freud's work, it is perhaps no coincidence that Schmitt and Kelsen were close colleagues at the University of Cologne in 1933. Moreover, at that time, there was an ongoing legal and philosophical debate between Schmitt and Kelsen (Vinx 2015). Schmitt's limited number of references to psychoanalysis – including a discussion of this debate in relation to Freud's opinion on the status of international law – are beyond the scope of this contribution. For the intellectual affinity between Freud and Schmitt: see Zakin (2011).

between one community and another or several others [...] have almost always been settled by force of arms [*Kraftprobe des Krieges*]” (206-7). This kind of warfare is re-contextualized within a broader historical perspective. “Wars of this kind end either in the spoliation or in the complete overthrow and conquest of one of the parties”, Freud states (207). A view at the past teaches Freud that the neutralization of international conflict situations implies the establishment of larger units where “the transformation of violence into law [*Umwandlung von Gewalt in Recht*]” and “in which a fresh system of law [*Rechtsordnung*] led to the solution of conflicts” (207). Following this kind of reasoning, “paradoxical as it may sound, it must be admitted that war” appears to be the ultimate “means of establishing the eagerly desired reign of ‘everlasting’ peace”, whereby “a powerful central government [*Zentralgewalt*] makes further wars impossible”, Freud argues (207)⁴⁰. Moreover, apart from the fact that the unification process is inherently violent, it is in fact always temporary – “owing to a lack of cohesion between the portions that have been united by violence” – and partially (207).

Freud’s analysis implicitly relies on the idea that both the states involved and their legal systems are sovereign. Correspondingly, war violence appears within an imperialist frame in which right is violently imposed on the vanquished by the dominant state. There is a primacy of the national constitutional law in Freud’s discourse. This is established when there is (forced) consent with the right imposed by the dominant state(s). In this way, the (in)stability of right is proportional to the (in)stability of the dominant state(s).

Freud’s primacy of the national constitutional law is diametrically opposed to the solution suggested by Einstein, namely the subordination of the sovereign state to the primacy of international law. According to Einstein, this in fact implies that the states would establish a “supranational organization” [*überstaatliche Organisation*], that is, “the setting up, by international consent, of a legislative and judicial body [*legislative und gerichtliche Behörde*] to settle every conflict arising between nations” (199-200). He argues that this kind of supreme organization incarnates an “incontestable authority” [*unbestreitbare Autorität*], but also the states’ renunciation of sovereignty. Thus, Einstein’s proposition is completely in line with Kelsen’s monism, which defends the primacy of international law against the sovereignty of the internal (national) law. Kelsen makes a

⁴⁰ The concept *Zentralgewalt* simultaneously expresses the connotations of *violence* and *the authority of right*.

plea for the radical abolishment of the sovereignty of both the state and constitutional law⁴¹. He defends the primacy of international law which receives the status of a universal law, providing legitimacy to constitutional law. Despite their shared monism, like Einstein, Kelsen is directly opposed to Freud's primacy of constitutional law. Correspondingly, Freud's discussion with Einstein again reveals an implicit argument with Kelsen. Kelsen's critique of the modern state's sovereignty – since the Peace of Westphalia (1648) – is part of his liberal frame of reference, characterized by the primacy of international law and a plea for judicial pacifism.

The liberal and pacifist program, interpreted by Einstein – and further contextualized by the reference to Kelsen –, can appropriately be summarized with the mantra “Peace Through Law” – and *no peace without law*⁴². This liberal legal pacifism advocates the establishment of an international legal community as the ultimate means to eradicate war. Kelsen promotes the primacy of international right as an anti-imperialist pacifist program, which is the mirror image of the imperialism of the nation states held by Freud⁴³. Kelsen makes a plea for an international legal community. Within the philosophical tradition of promoting a permanent peace settlement, Kelsen gives a prominent place to Immanuel Kant. Yet, Kelsen's cosmopolitan right, with the international legal community in the role of super-state, in fact, goes far beyond Kant's loose federation of republican states.

In order to draw attention to the historical failure of a law-based global Peace League, Freud implicitly refers to Kant's *Toward Perpetual Peace* (1795)⁴⁴. The latest contemporary manifestation of the Kantian vision was, indeed, Wilson's fragile League of Nations⁴⁵. Therefore, Freud is rather pessimistic about the Kantian possibility of a cosmopolitan right, as encountered in Einstein and Kelsen. In light of the historical facts, Freud seems to argue, Einstein's plea for an international legal order is nothing but a cosmopolitan utopia. Against this backdrop, Einstein's “result” is immediately reduced to an abstract ideal and reformulated by Freud as follows: “Wars will only be prevented with certainty if mankind unites in

⁴¹ Kelsen (1920a, 9-10).

⁴² See Kelsen (1944).

⁴³ Kelsen (1920a, 319).

⁴⁴ With the expression “the eagerly desired reign of ‘everlasting’ peace (*ewigen* *Friedens*)”, Freud implicitly refers to Kant's *Zum ewigen Frieden* (207).

⁴⁵ Tully (2009, 333-4). Freud speaks of Wilson (“an idealist”) and his plan to “bring to war-torn Europe a just and lasting peace” in terms of both nothing “except noble intentions”, which contradicted contemporary social reality, and “an alienation from the world of reality” (Freud, Bullitt 1966, xii).

setting up a central authority [*Zentralgewalt*] to which the right of giving judgement [*Richtspruch*] upon all conflicts of interest shall be handed over” (207). This supreme central authority thus has the strict monopoly on violence and, thereby, it can enforce compliance with international law by the threat of violence. However, exactly the realization of this kind of central authority is not evident – to say the least.

In order to sharpen his critique of Einstein and Kelsen, Freud immediately puts the proposed ideal scenario to the proof by comparing it with the functioning of the League of Nations at that time. Despite his appraisal of the historical uniqueness of the League of Nations as “supreme agency” [übergeordnete Instanz], Freud at the outset points at its lack of “the necessary power” [*erforderliche Macht*]. Freud describes the League of Nations as “an attempt to base upon an appeal to certain idealistic attitudes of mind the authority (that is, the coercive influence) which otherwise rests on the possession of power” (208). According to Freud, however, the intended centralization of “the compelling force of violence” is rendered completely impossible by the lack of “emotional ties (identifications)” among the members of the international community. Freud comes to realize that, during the Interbellum, both the requested international unity and “a unifying authority” [*einigende Autorität*] are obstructed by a diversity of “national ideals” (208).

It is not only the threat of European nationalism(s) which interfered with the establishment of a real centralized unity. Utopian unitary ideas, proclaimed by a range of world views in past and present, also confront Freud with the gap between dream and reality. Besides to pan-Hellenism and Christianity, Freud also refers to the gap between the Marxist world view and its realization in “Communist ways of thinking” in order “to make an end of war” (208)⁴⁶. Freud depicts the Marxian “ideal condition” of a non-violent society of equals in line with Kant’s, Kelsen’s and Einstein’s ideal condition in terms of both “the dictatorship of reason” and “a Utopian expectation” (213)⁴⁷. “Our best hope for the future is that intellect – the

⁴⁶ Freud developed a systematic critique of communism and the idea of a community of equals in labour (Freud 1927c, 9, Freud 1930a, 112-4, Freud 1933a, 176-181, Freud 1933b, 211-2). Freud’s criticism of the Marxist conception of the state is in line with Kelsen’s critique of socialism. At that time, Kelsen *Sozialismus und Staat* (1920b) was a bestseller in Vienna.

⁴⁷ Freud seems to allude to the concept *dictatorship of the proletariat* of Karl Marx and the tradition after him (Lenin and Stalin in the Russian Empire after the October Revolution of 1917). Kelsen’s rationalism implies that right – that is, a rational organization of power – becomes a social, instrumental technique for social reform (Kelsen 1933, 15-6).

scientific spirit, reason – may in process of time establish a dictatorship in the mental life of man”, Freud writes elsewhere⁴⁸. For now, this rationalist dream is still obstructed by the passionate irrational motives of mankind⁴⁹.

Freud acknowledges that “actual force” cannot be replaced by “the force of ideas” and ideals like equality or justice. This kind of denial is also at work in Einstein’s and Kelsen’s liberalism, which equally has a utopian character. Freud’s truth is confronting. International unity demands the transformation of violence into right, which is promulgated and enforced by the dominant states based on the primacy of the sovereign state. Freud resorts to the inherently violent character of right, as follows: “We shall be making a false calculation if we disregard the fact that law was originally brute violence and that even to-day it cannot do without the support of violence” (208-9).

For Freud, peace is, by definition, a negative and precarious peace in terms of a temporary absence of war in the incantation of violence by right. “*Si vis pacem, para bellum*. If you want to preserve peace, arm for war”, Freud recalls the old adage⁵⁰. War is a symptom of the impossibility of a positive, *democratic peace*. That a cosmopolitan peace is impossible for Freud, is consistent with his anthropology and the conflictual conception of society associated with it. Indeed, Freud argues: “there is no use in trying to get rid of men’s aggressive inclinations” (211). “It does not seem as though any influence could induce a man to change his nature into a termite’s”, Freud asserts⁵¹. Therefore, the human capacity for socialization is under constant pressure. “It is always possible to bind together a considerable number of people in love”, Freud continues cynically, “so long as there are other people left over to receive the manifestations of their aggressiveness”⁵².

⁴⁸ Freud (1933a, 171). Here, Freud reformulates the optimistic view on the potential of science in *The Future of An Illusion* (1927): “The primacy of the intellect lies, it is true, in a distant, distant future, but probably not in an *infinitely* distant one” (Freud 1927c, 53).

⁴⁹ In *Moses and Monotheism: Three Essays* (1939a), Freud reformulates his astonishment about the simultaneous progress of rationality and the increase of barbarism: “We are living in a specifically remarkable period. We find to our astonishment that progress has allied itself with barbarism” (Freud 1939a, 54).

⁵⁰ Freud (1915b, 300).

⁵¹ Freud (1930a, 96).

⁵² Freud (1930a, 114).

8. The Illusory Desire for Perpetual Peace

Freud's pessimistic view of man, including its disenchanting vision on human coexistence as fundamentally determined by violence, confronts him with still another riddle than the permanent threat of war. Given the all but flattering image of human nature, one can indeed be skeptical about the peculiar pacifist desire for perpetual peace of which both Kant and Kelsen witness. Einstein is confronted by Freud with the fact that, remarkably enough, this pacifism is never focused on a specific question⁵³. This is contrasted by the permanent focus on war: "Why do you and I and so many other people rebel so violently against war? Why do we not accept it as another of the many painful calamities of life? After all, it seems to be quite a natural thing, to have a good biological basis and in practice to be scarcely avoidable" (213). In other words, doesn't pacifism confront us with the paradox of war, that is, that in warfare *nobody* wants war and *everybody* wants peace?

Freud's questioning of pacifism brings us back to his conception of culture and the experience of individual discontent in culture. Aside from the dialectics between right and violence, Freud understands culture as a permanent process of development. The human being is *susceptible to culture* – Freud speaks of "susceptibility to culture" –, but this implies a process of *work* [*Arbeit*], the so-called "work of civilization" [*Kulturarbeit*]⁵⁴. In this respect, a new phase of cultural development implies the overrunning of the previous one. Especially from this progressive perspective, war is experienced as a *riddle* that is not in line with "a process of evolution of culture. (Some people, I know, prefer to use the term 'civilization')" (214)⁵⁵.

Analogous to the developmental psychological perspective with regard to the individual, Freud understands the evolution of culture as "an organic process" that goes along with "*psychical* modifications" (214). Freud refers to "the psychological characteristics of civilization" consisting "in a

⁵³ In *Moses and Monotheism* (1939a), Freud comes back to the idea of *pacifism* once more. There, he opposes the Mosaic god Aten as "a pacifist" against the violent god Yahweh (Freud 1939a, 63).

⁵⁴ Freud (1915b, 276, 283). For a detailed analysis of Freud's notion of "Kulturarbeit": see Smadja (2015, 111-160).

⁵⁵ Freud's thesis (see also: Freud 1927c, 6, Freud 1933a, 179) contrasts with the conventional distinction between *culture* [*Kultur*] and *civilization* [*Zivilisation*] in the German tradition. In Oswald Spengler's *Decline of the West* (1918), for example, *civilization* implies the ultimate stage and endpoint of *culture*: "The Civilization is the inevitable destiny of the Culture [...]. Civilizations are the most external and artificial states of which a species of developed humanity is capable. [...] They are an end, irrevocable, yet by inward necessity reached again and again" (Spengler 1918, 31).

progressive displacement of instinctual aims and a restriction of instinctual impulses” (214). More in particular, this means “a strengthening of the intellect, which is beginning to govern instinctual life, and in internalization of the aggressive impulses, with all its consequent advantages and perils” (214). “War is in the crassest opposition to” the process of civilization, Freud writes (215). Therefore, pacifism is not only “an intellectual and emotional repudiation”, for, it equally testifies of “a *constitutional intolerance* [*konstitutionelle Intoleranz*]” (215). This inclines Freud to think of pacifism as characteristic for the *Weltbürger* and *Kulturmensch*: “It is my opinion that the main reason why we rebel against war is that we cannot help doing so. We are pacifists because we are obliged to be for organic reasons” (214). This insight makes Freud conclude: “[W]hatever fosters the growth of civilization works at the same time against war” (215). The process of evolution of culture, however, is also ambiguous, in the sense that man pays a price for it: “We owe to that process the best of what we have become, as well as a good part of what we suffer from” (214). In this way, the developmental perspective re-confronts Freud with the pathogenic character of culture. Although he is the *cultural animal*, Freud argues, man equally remains the *anti-social* and “sick animal” [*das kranke Tier*]⁵⁶. At first sight, Freud’s focus on the evolution of culture seems to hint towards Enlightenment and Einstein’s idealistic pacifism. The latter may seem naïve though it seems, at the same time, guided by the belief in science as a value-free enterprise. Correspondingly, science appears to be the paramount forum to go beyond international disputes and even neutralize them by a *domination-free conversation* [*herrschaftsfreie Dialog*]. Kelsen equally relies on science (the science of positive law) as value-free. And, like Einstein, he considers international law to be the *nec plus ultra* in order to establish world peace. At the same time, Kelsen’s compromise model of state and right does not ignore the conflictual nature of society as rooted in violence. On the contrary, Freud holds a more radical view of violence. This is made explicit in the societal perspective on right and violence, elaborated in Freud’s anthropology. There, violence is an intrinsic characteristic of the unyielding natural condition of human coexistence. It can be temporally exorcized in the cultural establishment of right, though it never can be completely eradicated. “As we already know, the problem before us is how to get rid of the greatest hindrance to civilization – namely, the constitutional inclination of human beings to be aggressive towards

⁵⁶ Nietzsche (1994, 88).

one another”⁵⁷. In this way, for Freud war remains a symptom of the impossibility to ultimately abolish violence and to create perpetual peace.

9. The Times Are They a Changin’?

Although Freud’s pessimism certainly gets the upper hand in the discussion with Einstein, in the end the hope for peace is equally articulated as *human, all too human*. The ambiguity of the condition of human co-existence in relation to violence also reveals a contradiction in Freud’s thinking. “In any case, I do not expect to be awarded the Nobel Prize for this essay”, Freud wrote to Max Eitington⁵⁸. Freud’s intellectual pessimism regarding the human condition, however, goes together with his private and emotional disbelief towards the threat of Austro-fascism⁵⁹. Freud’s blindness for sociopolitical unrest is fueled by the imaginary glorification of the supreme German culture of his *hero* Goethe. For Freud, this is irreconcilable with the menacing image of Teutonic barbarism.

Very soon, at the occasion of the Book Burning in Berlin (May 1933), organized by the minister of propaganda Joseph Goebbels, the work of Freud, Einstein, and Marx, together with that of a range of other Jewish authors, would be consigned to the flames. To Arnold Zweig, Freud reported: “What progress we are making. In the Middle Ages they would have burned me; nowadays they are content with burning my books”⁶⁰. A few years later, they would no longer be satisfied with the burning of books. Yet, after the Anschluss, Freud would wait almost until the very last moment to cross the Channel (in June 1938).

Like Freud, Einstein was equally experiencing a combination of hope and disillusion, albeit in the reversed mode of defeatist realism and diminishing silent hope⁶¹. Although he was a member from the very beginning, Einstein no longer attended any of the meetings of International Institute, which was plagued by nationalism and too indifferent towards fascism. Though he eagerly took the opportunity to correspond with Freud, in fact,

⁵⁷ Freud (1930a, 142).

⁵⁸ Freud (2004, 820). Freud has been nominated for the Nobel Prize for Medicine no less than twelve times. To his own frustration, Freud never became a Nobel Prize laureate (Stolt 2001). In 1930, however, he was awarded the Goethe Prize for his literary work.

⁵⁹ See Freud (1992).

⁶⁰ Freud (1992, 149).

⁶¹ See Grundmann (2005), Rowe, Schulmann (2007).

Einstein already had resigned from the Institute at the moment the text was published. He had emigrated to the United States and accepted a professorship at Princeton University. Yet, during and after World War II, Einstein would continue to fight for his cosmopolitan-pacifist ideals. As a result, he would become known as one of the fathers of the Peace Movement⁶².

Hans Kelsen, who was nominated for the Nobel Prize for Peace in 1934 and 1936, equally continued to defend the same pacifist conviction. After his chair at the university of Cologne was revoked (in 1933), he initially tried to continue his work in Geneva and Prague. At the start of the Second World War, however, Kelsen took a flight to the United States in order to accept a professorship in Harvard and Berkeley respectively. From there, he actively participated in the establishment and implementation of the United Nations and its Permanent Security Council. The spirit of Kelsen's legal pacifism is also present in the International Criminal Court in The Hague⁶³.

Neither on a sociopolitical level nor on a strictly philosophical level, Freud's presentation of right and violence has lost any of its topicality. For, Freud's dynamic anthropological analysis of violence as the *fait primitif* of social coexistence is remarkably in line with the much-cited German philosopher Walter Benjamin. Freud's less fortunate Jewish contemporary developed his thoughts in the fascinating text *Critique of Violence* (1921), amongst others. Neglected by Benjamin scholars for a long time, this text was mostly referred to as an anti-pacifist text. In accordance with Freud, Benjamin was aware of the trajectory of violence throughout our cultural history. In this perspective, he developed an equally radical analysis of violence. Violence is not absent when right prevails, but continues to be at work through the institution of right by the enforcement of law. This becomes clear from the powerful first sentence of Benjamin's text: "The task of a critique of violence can be summarized as that of expounding its relation to law and justice"⁶⁴. Similar to Freud, Benjamin acknowledges the human tendency to neglect the continuing impact of violence in right, either in *lawmaking violence* [*rechtsetzend Gewalt*] or *law-preserving violence* [*rechtserhaltende Gewalt*].

The legacy of the ideas about the paradox of right and violence, shared by Benjamin and Freud, continues to be at work in the poststructuralist approach of violence, which can be found in the work of the French phi-

⁶² See Nathan, Norden (1960).

⁶³ See Telman (2011).

⁶⁴ Benjamin (1921, 277).

osopher Jacques Derrida, among others. In *Force of Law: The 'Mystical Foundation of Authority'* (1990), Derrida deconstructs the opposition between violence and the absence of violence from the perspective of mythical violence in the Greek tradition, situating its most radical offshoot in the *Final Solution* [*Endlösung*] or Holocaust⁶⁵. In this way, Derrida did not only revisit Benjamin's text, but equally reintroduced the reflection on both the radical nature of violence and its inherent relation to right as a philosophical issue. One of the most recent advocates of this idea is the Italian philosopher Giorgio Agamben, who resorts to the initial violence as the basis of his *Homo Sacer* cycle⁶⁶. There, too, right is the violent authority, representing the incantation of violence as defining the socio-anthropological condition.

The discussion between Freud and Einstein is not merely an historical document. For, at the same time, the text appears to be untimely. It is resurfacing in post-war debates in philosophy of law and in political philosophy until the present day, but also echoes in contemporary debates in political and social affairs. The fragility of the international union promoted by Einstein and Kelsen can be illustrated by the vicissitudes of the United Nations. Its unity is permanently threatened by the ghost of sovereignty through the use of the veto in the Security Council, the unilateral suspension of engagements in the Unesco or at the International Criminal Court in The Hague. But, again, the Occident and the European Union are equally threatened by the very same tendencies, as can be illustrated by the Brexit. In this sense, the contemporary international context continuous to confront us with the painful radical truth of Freud's thesis regarding *Right and Violence*.

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⁶⁵ Derrida (1990, 31, 57-63).

⁶⁶ See Agamben (1998).

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