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## VERGIL AND FOUNDING VIOLENCE

*Michèle Lowrie\**

*Dem Sieger gehört der Besiegte, mit Weib und Kind,*

*Gut und Blut. Die Gewalt gibt das erste Recht, und*

*es gibt kein Recht, das nicht in seinem Fundamente*

*Anmassung, Usurpation, Gewalttat ist.<sup>1</sup>*

In the 1930s and 40s, there was an assumption that ancient Rome stood as an exemplum for Europe,<sup>2</sup> though ever since the Founding Fathers framed our American constitution in partial imitation of Rome's,<sup>3</sup> there has been a competing assumption that Rome is an exemplum for the United States.<sup>4</sup> What exactly this exemplum means was and is still contested. The Roman Republic has been exemplary for the American constitution, the Roman Empire for fascism,<sup>5</sup> the

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<sup>1</sup> Epigraph from Nietzsche, *Der griechische Staat*, in FÜNF VORREDEN ZU FÜNF UNGESCHRIBENEN BÜCHERN, WERKE IN DREI BÄNDEN 280 (K. Schlechta ed., 1956).

<sup>2</sup> T.S. ELIOT, *What is a Classic?*, in SELECTED PROSE OF T.S. ELIOT (Frank Kermode ed., 1975) (discussed below in Section IV); ERNST ROBERT CURTIUS, EUROPEAN LITERATURE AND THE LATIN MIDDLE AGES (Willard R. Trask trans., 1998) (1953) (same). Rome's exemplarity for a Christian Europe is the unstated premise of Haeker's 1934 book on Vergil, roundly denounced as anachronistic by Benjamin in a review. Walter Benjamin, *Privileged Thinking: On Theodore Haeker's Virgil*, in SELECTED WRITINGS, VOLUME 2: 1927-1934, at 569-75 (R. Livingstone et al. trans., Michael W. Jennings, Howard Eiland, and Gary Smith eds., 1999).

<sup>3</sup> MICHAEL HARDT & ANTONIO NEGRI, EMPIRE 161 (2000) (discussing both Republican and Imperial Rome). Arendt's tracing of the parallel is discussed below in Section IV.

<sup>4</sup> Momigliano lists well and less-well known American literature making the parallel between Rome and America. ARNALDO MOMIGLIANO, *How to Reconcile Greeks and Trojans*, in SETTIMO CONTRIBUTO ALLA STORIA DEGLI STUDI CASSICI E DEL MONDO ANTICO 437 (1984). He includes Hermann Broch's *Death of Vergil*, which was finished during his American exile.

<sup>5</sup> For the fascist and anti-fascist Vergil, see Fiona Cox, *Envoi: The Death of Virgil*, in THE CAMBRIDGE COMPANION TO VIRGIL 327, 327-28 (Charles Martindale ed., 1997); VERGIL'S AENEID: AUGUSTAN EPIC AND POLITICAL CONTEXT, at xxix, n.9, 10 (Hans-Peter Stahl ed., 1998); RICHARD F. THOMAS, VIRGIL AND THE AUGUSTAN RECEPTION, at chs. 7, 8 (2001).

American Empire, and possibly the European Union. Not one of these exemplary acts misinterprets Rome, and yet they cannot be valid in all respects at the same time. The reason Rome can serve as a model for so many different political configurations lies partially in the Republic/Empire distinction, but even the Empire alone is exemplary for radically disparate forms of government. More to the point is that Rome obeys an axiom Jacques Derrida sets out in *The Other Heading*: “what is proper to a culture is to not be identical to itself.”<sup>6</sup> At all times Rome embodied certain contradictions in its identity. The Roman Republic had control of an empire before it transformed into the Roman Empire.<sup>7</sup> Their choice of a Trojan as a mythic founder is perhaps a sign of their awareness of the importance of non-Romanness at Rome.<sup>8</sup> It is

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<sup>6</sup> Jacques Derrida, *Force of Law: The “Mystical Foundation of Authority”*, in ACTS OF RELIGION 9 (Gil Anidjar ed., London 2002) (1990).

<sup>7</sup> Hardt and Negri consistently take Polybius’s description of Republican government as a blue-print for empire without distinguishing between the separation of powers in the Roman Republic and the monarchy of the Roman Empire. MICHAEL HARDT & ANTONIO NEGRI, *supra* note 3; JACQUES DERRIDA, *THE OTHER HEADING: REFLECTIONS ON TODAY’S EUROPE* (Pascale-Anne Brault & Michael B. Naas trans., 1992)

<sup>8</sup> For the motif of the *externi duces* (“foreign leaders”), see Nicholas Horsfall, *Externi Duces*, 199 REVISTA DI FILOGIA E DI ISTRUZIONE CLASSICA 119, 188-92 (1991). Gruen offers an accessible overview of the complex Greek and Roman traditions that produced the legend of a Trojan founder. ERICH S. GRUEN, *CULTURE AND NATIONAL IDENTITY IN REPUBLICAN ROME*, at ch. 1 (1992). He emphasizes the Romans’ establishing their identity vis-à-vis the Greeks: “The embrace of Troy . . . enables Rome to associate itself with the rich and complex fabric of Hellenic tradition, thus to enter that wider cultural world, just as it had entered the wider political world. But at the same time, it also announced Rome’s distinctiveness from that world.” *Id.* at 31. Galinsky considers the Roman embrace of the Trojan legend in the late fourth century in terms of both Italian and international (largely Greek) politics. See G. KARL GALINSKY, *AENEAS, SICILY, AND ROME* 160-1 (1969). Bremmer and Horsfall emphasize the constructed, antiquarian nature of the development of the canonical versions of both the Aeneas legend, and the Romulus legend, and of their linkage, though aspects of both go back to the archaic age. See JAN N. BREMMER & NICHOLAS M. HORSFALL, *ROMAN MYTH AND MYTHOGRAPHY* 12, 13, 20, 22, 33, 46-8 (1987); see also Tim J. Cornell, *Aeneas and the Twins: The Development of the Roman Foundation Legend*, 12 PROC. CAMBRIDGE PHILOLOGICAL SOC’Y 1, 9 (1975) (making useful remarks about the limitations of our abilities to reconstruct the early myths); Nicholas Horsfall, *Some Problems in the Aeneas Legend*, 29 CLASSICAL Q., 1979, at 372-90. Grandazzi defends the historical, though not literal kernel of the archaic myths, but has little to say of the Trojan legend. ALEXANDRE GRANDAZZI, *THE FOUNDATION OF ROME: MYTH AND HISTORY* 191-92 (Jan M. Todd trans., Ithaca 1997) (1991). The process of simultaneous Roman assimilation to and differentiation from the prevailing Greek culture of the Mediterranean is a negotiation between self and other that has consequences for the internal definition of the self. Horsfall emphasizes the particular role Vergil played in turning a legend particularly associated with the Julian clan and intensely propagated by Julian Caesar into a national myth “in a way far beyond the reach of the diplomacy and propaganda of earlier generations.” BREMMER & HORSFALL, *supra* at 24. Perret traces interest in the development of the Aeneas legend to the eighteenth century. It is disconcerting to find the Italian press reporting on the legend as if it were true, *La Repubblica*, January 29, 2005 at Roma Cronaca III. Grandazzi cites an Aegean anchor found buried three thousand years ago near the the present mouth of the Tiber for evidence of an early Greek presence. GRANDAZZI, *supra* at 75. Ferdinando Castagnoli lists those who want to use archeological evidence for Bronze Age contact between Latium and Maecenean Greece as support for an element of truth in the Aeneas legend, and refutes them. Ferdinando Castagnoli, *La Leggenda di Enea nel Lazio*, 30 STUDI ROMANI 1, 1-2 (1982).

to the extent of its non-self-identity that Rome offers an exemplum for Europe, and in turn America. Derrida's agenda in positing his axiom is less to set out general laws than to question the logic of Europe's exemplarity for the world.

Will the Europe of yesterday, of tomorrow, and of today have been merely an example of this law? One example among others? Or will it have been the exemplary possibility of this law?<sup>9</sup>

Exempla—like all foundations—have a tendency to repeat themselves, and if Europe is exemplary for a certain cultural non-identity to itself, Rome can stand as one of Europe's founding exempla.

My insistence on Rome's exemplarity is not merely to give depth to the historical record, to posit one particular exemplum (Rome) as anterior to another (Europe), nor to make the theoretical point that one exemplum (Rome as America) always presupposes a prior one (Rome as Europe), though I believe these are both true, but specifically to trace a genealogy of foundation. The singularity of examples is more critically useful than generalities, and I can only hope that the example of Rome will help us understand issues that persist even today.<sup>10</sup> Until the recent remarkable non-violent revolution in South Africa, there has been a pre-supposition that foundation entails violence. Even the American Revolution entailed violence, though not against itself. Europe, America, and Rome alike may be non-identical to themselves, but this is not by any means an easy relationship. Non-identity can mean opening onto the other, and it can mean doing violence, whether to oneself or others. My philological project here is to show that Vergil understood the problematics of cultural non-self-identity in the particular case of the Rome he lived in, and my theoretical project is to untangle the intimate and uncomfortable relation, in at least one exemplary instance, between two antitheticals: founding violence and a pluralistic opening onto the other. It is not clear to me that these are alternatives we can under most circumstances choose between, but perhaps Hannah Arendt's astute divorce of violence from power will open a way.<sup>11</sup>

The *Aeneid* ends with a double act of violence, one human and one

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<sup>9</sup> Derrida, *supra* note 6, at 11.

<sup>10</sup> On the one hand, Derrida emphasizes the singularity of examples. Derrida, *supra* note 6, at 263 (“[T]here are only singular examples. Nothing is absolutely exemplary.”). On the other, he also recognizes that singularity opens a window onto the type. *Id.* at 254 (“The singularity of the historical place . . . allows us a glimpse of the type itself, as the origin, condition, possibility or promise of all its exemplifications.”). He furthermore understands the moral force examples have to change history “the *task* of a historical and interpretative memory is at the heart of deconstruction. This is not only a philologico-etymological task or the historian's task but the responsibility in face of a heritage that is at the same the heritage of an imperative or of a sheaf of injunctions.” *Id.* at 248.

<sup>11</sup> See HANNAH ARENDT, ON VIOLENCE § 2 (1969) (concluding that “[p]ower and violence are opposites,” and that “[v]iolence can destroy power; it is utterly incapable of creating it”).

divine. Each is also an act of foundation, and each is multi-valent. Many different kinds of violence come together in the poem's final scenes and establish legitimacy for what emerged as Rome.<sup>12</sup> Vergil's commentary on violence pertains not only to Rome's legendary history, but to the immediate and intense concerns of his age: the transformation of Rome from a period of civil war, in which the future emperor Augustus played a signally bloody role, and the transformation under Augustus to a period of peace. Cesáreo Bandera and Philip Hardie have each discussed violence in the *Aeneid* in terms of sacrifice, but this is only one kind of founding violence among others.<sup>13</sup> Walter Benjamin's essay, *Critique of Violence*, will provide the frame of the analysis for two reasons. He establishes a number of categories of violence which will usefully help elucidate the *Aeneid*, and the time of the essay's composition corresponds to the period between the Wars when Vergil held a preeminent role in defining European unity (Section IV below). In his critique of Benjamin's essay, Jacques Derrida asks a question that essentially sums up the central interpretive problem that has dogged the *Aeneid*: "What difference is there between, *on the one hand*, the force that can be just, or in any case judged legitimate . . . , and, *on the other hand*, the violence that one always judges unjust?"<sup>14</sup> Derrida parts company with Benjamin in disavowing any notion of revolutionary violence justified by God. He furthermore makes a division between Greek and Jewish violence, although he is tentative about the distinction. Vergil's treatment of violence in the *Aeneid* demonstrates that Rome must be brought into the picture, and Rome comes up again and again, however latently, in the critical tradition's attempts to come to terms with Benjamin. Arendt famously avoids confronting Benjamin's conception of divine violence directly, though her *On*

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<sup>12</sup> See DENNIS C. FEENEY, THE GODS IN EPIC: POETS AND CRITICS OF THE CLASSICAL TRADITION 150 (1991) ("The poem can never forget, and can never let its readers forget, that the Roman order is founded on institutionalized violence, and Juno's participation in the creation of Rome's essence is one of the ways that the poem has of reflecting upon that inescapable truth."). Morgan emphasizes Vergil's preoccupation with violence in the Hercules and Cacus episode, "because it is with violence that he is centrally concerned." Llewelyn Morgan, *Assimilation and Civil War: Hercules and Cacus*, in VERGIL'S AENEID: AUGUSTAN EPIC AND POLITICAL CONTEXT 185 (Hans-Peter Stahl ed., 1998). Morgan goes on to find this violence constructive, precisely because it allows for foundation, and cites the parallel with the murder of Remus. *Id.* Farrell rightly distinguishes between "militarist" and "pacifist" readings of the *Aeneid*, and specifies that the question is not "whether empires should exist or not," but the justification of violence as a means toward empire. Joseph Farrell, *The Vergilian Century*, 47 VERGILIUS 3, 19 (2001).

<sup>13</sup> See Cesáreo Bandera, *Sacrificial Levels in Virgil's Aeneid*, 14 ARETHUSA 217 (1981); PHILIP HARDIE, THE EPIC SUCCESSORS OF VIRGIL, at ch. 2 (1993). Both use Girardian models. Dyson is not Girardian, and focuses less on foundation than on sacrifice gone wrong—which necessitates more sacrifice in a cycle that may explain why Rome needs multiple foundations. JULIA T. DYSON, KING OF THE WOOD: THE SACRIFICIAL VICTOR IN VIRGIL'S AENEID 13, n.25 (2001).

<sup>14</sup> Derrida, *supra* note 6, at 233-34.

*Violence* is clearly a response to Benjamin and she treats the *Aeneid* extensively in *On Revolution*. Anselm Haverkamp sees Rome as a model for Benjamin of latent violence. I will attempt to show that Rome may be latent in the tradition, but that Roman violence is a violence that emerges, and that Arendt's failure to come to terms with Benjamin leads her to misread the *Aeneid*. At stake are questions of not only of justice, but also of national identity, not just Roman, but the model of identity the *Aeneid* sets for being European, and in turn for being American.

### I. LAW-MAKING AND LAW-PRESERVING VIOLENCE

In German, Benjamin's title is *Zur Kritik der Gewalt*, and the standard English translation, *Critique of Violence*, picks up only part of the resonances in *Gewalt*. *Cassell's* lists "power, authority, dominion, sway . . . , control . . . ; might; force, violence" in its definition, and Hannah Arendt's differentiation among elements in a similar list in *On Violence* shows she also means *Gewalt*.<sup>15</sup> My use of Benjamin's term already carries the assumption—one I think not ungrounded – that violence in the *Aeneid* operates within the workings of power.<sup>16</sup> Benjamin opens his essay by stating that to critique violence means "expounding its relation to law and justice," but that since violence can never be an end, only a means, we would have to determine whether violence "in a given case, is a means to a just or an unjust end."<sup>17</sup> The problem then becomes that the criterion needed would be not for violence as a principle, but for its use, and as a consequence, "the question would remain open whether violence, as a principle, could be a moral means to just ends." The challenge then becomes how to critique violence itself. In our operating example, founding the Roman Empire appears in the *Aeneid* as a just, or at least fated end, and the questions at the poem's close have to do with the use of violence toward that end. Benjamin attempts to discriminate between means themselves, "without regard for the ends they serve," and this leads him to question the distinction between "historically acknowledged, so-called sanctioned violence, and unsanctioned violence."<sup>18</sup> This distinction belongs to the realm of positive law, which "sees violence as a product of history."<sup>19</sup>

<sup>15</sup> ARENDT, *supra* note 11, at 43; *see also* Derrida *supra* note 6, at 234, 262.

<sup>16</sup> Arendt critiques the assumption of a direct link between violence and power, but shows that it is an assumption with a long history. ARENDT, *supra* note 11, at 35-42.

<sup>17</sup> Walter Benjamin, *Critique of Violence*, in REFLECTIONS 277 (Peter Demetz, ed., Edmund Jephcott, trans., New York, Harcourt Brace Jovanich 1978) (1921).

<sup>18</sup> *Id.* at 279.

<sup>19</sup> *Id.* at 278.

Part of the issue at the end of the *Aeneid* is whether the violence there is sanctioned or unsanctioned, and who does the sanctioning: the poem's implied or real audience, the author, the gods, history itself? But the more important issue is what it means to make such an evaluation. Within a state, what sanctions violence in the hands of individuals, according to Benjamin, is the law.<sup>20</sup> But before there is a state in place, before the act of foundation or pre-foundation that the *Aeneid* heralds, does "natural law" prevail, where there is an assumption that people are justified in using the violence at their disposal by nature so long as the end is just?<sup>21</sup> Can Aeneas be faulted for killing Turnus before there is a state to make such violence illegal?<sup>22</sup>

This question brings up the relation of foundation to violence. Derrida considers the question as if there could be a moment of pre-foundation: "Since the origin of authority, the founding or grounding, the positing of the law cannot by definition rest on anything but themselves, they are themselves a violence without ground."<sup>23</sup> I am, however, not at all sure we can get back in our understanding to a moment of pre-foundation, to a state of nature, whether in the *Aeneid* or even theoretically. Evander, the source of information about the pre-history of the Italian settlements, tells Aeneas that the earliest inhabitants of the area were *indigenae Fauni Nymphaeque* (8.314)<sup>24</sup> as well as people from rocks and trees. The state of nature they represent is essentially subhuman and pre-social. The Saturnian foundation that follows contradicts Latinus's representation of the Latins as a Saturnian people who live in justice without laws.<sup>25</sup>

<sup>20</sup> *Id.* at 280.

<sup>21</sup> *Id.* at 277-78.

<sup>22</sup> Derrida sums up the paradox:

On the one hand, it appears *easier* to criticize the violence that founds since it cannot be justified by any preexisting legality and so appears savage. But on the other hand, . . . it is *more difficult*, more illegitimate to criticize this same founding violence since one cannot summon it to appear before the institution of any preexisting law: it does not recognize existing law in the moment it founds another.

Derrida, *supra* note 6, at 274.

<sup>23</sup> Derrida, *supra* note 6, at 242.

<sup>24</sup> Book 8, line 314 of P. VERGILI, *The Aeneid*, in MARONIS OPERA (R.A.B. Mynors ed., 1972). All textual citations to the *Aeneid* herein will follow this format.

<sup>25</sup> Adler analyzes the contradictions between these passages in detail. EVE ADLER, VERGIL'S EMPIRE: POLITICAL THOUGHT IN THE AENEID 151-62 (2003). She takes Evander's account as a correction of Latinus's, which emerges as flawed in many ways. I am less sure than she that we can privilege one over the other, and generally feel less of a need to unify Vergil's political thought into a consistent theory. See James J. O'Hara, *They Might Be Giants: Inconsistency and Indeterminacy in Vergil's War in Italy*, 30 COLBY Q. 222-23 (1994) (discussing Vergil's—and other Latin poets'—productive use of inconsistency); JAMES J. O'HARA, DEATH AND THE OPTIMISTIC PROPHECY IN VERGIL'S AENEID 140-44 (1990) (treating the disparities between Jupiter's prophecy to Venus in *Aeneid* 1 and the agreement worked out with Juno in book 12). Although Grandazzi does not address Vergil per se, his method uses the traditional foundation accounts judicially in light of archeological evidence and shows that there is a fundamental validity to the myth about dispersed settlements, including that on the Capitoline, uniting and

*neue ignorete Latinos*

*Saturni gentem haud uinclo nec legibus aequam,  
sponte sua ueterisque dei se more tenentem.*

7.202-4

do not fail to come to know the Latins a race of Saturn just through  
no bond nor laws, governing itself of its own accord in the manner of  
the old god.

Against this rosy picture, Evander tells a story of Saturnian foundation that sounds strangely familiar. It came about through the violence of Jupiter, it resulted in Saturn's exile—an important parallel for Aeneas—and his giving of laws.

*primus ab aetherio uenit Saturnus Olympo  
arma Iouis fugiens et regnis exul ademptis.  
is genus indocile ac dispersum montibus altis  
composuit legesque dedit*

8.319-22

First Saturn came from airy Olympus, fleeing the arms of Jupiter and an exile whose reign had been removed. He brought together an ignorant race, one dispersed in the high mountains and gave them laws.

The golden age that results (*aurea . . . saecula*, 8.324-5) differs significantly from other accounts of golden ages in that there are *already* laws, and it is noteworthy that the appellation “golden” is shortly thereafter made relevant to the poet's own time in his own voice: Evander took Aeneas to the Capitoline, which is “now golden but then bristling with woodland brambles.” (*Capitolia ducit / aurea nunc, olim siluestribus horrida dumis*, 8.347-8).<sup>26</sup> Richard Thomas has argued that Italy is presented as being in a Saturnian age before the advent of the Trojans, who bring on the age of Jupiter, but he neglects the contradiction between Latinus and Evander's accounts.<sup>27</sup> I think

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eventually founding a city in the middle of the eighth century on the Palatine, the “Romulean hill.” GRANDAZZI, *supra* note 8, at chs. 9-10.

<sup>26</sup> Edmunds uses the scholarship on the multitemporality of this passage to make an allegory of a reader-response approach to literature. LOWELL EDMUNDS, *INTERTEXTUALITY AND THE READING OF ROMAN POETRY*, at xiv-xv (2001); *see also* CATHERINE EDWARDS, *WRITING ROME* 27 (1996) (citing Freud's famous comparison of the layers of Rome's history to the psyche (found in *Civilization and its Discontents*)). This multitemporality contributes to Rome's ability to serve as an exemplum for so many different civilizations and their politics. *See* Grandazzi for the irony that the Forum shows traces of being a prehistoric watering hole and that it reverted to such as the “Campo Vaccino” famous from Piranesi engravings. GRANDAZZI, *supra* note 8.

<sup>27</sup> *See* Richard F. Thomas, *Torn Between Jupiter and Saturn: Ideology, Rhetoric, and Culture Wars in the Aeneid*, 100 *CLASSICAL J.* 121 (2004-5); RICHARD F. THOMAS, *LANDS AND PEOPLES IN ROMAN POETRY: THE ETHNOGRAPHICAL TRADITION* 95-97 (1982). Thomas characterizes Latinus's formulation as “the golden age, pure and simple,” although he recognizes Evander's portrait of Saturn according to the model of a “culture-hero” who “brought laws” to the

that the contradiction highlights the temptation to posit a pre-foundational golden age in theory (Latinus's formulation), but reveals it to be hollow (Evander's). The golden age that Anchises announces Augustus will found (6.791-5), and that the golden Capitoline suggests here, will similarly come about as a result of the violence of the civil wars, and there is no implication that the new Saturnian age will be lawless. At the very least, the contradiction between Latinus and Evander's descriptions of Saturn's rule points to two different ways of constructing the theory.<sup>28</sup>

Benjamin similarly finds the law always already in operation. He identifies a "lawmaking character" to violence, but cannot locate an origin for it. His evidence for law-making violence is that "even . . . in primitive conditions that know hardly the beginnings of constitutional relations, and even in cases where the victor has established himself in invulnerable possession, a peace ceremony is entirely necessary."<sup>29</sup> The treaty makes *de iure* a situation violence has rendered *de facto*. Law follows on the violence, but there is no presumption of a situation before any violence whatsoever, such that there would not already be some law in place. All the issues of foundation and violence are already in place in Aeneas's pre-foundation, which is not Rome's first foundation. Michel Serres, among others, comes back again and again in his *Rome: the Book of Foundations* to Rome's—and beyond that Europe's—need for continual refoundation.<sup>30</sup> Latinus and Evander

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indigenous Italians. THOMAS, *supra* at 97, 101, n. 20. Taylor analyzes Evander's primitivism as a fusion of hard and soft traditions (austere labor and virtue versus a golden age of no toil) and compares it with other instances both in Vergil and others. Margaret E. Taylor, *Primitivism in Virgil*, 76 AM. J. PHILOLOGY 261 (1955). Her results show the anomaly of the law's appearance in a period described as a golden age. *Id.* at 263-65.

<sup>28</sup> A similar contradiction exists between whether the Latins are at peace or at war. Vergil himself tells us they are at peace (*Rex arua Latinus et urbes / iam senior longa placidas in pace regebat*, "King Latinus now old was ruling the lands and towns placidly in a long peace," 7.45-6), but Tiberinus tells Aeneas that the Pallanteans continually wage war with the Latin race (8.55). Allecto's speech to Turnus implies he has been active in protecting the Latins (*i, sterne acies, tege pace Latinos*, "go flatten the front lines, cover the Latins in peace," 7.426), and Aeneas asserts to Evander that the Rutulians are at war with the Arcadians (*gens eadem, quae te, crudeli Daunia bello, / insequitur*, "the same Daunian race which pursues you in cruel war," 8.146-7). The apparent peace of the Latins turn out to be hollow. For detailed discussion, see EVE ADLER, *supra* note 25, at 167-68; James J. O'Hara *supra* note 25, at 206-32.

<sup>29</sup> Benjamin, *supra* note 17, at 283. Derrida comments that in the succession of peace after war, "war, which passes for originary and archetypal violence in pursuit of natural ends, is in fact a violence that serves to found law." Derrida *supra* note 6, at 273. Presumably war passes as natural because this is a necessary fiction for us to develop a historical understanding. Derrida reveals the constructed nature of the lack of an anterior state: "there is the question of this ungraspable *revolutionary instant*, of this *exceptional decision* which belongs to no historical, temporal continuum but in which the foundation of a new law nevertheless *plays* . . . on something from an anterior law that it extends, radicalizes, deforms, metaphorizes or metonymizes." *Id.* at 274.

<sup>30</sup> Cicero attributes to Cato the view that the strength of the Roman constitution resided in its having evolved over time and through its having more than a single founder, contrary to the

already governed established states which participated in what later became Rome—Evander is actually called the founder of the Roman citadel (*tum rex Euandrus Romanae conditor arcis*, 8.313)—so even Aeneas’s pre-foundation has multiple pre-foundations.

Benjamin sees a duplicitious relationship between law-making and law-preserving violence. These are the two kinds of violence he envisions as a means, and the end in each case is the perpetuation of state power, which continually refounds itself in the act of defending itself against rival acts of violence which could potentially establish a new law.<sup>31</sup> That is the reason the figure of the “great criminal” is secretly admired by the public, because his violence threatens the preservation of the law itself and would lead, if successful, to a new order.<sup>32</sup> This is perhaps also the reason why Turnus, so vilified by Stahl as a treaty-breaker and a “rebel against the gods,”<sup>33</sup> elicits such admiration in some quarters. The pity felt for Turnus’s youthful misguidedness masks a yearning for a credible threat to the order which would soon be established.<sup>34</sup>

The circular relation of law-making and law-preserving violence accounts, I think, for the series of images represented on Aeneas’s shield leading up the battle of Actium. The categories of foundation, violence, law-making, and law preservation together unite what otherwise appears as disparate scenes from Roman history. The

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Greeks, whose states usually identified a single founder per constitution: *nostra autem res publica non unius esset ingenio, sed multorum, nec una hominis uita, sed aliquot constituta saeculis et aetatibus* (“However, our republic was not founded on the genius of one man, but of many, nor in one generation, but over many centuries and ages,” *Rep.* 2.2). See GRUEN, *supra* note 8, at 83. Cicero refers, of course, to the myths of multiple foundations, but the history in fact is one of long and gradual development. Bremmer comments: “the archeological evidence shows that in the case of Rome we have to speak of a gradual *Stadtwerdung* rather than *Stadtgründung*. . . . Myth clarifies this process by representing it as a one-time historical event.” BREMMER & HORSFALL, *supra* note 8, at 42. He is speaking specifically of the Romulus legend. Grandazzi integrates gradualism with events; for foundation and refoundation. See GRANDAZZI *supra* note 8, at ch. 10; see also *id.* at 143 162, 165 (for events, *passim*).

<sup>31</sup> Fowler notes the analogous circularity of establishing the peace in the context of closing the gates of Janus in the *Aeneid* and by Augustus: “We can only pursue the closure of the gates if they have previously been opened; more generally, pacification requires a preceding state of war.” Don Fowler, *Opening the Gates of War*, in *VERGIL’S AENEID: AUGUSTAN EPIC AND POLITICAL CONTEXT* 164 (Hans-Peter Stahl ed., 1998).

<sup>32</sup> Benjamin, *supra* note 17, at 281. This is why, as Derrida notes, “The state is afraid of *founding violence*.” Derrida, *supra* note 6 at 268.

<sup>33</sup> Hans-Peter Stahl, *The Death of Turnus*, in *BETWEEN REPUBLIC AND EMPIRE: INTERPRETATIONS OF AUGUSTUS AND HIS PRINCIPATE* 174, 177 (Kurt A. Raaflaub & Mark Toher eds., 1990).

<sup>34</sup> The impulse comes out in Putnam’s work: “Aeneas’ final deed reminds us of the essential perversity of power even in the hands of those who could with some truth lay claim to have established the most orderly society that the world has yet known.” MICHAEL C.J. PUTNAM, *VIRGIL’S AENEID: INTERPRETATION AND INFLUENCE* 166 (1995). Thomas critiques Putnam’s glorification of the underdog from a sympathetic point of view. Richard F. Thomas, *The Isolation of Turnus*, in *VERGIL’S AENEID: AUGUSTAN EPIC AND POLITICAL CONTEXT* 283 (Hans-Peter Stahl ed., 1998) (critiquing Putnam’s 1965 work *The Poetry of the Aeneid* at 193).

Lupercal scene of the wolf and the twins is foundational; the specification that it occurs *Mauortis in antro* (“in Mars’ cavern,” 8.630) associates foundation with violence. The rape of the Sabines is foundational and violent—no children, no foundation, as we see in Richard Adams’s *Watership Down*, a reworking of foundation myths in popular culture.<sup>35</sup> The resulting war leads to the making of law through a treaty, as Benjamin describes happening even in so-called primitive conditions. The punishment of Mettus Fufetius is law-preserving, as Vergil indicates with his apostrophe: *at tu dictis, Albane, maneres!* (“but you should have stood by your word, Alban!”, 8.643). Mettus Fufetius and Porsenna together represent proto-civil war, and the attack of the Gauls represents foreign war. The link of violence with foundation, or re-foundation is made in a single line, when the Romans eject Tarquinius: *Aeneidae in ferrum pro libertate ruebant* “the descendants of Aeneas rushed into arms for their freedom.” 8.648). The scene right before Actium sets Catiline and Cato in the underworld, each representing the two aspects of the law. Catiline pays the penalty for his crimes (*scelerum poenas*, 8.668), while the language describing Cato giving out verdicts is law-making: *his dantem iura Catonem* (8.670). These instances from Roman history anticipate the re-foundation of Rome through civil war whose culmination in history and on the shield is Actium, and it is no accident that the final scene depicted is the triple triumph, the ritual that set an end to violence and paved the way for the first so-called “Augustan settlement.”

I think all the instances of violence at the end of the *Aeneid* are similarly foundational. They give rise to a new order which will be the *imperium Romanum*. However, the two main instances of violence function in different ways that go beyond the merely historical violence of the shield. There is the death of Turnus, but there is also the violence done on the Trojan race in the reconciliation of Juno. The latter will require some new categories, but I think that Benjamin’s double category of law-making and law-preserving violence applies well to the death of Turnus. Although the state has not yet been founded, hindsight—going by the name of fate—colors the actions of the poem so that any resistance to Rome’s foundation appears as an attempt to overthrow the powers that be, even though they do not yet exist at the story level.

Within the category of legal violence, Turnus certainly threatens the attempt to establish a legal basis for peace between the Trojans and Latins, and therefore violence against him is law-preserving. Someone has to pay for the breaking of the treaty that was so solemnly established at the book’s beginning and so quickly broken by the

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<sup>35</sup> See Bremmer in BREMMER & HORSFALL *supra* note 8, at 42 (noting “the breaking away of the ‘Jungmannschaft’” in the “formation of new tribes”).

Italians. Since the treaty that was ratified depended on the resolution of conflict by a duel between Aeneas and Turnus, it makes sense for Turnus to pay for the treaty's dissolution not just with defeat—that, according to the terms agreed upon, would indicate the Trojans had won—but with his life. The violence is at the same time law-making in that Turnus's death is necessary for the foundation of the new order. The law is a double reason for Turnus's death. The act of foundation that comes about according to the treaty is doubled by an act of punishment for the violation of the agreement. Law-making and law-preserving violence reinforce each other.

Let us, however, consider more closely the categorization of Aeneas's violence against Turnus as law-preserving. This is only one aspect of it, and I think the multi-valence of this violent act is what has given rise to the fierce debate between so-called optimists and pessimists about the death of Turnus. People can take such different views of Turnus's death because it is overdetermined. At issue is Turnus's status as a treaty-breaker.<sup>36</sup> There are two agreements between the Trojans and the Latins, the first established informally in book 7,<sup>37</sup> the second a treaty formally ratified with sacrifice in book 12. After the first is broken, Aeneas exclaims *quas poenas mihi, Turne, dabis* ("what a penalty you will pay me, Turnus," 8.538). Aeneas stays within the realm of legal violence: the treaty-breaker will pay the penalty. When he actually kills Turnus in book 12, however, the nature of the penalty has changed. According to Aeneas's conception, Turnus is not killed as the enemy leader bearing the responsibility for the treaty's violation, but rather because he killed Pallas. Aeneas still speaks in terms of penalties, but in a way that exceeds the category of law-preserving violence: *Pallas te hoc uulnere, Pallas / immolat et poenam scelerato ex sanguine sumit* ("Pallas sacrifices you with this wound, Pallas does, and he takes the penalty from your criminal blood," 12.948-9). Although an argument can and has been made that Turnus's killing of Pallas was criminal, and Aeneas is justified according to Roman standards of justice in taking revenge,<sup>38</sup> it needs to be recognized that this kind of violence is of a different order and exceeds the categories of law-making and law-preserving violence we have dealt with so far.

Furthermore, the reason for which Aeneas exacts a penalty from Turnus is not described as taking place within the legal sphere. It is a

<sup>36</sup> See W. Ralph Johnson, *Robert Lowell's American Aeneas*, 52 *MATERIALI E DISCUSSIONI* 227, 237 n.17 (2004) for bibliography.

<sup>37</sup> Latinus specifies that part of the peace treaty will be for him to meet in person with Aeneas and shake hands (*pars mihi pacis erit dextram tetigisse tyranni*, 7.266), but this never happens.

<sup>38</sup> See Karl Galinsky, *The Anger of Aeneas*, 109 *AM. J. PHILOLOGY* 321 (1988); Stahl, *supra* note 33, at 174, 205-09; NICHOLAS HORSFALL, *A COMPANION TO THE STUDY OF VIRGIL* 198-209 (1995).

personal act of vengeance done in anger, and is therefore prelegal and heroic. After the Furies are converted to the Eumenides in Aeschylus's play of the same name, law courts will try cases of personal vengeance, but the Athenian solution depends on there being a society to sustain the court. Turnus's despoiling of the body is the immediate cause of Aeneas's rage, and the baldric reminds him of Turnus's insolence in what might otherwise be viewed as a legitimate or at least conventional act of war. There is no society yet between the Trojans and Latin such that a legal solution would be available, and even if there were, warfare operates according to a different set of rules. Benjamin uses anger as his transition out of the category of violence done within the confines of the law into a more mystical realm,<sup>39</sup> and his new categories pertain both to Turnus's death and the divine decision to eradicate Troy.<sup>40</sup>

## II. MYTHICAL VIOLENCE

Anger is Benjamin's everyday instance of violence that does not function "as a means to a preconceived end." It is rather expressive, "a manifestation."<sup>41</sup> He calls his first category of violence outside that envisioned by legal theory "mythical violence," and he makes a leap from the anger of men to that of the gods: "Mythical violence in its archetypal form is a mere manifestation of the gods. Not a means to their ends, scarcely a manifestation of their will, but first of all a manifestation of their existence."<sup>42</sup> I find Benjamin's account of mythical violence inadequate on several counts. His examples are Niobe and Prometheus, where it is easy to confuse the manifestation of the gods' power with punishment, and questions of theodicy muddle the issue. Juno's pursuit of Aeneas is a much better example. If we turn our sights from narrative strategy, where Juno serves as a blocking figure, to theology, Juno's wrath is inexplicable.<sup>43</sup> Certainly, she has various specific reasons that range from petty revenge against the Trojans for the judgment of Paris and Jupiter's rape of Ganymede to a more political desire to save Carthage from its fated destruction by Rome, but the poem opens with a rhetorical question that underscores the impenetrability of the divine. Unlike Homer, who calls on the Muse

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<sup>39</sup> Derrida uses "mystical" of the uninterpretability of events while we experience them. Derrida, *supra* note 6, at 269.

<sup>40</sup> Morgan refers to the "mystical notion that destruction is constructive" and to the "mysteriousness of Vergil's scheme." Morgan, *supra* note 12, at 186.

<sup>41</sup> Benjamin, *supra* note 17, at 294.

<sup>42</sup> *Id.*

<sup>43</sup> Williams comments: "This is the question which the *Aeneid* explores, 'to justify the ways of God to men'; Virgil unlike Milton finds only groping and imperfect answers." THE AENEID OF VERGIL 1.11 (Robert Deryck Williams ed., 1972).

to identify the god who stirred up strife among the Achaeans (*Il.* 1.8), a question about information, Vergil asks the Muse a question with no answer: why a goddess would harass a man, namely Aeneas, renowned for what the Romans call *pietas*, duty.<sup>44</sup>

*Musa, mihi causas memora, quo numine laeso  
quidue dolens regina deum tot uoluere casus  
insignem pietate uirum, tot adire labores  
impulerit. Tantaene animis caelestibus irae?*

1.8-11

Muse, tell me the reasons—for what insult to her divinity, or grieving over what, did the queen of the gods impel a man outstanding in duty to undergo so many disasters, affront so many labors. Is anger so great in the heavenly spirits?

Juno's anger is disproportionate and misdirected. It is not even a test, as God tests Job. Aeneas was punished for no offence; on the contrary, part of his dutifulness (*pietas*) is reverence toward the gods (piety), and he does not deserve his suffering. Juno, though she knows full well that she cannot ultimately achieve her aim of saving Carthage, makes Aeneas suffer simply because she can.<sup>45</sup> Her violence is immediate; it is not a means to an end; it has no purpose beyond the manifestation of her anger at fate, which she knows she cannot alter.

In order to understand Juno's anger, we have to take it as something beyond her character. Denis Feeney explores the relation in the epic tradition between allegorizing interpretations that attempt to turn the gods into something accessible to human understanding and the irreducibility of the divine characters as actors.

Each manner of looking at "Juno" gives something hostile and obstructive: chaos threatens from all directions, from history, myth, and nature. . . . [H]er savage force is greater than the sum of its parts.<sup>46</sup>

Juno stands for the opposition to Rome that emerged from Carthage; her hatred finds expression in myth; she is allegorized as air in nature, and

<sup>44</sup> Feeney notes that in tragedy, characters express "resourceless shock," but that here it is "the poet who is at a loss." FEENEY *supra* note 12, at 130. He points out that Vergil's question here matches another unanswerable question about the divine at the poem's end: *tanton placuit cucurrere motu, / Iuppiter, aeterna gentis in pace futuras?* ("Was it pleasing, Jupiter, for races which would join in eternal peace to come together in such great disturbance?" 12.503-4). His point is that the initial question is never resolved. *Id.* at 154.

<sup>45</sup> "It is precisely because she foresees that her plans will inevitably come to nothing that there are no bounds to her overwhelming desire to exact the greatest possible vengeance while she still has the chance to do so." RICHARD HEINZE, *VIRGIL'S EPIC TECHNIQUE* 148 (Hazel and David Harvey & Fred Robertson, trans., 1993). Feeney points out that her actions are even counterproductive in that they bring about the very outcome she tries to prevent. FEENEY, *supra* note 12 at 146.

<sup>46</sup> FEENEY, *supra* note 12, at 134.

consequently has a strong connection with the storms that pursue Aeneas so relentlessly. But more than all these things, she is the personification of the destructive forces outside human control and understanding. The reason that Juno operates effectively as a character in an epic has to do precisely with the fact that as a goddess, she can unite disparate destructive forces. This method works in poetry, but it is rather strange to find a twentieth century theorist putting forward categories of violence emanating from the gods without any of the allegorizing moves Feeney traces among the ancients.

I find Benjamin's category of mythical violence unsatisfying because his examples imply a distinction between human and divine violence, such that all mythical violence belongs to the gods, and this is not true, as his starting with anger as self-expression shows, even apart from whether or not we believe in the gods. Where he has a point is in showing that the immediate violence of expression, which does not have an end in view, is closely allied with law-making violence, which is mere means, in that both establish a new power. This opens up a hole in legal violence, which is supposed to countenance violence only as a means. Violence which is not a means has a way of sneaking in, even though it cannot, in Benjamin's view, be legally justified. I think that Aeneas's anger allows a violence which is not used as a means to an end to color his killing of Turnus, and overlays the more justified reason for killing Turnus as a law-breaker. And this immediate violence is what the pessimists object to.

### III. DIVINE VIOLENCE

The foundation of Rome, however, depends not only on the death of Turnus, but on the reconciliation of Juno. Here again we find overlapping kinds of violence. Before analyzing the types, it will be useful to step back to consider the underappreciated strangeness of the agreement bartered by Jupiter and Juno. We are blinded by our modern knowledge that Trojan culture was not active in forming Rome, and so accept its disappearance as a rationalization of a historical phenomenon,<sup>47</sup> but in narrative terms, the agreement is bizarre. Juno

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<sup>47</sup> See Stahl, *supra* note 33, at 194:

The Trojan component of the people is denied dominance by Jupiter probably for two reasons. One is that, after all, Trojan-Julian leadership itself has not been visible in Roman history until fairly recently. The other reason is that in Vergil's time Rome and Italy are supposed to feel reconciled to the rule of the Trojan-Julian House, but not suppressed—reconciled like Juno, protectress of Italian Turnus, to the victory of Aeneas.

*Id.*; see also Nicholas Horsfall, *Aeneas the Colonist*, 35 *VERGILIUS* 8, 22 (1989) (commenting on how little room to maneuver the facts of history give Vergil).

will cease obstructing the foundation of Rome in return for the destruction of the cultural identity of the victors. What?! If Juno and Jupiter were arguing about the United States, the European colonists would be victorious, but we Americans would be speaking and dressing in Navaho or Cherokee.<sup>48</sup> Vergil's narrative, however, responds to a cultural strangeness. What need did the Romans have to create a foundation myth in which foreigners from the East, who had suffered defeat in the Trojan War, which Vergil represents as a conflict between Europe and Asia,<sup>49</sup> come and transform through their cultural assimilation a native culture that in historical terms was developing quite nicely into a world power anyway? You might think autochthony would have greater ideological resonance, but this idea has little appeal to Vergil.<sup>50</sup> The people Evander calls indigenous have no society (8.314), but Vergil mentions many people who come from abroad and found settlements that will contribute to Rome: the Arcadians themselves, the Sicani (8.328), and the Pelasgi (8.600).<sup>51</sup> Even the native Ausonians Evander speaks of as coming from elsewhere (8.328), and Vergil presents the Etruscans as Lydians (10.155). Autochthony lacks a moment of founding violence, as does the idea of a hospitable land subject to successive waves of colonization. The Theban myth of the Spartoi, "sown men," who spring from dragon seeds planted in the ground and fight each other, lends a moment of founding violence to the myth of autochthony, but this sort of legend is too fantastic for Vergil's central narrative and was not part of Roman myth. Other narratives of early Rome, which all accept the role of Aeneas as founder of the race that would produce Romulus, do not represent an analogous moment of founding violence.<sup>52</sup> Livy, for instance, gives a similarly rationalizing

<sup>48</sup> For the emphasis on dress and language, see Horsfall *supra* note 47, at 22, and ADLER, *supra* note 25, at 197.

<sup>49</sup> Ilioneus and Juno both describe the Trojan War as a conflict between Europe and Asia (7.224; 10.91).

<sup>50</sup> Or to the Romans generally. For the contrast with the Greeks on this issue, see MOMIGLIANO *supra* note 4, at 438, 442, 457. Grandazzi tells a narrative of autochthonous gradualism in the development of the Roman people marked, however, by historical events, such as the digging of the Pomerium in the middle of the eighth century, that surely entailed violence in the differentiation of Romans from their neighbors. GRANDAZZI, *supra* note 8 at chs. 7, 8. He sees the development from the second millennium on as one of increasing particularity, such that the people who inhabited Latium "were not Latins, but *became* Latins," and the same for the other different cultures on the peninsula and the different social classes at Rome. *Id.* at 116-17, 119. For increasing cultural differentiation, see also EMMA DENCH, FROM BARABRIANS TO NEW MEN: GREEK, ROMAN AND MODERN PERCEPTIONS OF PEOPLES OF THE CENTRAL APENNINES 202 (1995). At the time of submission, Dench's 2005 work was not yet released.

<sup>51</sup> Galinsky lists Greek sources for the Sikels (Dionysius of Halicarnassus cites Antiochus of Syracuse for a story about a Sicelos, who came from Rome before the Trojan war, 1.73.4-5) and Pelasgians (*Plut. Rom.* 1.1) as proto-Romans. GALINSKY, *supra* note 8, at 162. For Aeneas as a metaphor for Roman foundation through colonization, see MOMIGLIANO *supra* note 4, at 441; and Horsfall *supra* note 47.

<sup>52</sup> Horsfall in BREMMER & HORSFALL *supra* note 8, at 12-24.

account for the continuation of the native culture: in the face of war from the Rutulians and Etruscans who had joined forces under Turnus and Mezentius, Aeneas, “in order that he might conciliate the spirits of the Aborigines and that they might be under not only the same law, but the same name, called both races Latins” (*Aeneas ut animos Aboriginum sibi conciliaret nec sub eodem iure solum sed etiam nomine omnes essent, Latinos utramque gentem appellavit*. 1.2.4).<sup>53</sup> Livy’s solution is a political decision, one that significantly allies naming with the law, and is radically different from Vergil’s founding violence.

Juno sets her terms to Jupiter thus:

*cum iam conubiis pacem felicibus (esto)*  
*component, cum iam leges et foedera iungent,*  
*ne uetus indigenas nomen mutare Latinos*  
*neu Troas fieri iubeas Teucrosque uocari*  
*aut uocem mutare uiros aut uertere uestem.*  
*sit Latium, sint Albani per saecula reges,*  
*sit Romana potens Itala uirtute propago:*  
*occidit, occideritque sinas cum nomine Troia.*

12.821-28

When they settle a peace now with marriages—so be it—when they now join laws and treaties, may you not order the native Latins to change their name, nor to become Trojans or be called Teucrians, or order the men to change their tongue or alter their clothing. Let Latium be, let the Alban kings be through the ages, let the Roman progeny be powerful through Italian virtue: allow Troy to die, and die along with its name.

As in Livy, the question of cultural identity in Vergil is intimately tied up with the establishment of the law. With Juno’s reconciliation, her mythical violence is commuted into law-making violence; it results in the fated establishment of a new world power. The agreement, however, comes at a price, which is yet another kind of violence: the destruction of Trojan culture. Difference in language and clothing is what marks the conquered peoples on the shield of Aeneas (*incedunt uictae longo ordine gentes / quam uariae linguis, habitu tum uestis et armis*, 8.722-3), and these are things the Trojans must give up, as if conquered. Juno effectively achieves a bloodless genocide under the

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<sup>53</sup> For the lack of any specific trait to the Aborigines, which different authors associate with different other named tribes, and the formation of the word (*ab-* is a prefix, so it means the “original inhabitants” and not the “from the origin people”), see JACQUES PERRET, *LES ORIGINES DE LA LÉGENDE TROYENNE DE ROME* 637-41, Appx. 3 (1942). His intuition that the word is a scholarly construction seems persuasive, but his theory that Naevius invented it, that it then traveled through Fabius Pictor to Cato does not.

name of peace and the establishment of the law. My formulation here is tendentious, and blends Benjamin's mythical violence with his last category, divine violence.

Divine violence is a complex term that Benjamin reaches for as an antidote to mythical violence. It comes from God with a capital "g," and for it he turns to the revolt of Korah in the Hebrew Bible.<sup>54</sup> What Benjamin is looking for is a way to critique violence itself, not just violence as a means. He nevertheless wants to preserve it as a vehicle for historical change. The Korah story is in fact political, since it is about rebels to Moses' power.<sup>55</sup> Since violence cannot be an end in itself within the legal sphere, Benjamin has to look for areas of immediate violence, and this is what drives him to the gods. Benjamin has a messianic streak that I do not fully understand. Be that as it may, mythical violence as he defines it has immediacy, but ends up being compromised by its link to legal violence. It establishes a new law in its wake, and Benjamin wants to find a violence that inaugurates "a purer sphere."<sup>56</sup> The Marxist in him is looking for a way to justify revolution, not some ordinary man-wrought, compromised political realignment, but something radical, that would found "a new historical epoch," something that turns out to be unknowable.

If mythical violence is law-making, divine violence is law-destroying;<sup>57</sup> if the former sets boundaries, the latter boundlessly destroys them; if mythical violence brings at once guilt and retribution, divine power only expiates; if the former threatens, the latter strikes; if the former is bloody, the latter is lethal without spilling blood.<sup>58</sup>

While we can never know what the gods are or God is up to, we can do something more modest, which is to see whether Vergil shares a similar conception to Benjamin. I would like to argue that there are sufficient

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<sup>54</sup> *Numbers* 16. The Biblical story is extremely complex, since the chapter is a conflation of two rebellions, one "a rebellion of Levites for priestly privilege and a rebellion of Reubenites for political power." ROBERT ALTER, *THE FIVE BOOKS OF MOSES* 762 (2004). Milgrom traces the recension. *NUMBERS: THE TRADITIONAL HEBREW TEXT WITH THE NEW JPS TRANSLATION*, at Excursus 39 (Jacob Milgrom ed., 1990). I thank Judith Shulevitz for the references.

<sup>55</sup> "Korah . . . becomes the archetype of the presumptuous rebel against just authority." ALTER, *supra* note 54, at 762.

<sup>56</sup> Benjamin, *supra* note 17, at 296.

<sup>57</sup> Alter sums up the moral and legal problem in Benjamin's chosen example: "This justice by cataclysmic portent is pitiless, and scarcely accords with the discrimination of guilty agents elsewhere in the Mosaic Code—everyone associated with Dathan and Abiram is engulfed, down to the little children. The real thrust of the story is not considered justice but monitory spectacle." ALTER, *supra* note 54, at 767. Moses and Aaron try to argue against God's killing the entire congregation on the basis of one man's sin but God's punishment exceeds the scope of the perpetrators. *Id.* at 423.

<sup>58</sup> Benjamin, *supra* note 17, at 297. The earth swallowing up the household of Korah and the plague do not produce bloodshed but does fire of the Lord spill no blood? *Numbers* 16.31-35, 46-9.

points of contact that the concept is worth keeping in play. Let us go over them point by point, though not necessarily in Benjamin's order.

Juno's violence is bloodless. Her destruction of Troy, at least at this point, is not a massacre, but rather the disappearance of Trojan culture without any need for spilling blood. For Benjamin, the importance of the lack of bloodshed is that blood symbolizes mere life (*zoe*), and divine violence is "pure power over all life for the sake of the living," where life "means the irreducible, total condition that is 'man'" (*bios*).<sup>59</sup> Juno is not interested in exterminating mere individual Trojan lives, but in establishing a superior culture. She is attempting to do something elevating, however petty she may seem narratively.

The destruction of Troy is boundless. Troy is destroyed not only at her site; the destruction keeps Troy from popping up somewhere else. The name itself, a movable signifier, will die. Juno does not bother with all the little Troys founded by Aeneas or others in book 3—they are pale shadows and will have no power. She destroys the heart of the thing.<sup>60</sup>

The violence of Jupiter and Juno is law-destroying. They do not let the Latins and Trojans revert to the treaty they worked out among themselves, but destroy it.<sup>61</sup> There is a fundamental difference between the terms of the human treaty and that agreed on by the gods. For one, the gods agree on the annihilation of the Eastern culture. By contrast, the terms set and ratified by Aeneas and Latinus entail a more benign arrangement, something Hannah Arendt accepts as a model for working things out without violence.<sup>62</sup> If Turnus wins, Aeneas agrees to leave the territory, join with his ally Evander, and refrain from further warfare against the Latins. But if Aeneas wins, he will not impose his might on the losers. Both races will remain *unconquered*.

*non ego nec Teucris Italos parere iubebo  
nec mihi regna peto: paribus se legibus ambae  
inuictae gentes aeterna in foedera mittant.  
sacra deosque dabo; socer arma Latinus habeto,*

<sup>59</sup> Benjamin, *supra* note 17, at 297, 299. Derrida's analysis makes it clear the distinction is between *zoe* and *bios*. Derrida, *supra* note 6, at 289.

<sup>60</sup> The people, however, are not destroyed. On the endurance of the Trojans, see AENEID 7.295 (Nicholas Horsfall ed., 2000) and AENEID 11.306-703 (Nicholas Horsfall ed., 2003).

<sup>61</sup> To this extent, I disagree with Adler, who states that Aeneas "founds Rome by making a peace settlement in Italy." ADLER, *supra* note 25, at 167, 183. Whatever settlement is made falls outside the action depicted in the text; we cannot take the treaty Aeneas ratifies in book 12 as binding.

<sup>62</sup> See HANNAH ARENDT, ON REVOLUTION 209 (London 2003). Dionysius of Halicarnassus depicts the blending of Trojan and Italian customs as the organic result of the joining of the races. The people imitate their kings and join together their "customs, laws, and religious ceremonies," they intermarry and wage war together, and they call themselves after Latinus, the king of the Aborigines (60.2). One race does not dominate the other.

*imperium sollemne socer; mihi moenia Teucri  
constituent urbique dabit Lavinia nomen.*

12.189-95

I will not order the Italians to obey the Teucrians [Trojans] nor do I seek rule for myself. The two races will join unconquered in eternal treaties with equal laws. I will contribute sacred things and my gods; let my father-in-law Latinus control warfare and formal sovereignty [*imperium*]. The Teucrians will build walls for me and Lavinia will give her name to the city.

The humans let both races remain under the law, with a significant religious contribution from the Trojans; the gods eliminate the Trojans' cultural identity. The human attempt to establish the law is a further casualty.

Although Vergil does not use explicit language for expiation, Juno accepts what we might call in loose terms the sacrifice of Trojan culture in exchange for her rage. The Trojans make good for their unacceptability to the goddess by ceasing to be Trojan. They give up their identity to appease the god, and the expiation works even though their action is neither willing nor conscious. There is, however, a more explicit notional sacrifice, and this is the life of Turnus.

The divine pact between Jupiter and Juno enables Aeneas on the human level finally to go ahead and kill Turnus. Here is yet another way in which Turnus's death is overdetermined. Vergil makes it clear that there is no need for Turnus to be killed as far as the establishment of the Roman race is concerned. Turnus concedes defeat publicly and pleads for mercy: "You have won and the Italians have seen me spread my hands in defeat; Lavinia is your wife, don't extend hatred any more" (12.936-8). The marriage is the institutional seal of the new order. Turnus's death would, in his own formulation, simply be a needless extension of violence, and Aeneas's famous hesitation shows that he has at least a theoretical point. The need for his death lies elsewhere.<sup>63</sup> The current way of thinking about the death of Turnus tends to see it as playing out contemporary concerns about vengeance and clemency, which were topical in the wake of civil war.<sup>64</sup> Aeneas has a choice between the virtue of the sovereign, to show his power in his ability to suspend the law and grant reprieve, or to exact vengeance. Augustus himself made a transformation from pursuing vengeance for his posthumously adoptive father Julius Caesar's murder during the civil

<sup>63</sup> Horsfall goes over the various reasons ancient and modern that make Turnus's death not only justifiable, but necessary. HORSFALL, *supra* note 38, at 195-209.

<sup>64</sup> DAVID QUINT, *EPIC AND EMPIRE: POLITICS AND GENERIC FORM FROM VIRGIL TO MILTON* 74-83 (1993). Putnam calls clemency a refoundation over against the principle of vengeance, and clemency is a leitmotif of this collection of essays. Putnam *supra* note 32, at 4-5. Horsfall cites Cicero *Off.* 1.35 and Augustus *RG* 3.2 for limitations on clemency. Horsfall *supra* note 38 at 207.

wars to sovereign clemency after he had won,<sup>65</sup> and his dedication of a temple to Mars the Avenger many years later does not so much celebrate vengeance as a principle as hand it over to the gods.<sup>66</sup> The founder of the race, however, was overwhelmed by rage (*furiis accensus et ira / terribilis*, “inflamed by furies and terrible in his anger,” 12.946-7<sup>67</sup>); he drove his sword home, and the epic ends before we can see any transformation. His anger essentially removes what at the moment of hesitation appears as a choice.<sup>68</sup> Aeneas’s violence exceeds the legal realm, just as it exceeds the reach of reason. Benjamin states that divine violence does not demand sacrifice, but accepts it.<sup>69</sup> Aeneas speaks of Turnus’s death as a sacrifice (*immolat*, 12.949).<sup>70</sup> The final sentence of *Critique of Violence* is: “Divine violence, which is the sign and seal but never the means of sacred execution, may be called sovereign violence.” Aeneas executes Turnus under the sign and seal of the sacred; he is the means of the sacred execution which sovereign violence accepts.

There is a problem here, perhaps many, but the most fundamental is that divine violence is unknowable. We may allegorize tsunamis as the work of Poseidon, but this is our attempt to come to an understanding beyond our capabilities of understanding. Rather than taking such attempts as truth, we should recognize them as acknowledgment of our own interpretive limits. And violence among men is no more or less than violence among men. It may operate within the law or partially exceed it, it may be law-making, law-preserving, or expressive, it may be political or personal, but it is visited upon men by

<sup>65</sup> Thomas calls attention to Augustus’s expression of his clemency: *uictrque omnibus ueniam petentibus ciuibus peperci* (“as victor I spared all the citizens who asked for mercy,” *RG* 3.1). Thomas *supra* note 34, at 274. Although there is no state yet for Turnus to be a citizen of, he is a potential citizen who asks for mercy. But he does not give enough emphasis to the earlier behavior. Morgan *supra* note 12, at 182-3 (citing Seneca’s *De clementia* 1.11.1 for the transformation). Horsfall reminds us that the fact that Julius and Augustus Caesar made clemency an important part of their public image did not keep them from engaging alike in “acts of savage cruelty.” HORSFALL, *supra* note 38, at 206. Quint on Augustus’s heralding his clemency in the *RG* is terse: “He was, of course, lying.” QUINT *supra* note 64, at 76.

<sup>66</sup> Stahl, *supra* note 33, at 202-03, who uses the temple dedication forty years after it was vowed to assert that, “Revenge was in good political standing in Vergil’s time.”

<sup>67</sup> The plural “furies” is difficult here, since it almost implies personification. It certainly surpasses mere human emotion. For the different furies in the tradition, see AENEID 7.323-40 (Nicholas Horsfall ed. 2000).

<sup>68</sup> Barnes examines Aeneas’s change of mind in light of the intertextual relation with Homer and the Homeric scholia. Although Achilles never even considered sparing Hector, before the duel Hector imagined negotiations. W.R. Barnes *Seeing Things: Ancient Commentary on the Iliad at the End of the Aeneid*, in *AMOR: ROMA, LOVE AND LATIN LITERATURE* (Susanna Morton Braund and Roland Mayer eds., 1999). The appearance of Pallas’s baldric leads to an audience expectation that Aeneas will become angry. *Id.* at 69, n.46.

<sup>69</sup> Benjamin, *supra* note 17, at 297.

<sup>70</sup> This sacrifice is not final, and will in turn require expiation. DYSON, *supra* note 13 at, 24 (“The unwillingness of Turnus, both as sacrificial victim and as representative of the Italian countryside, promises not closure but the necessity for expiation through repetition of sacrifice.”).

men. The pessimistic interpretation of the *Aeneid* recognizes all the reasons that the optimists cite for justifying Aeneas's violence in cultural terms, but they still say no. This is because, while they might accept law-preserving violence, they are uncomfortable with law-making violence; immediate violence, furthermore, is an abomination—one which Hannah Arendt, for instance, does not recognize as a category<sup>71</sup>—and divine violence appears as mystification. In *Force of Law*, Derrida closes his critique of Benjamin by rejecting divine violence as an idea precisely because it could lead to dire human consequences: it could justify the “final solution” of the Nazis. Gas chambers, he points out, cause no bloodshed. As in the *Aeneid*, at issue is the attempted eradication of a race from the Near East, a race which under some representations calls down the anger of the gods or God. There are no bounds to the violence. Derrida says “one is terrified at the idea of an interpretation that would make of the holocaust an expiation and an indecipherable signature of the just and violent anger of God.”<sup>72</sup>

#### IV. VERGIL AND THE ROMAN EXEMPLUM

Derrida's discomfort with Benjamin's category of divine violence is especially poignant because of Benjamin's biography, and particularly, the manner of his death.<sup>73</sup> Derrida is aware that Benjamin cannot have known in 1921, when *Critique of Violence* was written, nor even at his death in 1940 about the “final solution,”<sup>74</sup> but he is worried because the examples Benjamin uses to illustrate mythical violence come from Greek myth, while that illustrating divine violence comes from the Hebrew Bible.<sup>75</sup> Derrida is uncomfortable doing so, but he nevertheless tentatively suggests a generalization that mythical violence is a Greek and divine violence a Jewish idea.<sup>76</sup> There are both historical and moral problems with Derrida's partition. On his interpretation, it would be a Jewish tradition of divine violence which leads to the holocaust, and the Jews would ultimately be responsible for the ideas

<sup>71</sup> It is remarkable, given Arendt's interest in Benjamin, that she fails even to mention *Critique of Violence* in her own treatment of violence. ARENDT, *supra* note 11. She makes clear statements that all violence is a means, and Haverkamp describes her attitude toward the essay as a desire to put it “under quarantine” Anselm Haverkamp, *Anagrammatics of Violence: The Benjaminian Ground of Homo Sacer*, 26 CARDOZO L. REV. 995, 998 (2005).

<sup>72</sup> Derrida, *supra* note 6, at 298.

<sup>73</sup> For accounts of Benjamin's suicide, see HANNAH ARENDT, *MEN IN DARK TIMES* 170-1 (Harcourt, Brace & World 1955), and WALTER BENJAMIN, *REFLECTIONS*, at xiv-xv (Peter Demetz, ed., Edmund Jophcott trans., Harcourt Brace Jovanovich 1978) (1921).

<sup>74</sup> Derrida, *supra* note 6, at 260.

<sup>75</sup> Benjamin, *supra* note 17 at 294-95, 297.

<sup>76</sup> Derrida, *supra* note 6 at 259, 287-88, 291-92.

that caused them harm. I think it is important to show that divine violence was already in operation as an idea within Europe “proper,” and I hope to have been successful in showing its presence at the end of the *Aeneid*. We cannot displace responsibility for this destructive idea onto the Jews, an Eastern culture whose assimilation into Europe has been at the same time so partial and so complete.

What Derrida’s scheme leaves out is the Roman. The Romans are often considered the mere inheritors of Greek culture, and it is symptomatic of scholarly blindness to Rome that Derrida overlooks the Ovidian source of Benjamin’s version of the Niobe myth.<sup>77</sup> But it is not a mere question of literary filiation. Rémy Brague in *La voie romaine* defines Europe as the culture where people care, or at one time cared about Latin. Brague specifies Latin and not Rome. The language, with its literary heritage, has created a shared culture, while Rome was Eastern as well as Western, and eventually migrated to Byzantium. Brague has a sense that the reason we tend to overlook Rome in favor of the Greeks and the Hebrews as originators of European culture is the role Latin places in the transmission of these other cultures: the medium in some ways becomes transparent. Here he picks up T.S. Eliot’s notion, in *What is a Classic?*, that Greek and Latin are not “two systems of circulation, but one, for it is through Rome that our parentage in Greece must be traced.”<sup>78</sup> Derrida’s *Force of Law* came out in English in 1989, with revisions in 1994, and more recently, Derrida became much more interested in the role of Latin in European culture.<sup>79</sup> In *Demeure*, he proclaims: “Literature is a Latin word.”<sup>80</sup> He discusses Ernst Robert Curtius in examining how literature, specifically Latin literature, plays a role in defining what it means to be European. Curtius was Alsatian and his political aim in writing *European Literature and the Latin Middle Ages* was to show the extent of a shared European culture leading up to the Second World War. Such an argument could go both ways: as a reason not to rip Europe apart, or to justify the unification of Europe under a revived Holy Roman Empire.<sup>81</sup> Eliot expresses a similar sense of Vergil, and of Rome as central to Europe in the same period. *What is a Classic?* was delivered in 1944.<sup>82</sup>

But [Aeneas] is a symbol of Rome; and as Aeneas is to Rome, so is

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<sup>77</sup> See Haverkamp, *supra* note 71, at 1002 (identifying Benjamin’s source correctly).

<sup>78</sup> ELIOT, *supra* note 2, at 130.

<sup>79</sup> Cynthia Chase reports to me that the last time she visited Derrida, he kept emphasizing the need to study Latin literature with care, especially in the original.

<sup>80</sup> JACQUES DERRIDA, *DEMEURE: FICTION AND TESTIMONY* 20 (Elizabeth Rottenbuerg ed., 2000).

<sup>81</sup> Michèle Lowrie, *Literature is a Latin Word*, 47 *VERGILIUS* 29, 32-5 (2001); Farrell *supra* note 12, at 18; P. Eiden, *Der Tod de vergil: Beerbung und Beerdigung einer Tradition*. (forthcoming).

<sup>82</sup> See Charles Martindale, *Introduction: ‘The Classic of All Europe’*, in *COMPANION TO VERGIL* (Charles Martindale ed., 1997) (for Vergil’s status as a European classic).

ancient Rome to Europe. Thus Virgil acquires the centrality of the unique classic; he is at the centre of European civilization, in a position which no other poet can share or usurp. The Roman Empire and the Latin language were not any empire and any language, but an empire and a language with a unique destiny in relation to ourselves; and the poet in whom that Empire and that language came to consciousness and expression is a poet of unique destiny.<sup>83</sup>

George Steiner more recently took this idea further: "Above all, Virgil is European." He specifies that Vergil's concerns lie "at the roots of our European conditions."<sup>84</sup> The statement is perhaps reversible: to be European means to inherit a legacy left by Vergil. Curtius and Eliot alike cling to Rome in a Eurocentric vision that is no longer politically relevant. The current expansion of the European Union is interesting, among other reasons, because it is dissolving anew the boundaries between what is and is not Europe. The debate over the inclusion of Turkey, the geographical home of Troy, is particularly ironic in light of the Roman foundation myth.

That Vergil should offer a model for being European depends first and foremost on the particular role he represents violence as playing in foundation, but furthermore in the interaction he sets up between literature and politics. One of the reasons Vergil suffers in the current American university curriculum is that teaching Latin literature requires a knowledge of history, while Greek literature and the Hebrew Bible appear accessible as universalizing myths.<sup>85</sup> But the contingent historical orientation of the *Aeneid* lends it an inordinate power to represent Rome to posterity, as if it were a transparent window onto Roman history instead of a participant in the ideological construction of empire.

Arendt falls prey to the *Aeneid's* seductions in her analysis of the American Revolution, and her use of the *Aeneid* is exemplary for its role in defining European—including American—models of foundation. Her dependence on a literary text in fact misleads her on a number of points. She wants to take the poem as a blue-print for the Roman Republic, while it is one, if anything, for the Empire. In *On Revolution*, she devotes two chapters entitled "Foundation" to the American Revolution, and in the second spends considerable time on the use the Founders made of the Roman constitution. The particular aspect they

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<sup>83</sup> ELIOT, *supra* note 2, at 128-29.

<sup>84</sup> George Steiner, *Homer and Virgil and Broch*, LONDON REVIEW OF BOOKS, July 12, 1990, at 10 (reviewing *Oxford Readings in Virgil's Aeneid* by Stephen Harrison).

<sup>85</sup> Selden argues that bourgeois ideology in Anglo-american criticism since the eighteenth century uses Milton as a model for pushing Vergil out of the curriculum on both aesthetic and political grounds: he is not original in that he derives too much from Homer, and the empire which he supports does not leave enough scope for individuality. D. SELDEN, *Virgil and the Satanic Cogito*, in LITERARY IMAGINATION 8.3 (forthcoming).

imitated from Rome was to ground the constitution in neither some absolute, as the European monarchies had done, nor in the volatile will of the people, as the French Revolution would do, but rather in the very act of foundation itself as a new beginning. They innovated on the Roman model by not having the foundation be a re-foundation, but rather a foundation from scratch. Arendt, however, turns to the *Aeneid* to support this idea without taking account of the fact that Vergil's foundation story is more about Augustus than the Republic. Although Augustus claims to restore the Republic after a period of civil war (*Res gestae*, 34.1), one major constitutional change under his ascendancy is that *auctoritas*, previously located in the Senate, migrates to him, and along with it comes a large measure of sovereign power.<sup>86</sup> Part of the *Aeneid's* great contribution to the Empire and to the later constellations of power that take it as an exemplum resides in its setting out a new model for foundation, one that is relevant for the new government of its time.

By trying to make the *Aeneid* fit her understanding of what the Founders took from the Roman Republic in the framing of the American constitution, Arendt whitewashes the *Aeneid* in several ways. First of all, Vergil does ground Roman power on an absolute. We can rationalize fate to some extent as history as it appears in hindsight, but Vergilian fate resides in the will of Jupiter. While fate does not correspond exactly to the Christian God which upheld European monarchies for so long, it is an innovation over Republican ways of grounding the state in that it lends divine sanction not only to the state, but to the reigning Julian family. Arendt's presentation of Rome as a re-foundation is also somewhat off. Here she is making a distinction between the American ordinary foundation and Rome, which continually needs re-foundation, but she errs in making Rome a re-foundation of Troy.<sup>87</sup> With Juno's reconciliation, Vergil asserts emphatically that Rome is not a re-foundation of Troy, and the numerous failed attempts to re-establish Troy in book 3 similarly attest to the impossibility of bringing back Troy. This is an idea Aeneas has to give up. Rome is only ever a re-foundation of itself, and the connection to the East Arendt might wish to see as an instance of tolerance is broken. Arendt furthermore goes out of her way to remove founding violence from the Roman foundation. She downplays the war between the Italians and the Trojans merely as a means to undo the previous defeat at Troy.<sup>88</sup> This gets not only the Empire, but the

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<sup>86</sup> The vast bibliography on Augustan *auctoritas* and his "restoration of the Republic" can be traced through Galinsky's *Augustan Culture*. KARL GALINSKY, *AUGUSTAN CULTURE*, at chs. 1-2 (1996).

<sup>87</sup> ARENDT, *supra* note 62, at 208.

<sup>88</sup> *Id.* at 209.

Republic wrong. Rome inscribed violence in all its acts of foundation, from Romulus's murder of Remus,<sup>89</sup> to Lucretia's suicide, to the execution of the Catilinarians, to the proscriptions of the triumvirate, and the multiple instances of civil war culminating in Augustus's rule. Founding violence is an element of continuity between Republic and Empire that Vergil understood. The question is whether he took this to be the only option—a question that will be addressed below in Section V. Arendt takes the treaty Aeneas establishes with Latinus in book 12 as the treaty which will hold, and emphasizes that both nations will join each other unconquered under equal laws.<sup>90</sup> Her desire to take Rome as a healthy model for America leads her to overlook that Juno explicitly rejects this treaty in favor of one where the winners will emerge as conquered. It is characteristic of Arendt to turn a blind eye to divine violence.

But it is precisely in a literary work that divine violence can be represented. We cannot see such things in life, but literature has no such constraints. It is telling that the instances of violence Benjamin cites as done by the gods are literary, and also that Anselm Haverkamp turns to Vergil in order to find a model not for Benjaminian kinds of violence, but rather for the structure of his theory. Haverkamp tries to de-claw the more horrific aspects of Benjaminian violence by turning it from a theory of performance to a theory of latency.<sup>91</sup> He understands the Messianic aspect of divine violence as a potential which will never emerge.<sup>92</sup> The political consequence of this move is to exonerate Benjamin from responsibility for a theory which would anticipate the holocaust. The Roman model he chooses, however, tells a different story.

The anagram provides the model for Haverkamp's structure of latency, and he argues that Benjaminian violence hides "in the most classical sense of the latin *latere*, of the 'threat lurking in what is hidden,' which Vergil found anagrammatically inscribed in Rome's

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<sup>89</sup> Arendt tries to avoid founding violence by making Aeneas Rome's founder instead of Romulus, but she neglects that both are founders, among others, and that Romulus is Aeneas's descendent. See ARENDT, *supra* note 62, at 209. For Vergil's conception of multiple founders, see Anchises' statement about Numa at *Aeneid* 6.810-11: *primam qui legibus urbem / fundabit*, "who will found the first city on laws." Bremmer finds the murder of Remus enigmatic, but emphasizes the special mythic status of twins against theories which have made the two founders allegorical for various dual political organizations at Rome, BREMMER & HORSFALL, *supra* note 8, at 34-8. See e.g., CORNELL *supra* note 8, at 27-31. Cornell also argues against other rationalizing accounts. The murder of the twin, of course, points to a division in the self and during the first century BCE becomes allegorical for civil war. CYNTHIA J. BANNON, *THE BROTHERS OF ROMULUS: FRATERNAL PIETAS IN ROMAN LAW, LITERATURE & SOCIETY*, 158-73 (1997).

<sup>90</sup> ARENDT, *supra* note 62, at 209.

<sup>91</sup> He argues against the Pascalian notion Derrida analyzes as a "performative force" in the "very emergence of justice and law." See DERRIDA, *supra* note 6, at 241.

<sup>92</sup> I thank Anselm Haverkamp for clarifying this point in conversation.

foundational scene, in the landscape of *Latium*.<sup>93</sup> Why Rome? And, moreover, why Vergil? More is at stake here than the coincidence of an etymology and anagram that encode latency in both form and content. The scene Haverkamp focuses on is the earliest of the many foundation scenes depicted in the *Aeneid*: it is the foundational foundation scene.<sup>94</sup> Saturn provides an even more remote myth of Roman foundation than Romulus and Remus. The more remote and fictitious the myth, the clearer its function as ideology. The story Haverkamp tells, however, resembles the story Arendt tells, in that both are committed to putting restraints on divine violence. Haverkamp, however, is keenly aware of the fragility of the restraints:

The god Saturn loves (*maluit*) Rome out of the hiddenness of his hideaway *Latium* (an anagram without remainder), and out of this love he allows Rome to be delivered from its threat, thanks to the privilegium granted by its god, and transported into the foundational security of Roman law. What poses the hidden threat, however, is violence, barely restrained. . . .<sup>95</sup>

Vergil's point is that all attempts to tame violence fail, and fail spectacularly. Rome is where violence does emerge. It does so again and again. Hence the multiple acts of foundation, which invariably, from Saturn to Augustus Caesar and beyond (in, for instance, the year of the four emperors), entail clamping down on an ever emergent violence. This is perhaps one of the reasons Rome is exemplary for Europe.

The question remains whether such violence belongs to Benjamin's category of divine violence. For Roman history, we will, as Benjamin points out, never know, but the literature certainly represents it that way, and Augustus furthermore capitalized on the divinization of his adoptive father Julius Caesar in his attempt to avenge his murder. I am not at all sure Benjamin did not understand divine violence as emergent—our inability to know does not bear on whether it stays latent or emerges. The final page of the *Critique of Violence* shows Benjamin

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<sup>93</sup> Haverkamp, *supra* note 71, at 997. Ahl discusses the complex word-play at 8.322-3, [*Saturnus*] . . . *Latiumque uocari / maluit, his quoniam latuisset tutus in oris* ("Saturn preferred it to be called Latium, since had hidden safely in these places"): there is not only an etymology between hiding (*latere*) and Latium, but "*maluit* is a perfect anagram of Latium, which neatly complements the idea of Saturn's concealment in Latium." FREDERICK AHL, *Ars Est Caelare Artem (Art in Puns and Anagrams Engraved)*, in *ON PUNS: THE FOUNDATION OF LETTERS* 30 (Jonathan Culler ed., 1988). O'Hara finds this the only plausible anagram in Vergil, and stresses that there is no indication Latium and *maluit* are related etymologically. JAMES J. O'HARA, *TRUE NAMES, VERGIL AND THE ALEXANDRIAN TRADITION OF ETYMOLOGICAL WORDPLAY* 62, 207, n. 318 (1996). He argues that paronomasia and etymologizing are much more common word plays in Latin than anagrams, and understands the purpose of such play in the poets as analogous to the way they play with myths: in each case, they are telling stories of origins. *Id.* at 58.

<sup>94</sup> Grandazzi notes that *condere* means both "to hide" and "to found," a pun which may underlie the emphasis in hiding in this passage. GRANDAZZI, *supra* note 8, at 61.

<sup>95</sup> Haverkamp, *supra* note 71, at 997.

altogether unsure:

On the breaking of this cycle [the oscillation between law-making and law-preserving violence] maintained by mythical forms of law, on the suspension of law with all the forces on which it depends as they depend on it, finally therefore on the abolition of state power, a new historical epoch is founded. If the rule of myth is broken occasionally in the present age, the coming age is not so unimaginably remote that an attack on law is altogether futile. But if the existence of violence outside the law, as pure immediate violence, is assured, this furnishes the proof that revolutionary violence, the highest manifestation of unalloyed violence by man, is possible, and by what means.<sup>96</sup>

Augustus's refoundation of the Roman state after the civil wars took place on the back of the suspension of the law, first during the second triumvirate, and then during the period between his victory at Actium (31 BCE) and the so-called first Augustan settlement (27 BCE). No matter how we regard his statement in the *Res gestae* that he handed back the state to the *Senatus Populusque Romanus*, he maintains his sovereign position in Carl Schmitt's definition: "The sovereign is he who decides on the state of exception."<sup>97</sup> Augustus is the one to decide, and, in the relocation of sovereignty that his ability to decide indicates, a new historical epoch has been founded, as Benjamin describes it, on the suspension of the law. Revolutionary violence, which carries the characteristics of purity and immediacy of divine violence, is as close as we can get in Benjamin to divine violence. I think it is not a coincidence that in the 1930s, Sir Ronald Syme chose to call the passage from Republic to Empire under Augustus *The Roman Revolution*. Derrida's generalization that "all revolutionary discourses . . . justify the recourse to violence by alleging the founding, in progress or to come, of a new law, of a new state" could have been written of Augustus.

## V. RACE

If Vergil plays a decisive role in the tradition of the analysis of violence, he also contributes to our understanding of what it means to be European, in the particular case at hand, what it means to be Italian in relation to all the many other cultures, largely Trojan and Greek, that he shows going into the make-up of the Roman race. I think that the way

<sup>96</sup> Benjamin, *supra* note 17, at 300.

<sup>97</sup> CARL SCHMITT, *POLITICAL THEOLOGY: FOUR CHAPTERS ON THE CONCEPT OF SOVEREIGNTY* 5 (George Schwab trans., 1985). Schwab's translation, "[s]overeign is he who decides on the exception," is misleading. *Id.*

the Eastern culture is understood as essential to the foundation of Rome, but then eclipsed, is paradigmatic for Western thought about East and West and may interact in unpredictable ways with Western ideas about the Jews as foundational, assimilable, and ultimately resistant to assimilation. There is an uncanny inversion between Juno's violent expression of what could in other terms be presented as a much more benign force of assimilation, where the bodies of individuals are preserved but the culture is erased, and the holocaust, where the people were killed but the Bible retained its role as a foundational text in Western culture.<sup>98</sup> We have time only for a sketch of Vergil's construction of Roman identity, but I want to put forward the thesis that over against the main overt narrative, which can be analyzed in the Benjaminian categories of violence, an alternative, more pluralistic narrative lies fragmented over the course of the poem.

Vergil, as in his depiction of the Saturnian age, presents two incompatible views. The radical dichotomy between East and West on Aeneas's shield reproduces the official view that Actium was a foreign and not a civil war.<sup>99</sup> There is a disparity between the political reality (civil war), the ideological construction (East versus West), and the reality on the ground, where Antony had a army of some thirty Roman legions and the Eastern contribution was minimal—primarily cavalry; Cleopatra commanded her own squadron in Antony's fleet, but this was only part of the total number of ships.<sup>100</sup> Vergil lets the ideological representation stand, although we cannot erase our knowledge of the civil war. Similarly, Vergil has Iarbas and Numanus Remulus express orientalizing views of the Trojans as Easterners, wearing Phrygian bonnets, engaging in luxurious exotic rites, and stealing their women.<sup>101</sup>

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<sup>98</sup> I thank Judith Shulevitz for this observation.

<sup>99</sup> Haecker accepts the demonization of the East and views the possibility of a leader who is a "traitor to his own Western spirit" with horror. HAECKER, *supra* note 2, at 27.

<sup>100</sup> The ideology of the battle's reception has skewed the historical record so that details are extremely controversial. See also ROBERT GURVAL, *ACTIUM AND AUGUSTUS: THE POLITICS AND EMOTIONS OF CIVIL WAR* (1998) (providing a treatment of the ideology); JOHN M. CARTER, *THE BATTLE OF ACTIUM: THE RISE AND TRIUMPH OF AUGUSTUS CEASAR 220-27* (1970) (providing a standard historical account); JOHN M. SCULLARD, *FROM THE GRACCHI TO NERO, 174-77* (1959) (same). After detailed analysis, Tarn concludes, "Pictures of Antony meeting Octavian at the head of a motley half-Asiatic army do not belong to history." William Woodworth Tarn, *Antony's Legions*, 26 *CLASSICAL Q.* 75, 81. Syme lists Antony's and Octavian's Roman supporters. See RONALD SYME, *THE ROMAN REVOLUTION 266-69, 292-93* (1939).

<sup>101</sup> For the ethnographical tradition in both the idealized Italians peasants and the Phrygian effeminate, see Nicholas Horsfall, *Numanus Remulus: Ethnography and Propaganda*, in *Aen.*, ix, 598f., *Latomus* 30: 1108-16, in *OXFORD READINGS IN VERGIL'S AENEID 305-15* (Stephen J. Harrison ed., Oxford 1990) (1971). Thomas takes these representations too literally as depicting the Trojan contribution to the Roman line as incorporating a strain of decadence. THOMAS, *supra* note 27, at 98-103. The Trojans may, as he argues, be the catalyst to the age of Jupiter, but they are hardly "the primary inhabitants of the new area," and furthermore, Juno's insistence on the destruction of their culture calls into question the degree of their contribution to Roman culture

Where Vergil makes a counter-representation is in mentioning piecemeal the great ethnic diversity that constitutes the Roman race.<sup>102</sup> The consistent naming of peoples makes the question he asks of Jupiter all the more poignant: *tanton placuit concurrere motu, / Iuppiter, aeterna gentis in pace futuras?* (“Was it pleasing, Jupiter, for races which would join in eternal peace to come together in such great disturbance?” 12.503-4). Let us return to Derrida’s axiom from *The Other Heading: Reflections on Today’s Europe*, with which I began this essay: “what is proper to a culture is to not be identical to itself.” He continues, “a culture never has a single origin. Monogenealogy would always be a mystification in the history of culture.”<sup>103</sup> I think that this is one reason the Romans needed a Trojan founder; they needed a way to express their non-identity to themselves. I also think this is something Vergil understood. The dichotomy between East and West in the *Aeneid* turns out to be much more blurred than the official line and the bigoted views he lends voice to would lead us to expect.

The parallel inversion between native and foreign in Aeneas and Turnus’s respective genealogies can be interpreted many ways. We could, if we wanted, take the fact that Dardanus, an Italian, was Aeneas’s ancestor as a sign that the foreignness of the Trojans is eclipsed and that the Romans are all native Italian after all.<sup>104</sup> This view, however, fails to give sufficient weight to the fact that, as Amata tells us, Turnus’s ancestors come from Mycenae (*et Turno, si prima domus repetatur origo, / Inachus Acrisiusque patres mediaeque Mycenae*, 7.371-2). There is a balance in that both are native sons and both are foreign. The distinction blurs. The oracle that leads Latinus to accept Aeneas as his son-in-law, however, stresses that there is a need to bring in foreigners. Amata’s argument that Turnus is just as foreign as Aeneas and should therefore marry Lavinia and inherit the throne does not hold because he and his ancestors have already been assimilated. The story of Rome is one of a series of assimilations: the

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(12.827-8). *Id.* at 103. The element Jupiter insists on preserving, their religion, does not encourage decadence (12.836-7), though Horsfall comments that Jupiter’s agreement to retain the Italian language and customs at *Aen.* 12.834 shows that “traditional Greco-Roman contempt for the East seems ineradicable” Horsfall, *supra* at 1116.

<sup>102</sup> Formally, Vergil likes to bring different races together in lists, sometimes within a single line, whether in violence or unity (10.429-30, 11. 92-3, 11.167, 11.592, 12.281, 12.289-90, 12.548-51); mixed parentage (11.272); multiplication of races in Mantua, his hometown (10.201-3). Adler notes that Vergil conveys the unity of Roman people in his own day by making it hard to tell from proper names who is a Trojan and who a Latin in the battle scenes. ADLER, *supra* note 25, at 307.

<sup>103</sup> Derrida, *supra* note 6, at 9-11.

<sup>104</sup> This move has been made most recently by West. David West, *The End and the Meaning: Aeneid 12.791-842*, in *VERGIL’S AENEID: AUGUSTIAN EPIC AND POLITICAL CONTEXT* 307 (Hans-Peter Stahl ed., 1998). Horsfall shows that Aeneas’s being a native son is not emphasized as a home-coming. Horsfall, *supra* note 8, at 191. Adler balances Aeneas and Turnus’s genealogies. ADLER, *supra* note 25, at 180-81.

Rutulians, the Arcadians, and the Etruscans are non-native races that are active in addition to the Trojans during the present of the *Aeneid's* story-line. In the catalogue of Italian forces at the end of book 7, we find Argives (Rutulians), the Auruncae (Ausonians), Rutulians under their own name, Sicani, Sacrani, and Labici.<sup>105</sup> In prehistory, we saw Pelasgians, Sicanians, and Ausonians. Although the commentaries say the Ausonians are native, Evander depicts them as arriving, and therefore as not entirely indigenous (8.328). The only race to emerge as truly native is the Latins.<sup>106</sup> The overall picture is one of colonization rather than of pure nativism.<sup>107</sup>

We can extend this image of Rome as built on cultural diversity to include the Trojans. Juno's radical cultural eradication can be rationalized as assimilation. The American model which I suggested earlier, of the external culture as dominating the native culture, is in fact an anomaly. Colonists often "go native." Which picture, one of many conflicting pictures the *Aeneid* produces, should we choose: Juno's divine violence or assimilation? In book 5, Vergil identifies one cultural phenomenon as deriving from Troy and passing through transmission from Ascanius down to contemporary Rome. It is the *lusus Troiae*. Let us put out of our minds for the moment the derivation from the lost noun *troia*, which would mean "movement" or "evolution" and might make the rite Italian.<sup>108</sup> We are trying to see how Vergil constructs Roman identity rather than delving into this construction's

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<sup>105</sup> Horsfall shows that the stories about the Italians are not even, for the most part, Italian, but belong to the category he calls "secondary myth," that is, they are the product of scholarship heavily influenced by the Greeks: "aside from some minute but suggestive scraps, the thirteen leaders have yielded up precisely one native myth." BREMMER & HORSFALL, *supra* note 8, at 1, 8-10. The Etruscan catalogue starting at *Aen.* 10.166 contains even less native material. *Id.* at 9-10. Dench argues from a historical perspective against simplistic ethnic categorizations of the peoples of the central Apennines. EMMA DENCH, *supra* note 50 at ch. 5.

<sup>106</sup> Dionysius of Halicarnassus makes *none* of the peoples who join together into the Roman race native. He traces even the so-called Aborigines as well as the Trojans back to the Peloponnese, so that all the races he mentions are Greek. He is not alone in this; Cato (frg. 61 Peter) and others thought they were Greek immigrants. See GRUEN *supra* note 8, at 59, n.61. The one native race, the Sicels, had already been driven out of Italy by the Aborigines by the time the Trojans appear on the scene (Dionysius, *Roman Antiquities* 60.3-62). Gruen sets Dionysius's Greek agenda within a larger Greek tendency to view all significant cultural developments in the Mediterranean basin as Greek. *Id.* at 7-8.

<sup>107</sup> Nicholas Horsfall comments to me that Vergil presents "the Ellis island view of Ausonian culture."

<sup>108</sup> P. VERGILI MARONIS: AENEIDOS LIBER QUINTUS 5.545f (Robert Deryck Williams ed., 1960). An Etruscan oenochoe from Tragliatella near Cerveteri bears the word *TRUIA* beside pictures of horsemen and a labyrinth. Horsfall suggests it may refer to the mythical city of Troy, "but should not be pressed." BREMMER & HORSFALL, *supra* note 8 at 19. He lists it with other Etruscan items showing an awareness of Aeneas and Troy. *Id.* The rite practiced during Vergil's lifetime did not in fact go back very far historically, since the sources first attest it for Sulla, and Horsfall suggests he may have brought the game back from the East. *Id.* at 23. See also Castagnoli *supra* note 8, at 6.

historicity.<sup>109</sup>

*hunc morem cursus atque haec certamina primus  
Ascanius, Longam muris cum cingeret Albam,  
rettulit et priscos docuit celebrare Latinos,  
quo puer ipso modo, secum quo Troia pubes;  
Albani docuere suos; hinc maxima porro  
accepit Roma et patrium seruauit honorem;  
Troiaque nunc pueri, Troianum dicitur agmen.*

5.596-603

Ascanius, when he encircled Alba Longa with walls, first brought back this kind of course and these contests, and taught them to the ancient Latins, how he himself as a boy, how the Trojan youth along with him used to do; the Albans taught their sons; from here further greatest Rome received the ancestral custom and preserved it. The boys are now called “Troy,” the company “Trojan.”

This passage gives the lie to Juno’s stipulation of the complete eradication of Trojan customs along with the city’s name. The repetition of “Troy” and “Trojan” here resists Juno’s repetition of “die” in *occidit, occideritque* (12.828), when she pronounces the city dead and demands Jupiter let the name die with it. When Jupiter accedes to Juno’s request, he grants that the Ausonians retain their language, name, and customs.<sup>110</sup> He allows the Trojans to “subside” through the mixing only of their blood: *commixti corpore tantum / subsident Teucrici* (12.835-6). He does, however, allow for the addition of Trojan religious customs into Latin ones, though the resulting hybrid will be Latin (*morem ritusque sacrorum / adiciam faciamque omnis uno ore Latinos*, 12.836-7).<sup>111</sup> The *lusus Troiae*, however, is depicted as not undergoing any kind of hybridization. Its transmission is linear and it remains itself intact.

What are we to conclude? Is Vergil’s pluralistic Rome a proto-America, where cultural assimilation and the preservation of at least a minimum of “other” cultural practices prevails? Or is his Rome one where divine violence eradicates a foundational Eastern culture? Derrida makes a call for a Europe that “consists precisely in not closing

<sup>109</sup> Vergil is not the only one to posit a Trojan cultural relic at Rome. See GRUEN *supra* note 8 at 27 (on Timaeus’ interpretation of festival of the October Horse). Parallel perhaps is the desire of modern scholars to find early seventeenth century evidence for an Aeneas cult at Lavinium. *Id.* at 24; BREMMER & HORSFALL, *supra* note 8, at 15-17; GALINSKY, *supra* note 8, at 141-90 141-90. Less skeptical is Grandazzi. GRANDAZZI, *supra* note 8, at 180.

<sup>110</sup> There was, however, speculation at Rome that Latin derived from Aeolic, a Greek dialect from the coast of Asia Minor, namely in the vicinity of Troy. See GRUEN *supra* note 8, at 234-35.

<sup>111</sup> Adler correctly emphasizes that the Trojans’ contribution of the Penates and religious rites is shared between Aeneas and Jupiter’s treaties. ADLER, *supra* note 25, at 183-85.

itself off in its own identity and in advancing itself in an exemplary way toward what it is not.”<sup>112</sup> Vergil, I think, understands the choices and presents them to us as two truths about the society he lives in: one in which mystifying violence interminably repeats acts of foundation in the attempt to eradicate an other which is the mirror of the self, and one which opens out toward difference. In this day and age, I hope we can with confidence choose the latter as a preferable model, but let us remember that both constructions are not only true, they represent equally imperialistic ideologies.<sup>113</sup>

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<sup>112</sup> Derrida, *supra* note 6, at 29.

<sup>113</sup> Eiden critiques the dichotomy between the European imperialistic interpretation of Vergil and the largely American school of so-called pessimism on the grounds that the interpretation of the *Aeneid* as speaking in multiple voices expresses an American, pluralistic ideology that is no less imperialistic than the optimistic school. *See* Eiden, *supra* note 81. Adler examines the extent to which Vergil offers a consistent political philosophy of empire, and analyzes his theory in relation to an unusual and stimulating variety of texts. Although she goes further than I would in lending Vergil a unified and consistent philosophy, her interpretation is salutary in taking him much more seriously as a philosophical thinker than he is usually credited. ADLER, *supra* note 25, at ch. 11 (entitling the chapter “World Empire”).