Talking about Resistance and Revolutionary Legality

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This article sets up and defends an *ontological theory of resistance*, which has its origins in the dialogue I carry out between some works of Peter Fitzpatrick and Oscar Correas. To lay down such a theory, it is important to acknowledge the apparently oxymoronic concept of *revolutionary legality* in order to grasp the ontological problem of law in a centripetal and dynamic manner, where law, as a form of power that subdues, generates the conditions of its own transgression.

**Introduction**

*That it is the measure of strength to what extent we can admit to ourselves without perishing, the merely apparent character, the necessity of lies.*

Our modern world is but an aporetic world. Aporia, however, must be understood here not only in its classical Greek sense but also beyond it, namely, that *a-poria* implies the idea of no road, but this shall not import the idea of failure or impasse. On the contrary, from a critical standpoint the aporetic means ‘no already assured passage’ as long as

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such an idea involves a generative appreciation of the aporia itself.\(^3\) In this sense, allow me to quote Derrida to reflect the aporetic condition of modernity:

No one here doubts it, some aplomb ... is what is needed ... to advance quietly some reports of panopticon collapse ... on the status of the States in the world, on the new world order or disorder, and also to afford, even denying it, the geopolitical prescription or counter-prescription. All of this intimating that the geopolitical discourse is paralyzed in a sort of widespread impasse or aporia: nothing works and everything may happen.\(^4\)

Resistance and law need somehow to be placed in the aporetic relation between such enduring determination—‘nothing works’—and such infinite responsiveness—‘everything may happen’.\(^5\) Thus, law may reveal itself ‘not only as a dutiful child but also as a child with oedipal inclinations, one whose ultimately uncontrollable being opposes, even disposes of, its imperious parent’.\(^6\) This article will attempt to accomplish this parricide.

In a more schematic manner, I will draw attention in this article to the imperial conception of power and resistance. The scheme of the work is the following: firstly, I attempt to expose a resistance conception beyond the imperial, a conception that reveals the priority of resistance over power (heading I). Then, once it has been stated that ‘resistance comes first’ a new problem emerges: if resistance is ever one step ahead, how can we know if this description does not make the very idea of resistance superfluous?\(^7\) Or, in other words, how does its political significance not fade away? (heading II). The two previous headings take us to advance a distinction between ontological...

\(^3\) ibid

\(^4\) Jacques Derrida, 'Que faire de la question "Que faire?"', in René Major (ed.), *Derrida pour les temps à venir* (Stock 2007) 17. Translation and emphasis are mine.


\(^7\) This question is important since if we conform with the mere idea that ‘resistance comes first’, without going further, we can fall into ‘hyperlucid passivity’, see heading III, below.
resistance and political resistance and in so doing to attempt seeing how the former can interact with the latter (heading III). Finally, I will try to link all these considerations with regard to law, bringing to mind the parallelism I find between the Latin American and the European legal critiques by means of Oscar Correas and Peter Fitzpatrick (heading IV).

I. A resistance conception beyond the imperial

One of the so-called ‘masterpieces’ of El Museo Nacional del Prado in Madrid is Carlos V at the Battle of Mühlberg by Titian. According to the description of ‘El Prado’ this portrait:

Commemorat[es] the victory of imperial troops over the Protestants at Mühlberg. The apparently straightforward composition hides a complex symbolism that portrays Carlos as both a Christian knight and heir to the imperial tradition of Rome. For example, the lance he holds in his right hand symbolizes the power of the Caesars, but it simultaneously alludes to Saint George’s weapon, and to the one carried by Longinus during the Passion of Christ.

Putting aside the symbiosis between western politics and religion delineated in the previous depiction, which still endures in the form of secular theology, in this depiction of Carlos V’s portrait there are two things that reveal modern imperialism as terminal. Firstly, we find the way modern imperialism conceives power as something that one ‘has’, as something that can ‘be contained in a single centre or locus’. The second, which is a direct result of the first, is modern imperialism’s arrogance in thinking that a victory is a stable event, that is to say, something that, once occurred, sets the balance of power in a way that

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9 ibid (n 8)
11 Ben Golder and Peter Fitzpatrick, Foucault’s Law (Routledge 2009) 73.
allows us to easily recognise and separate between the victorious and the defeated, thereby minimising the resistance. In Titian’s piece the power is embodied in the person of Carlos V, who tries to present himself as ‘powerful’ as his predecessor’s Roman emperors.

Titian’s piece is then a classic representation of the imperial conception of power. According to such conception all resistance is conveniently poor. And, as Fitzpatrick remarks, ‘[t]he very etymology is compliant: re—“back” and sistere—“to stand”, hence resistere, to stand back, to withstand’. Indeed, it is not coincidence that coming from an imperial language, Latin, resistance be nothing but poor. It is convenient to imperial purposes so be it. In this sense, for an imperial account, resistance solely ‘tends to affirm the integrity of what is resisted … it elevates what is resisted [imperialism] whilst itself becoming diminished and parasitic. So … the monumental solidity of what is resisted confronts a resistance rendered as local or quotidian, reactive or dependent, interstitial or evanescent’. If power has a centre, as the imperium claims, it is quite normal that this centre can be embodied or retained by someone or something and resistance remains external to this centre.

The colonisation of the Americas helped to consolidate these imperial conceptions of power and resistance, which are still present today. Accordingly to Foucault, nowadays these conceptions may be termed as ‘juridico-discursive’. From ‘the juridico-discursive view, power is understood either as a commodity that some political actors

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12 Of course, there are many other instances, thus it is not fortuity that I have chosen Carlos V as my initial figure here. My interest in Titian’s piece is for two reasons. Firstly, it was during the rule of Carlos V that Spain ‘assured’ its colonisation enterprise over the so-called Indies, including Mexico. Secondly, as said before, it is presented as a masterpiece, by the European history of art, in the Spanish museum of El Prado. Would it be a masterpiece from the Indian or subaltern standpoint?


14 ibid

15 When I say, following Fitzpatrick, that resistance is ‘conveniently poor’—according to the imperial conception of power, of course—I mean that this pleases precisely the imperial conception of power because resistance, from such conception, is always depending on power. Nonetheless, as we shall see, power, on the contrary, is depending on resistance.

16 ibid

17 Michel Foucault, History of Sexuality, Volume I: An Introduction (Pantheon 1978) 82.
can determinately secure, alienate, or exercise to the detriment of others, or as a superstructural effect of relations of economic production’. These approaches try to respond to the questions: ‘what is power?’, ‘where does it come from?’ and here is their misapprehension of power since they do not see it in relation. The question that allows us to understand better the problem of power relations is ‘how is it practised?’. I shall say something about this theme in the next heading meanwhile I will try to set the basis of a resistance conception beyond the imperial.

Where can we say that there ‘is’ resistance in Carlos V’s portrait? No representation of ‘defeated’ enemies is shown. Actually, there is no sign of battle. Thus, the defeated are not even set as defeated; the piece tries to keep them invisible, in a word, resistance is presented in a position of exteriority. However, although it might seem paradoxical, resistance—even in this piece—remains primary to power. What is the piece about? As explained in the Prado’s description, it is about ‘commemorating the victory of imperial troops over’. Thus in the end it is about a ‘victory’, and, more importantly still, a victory ‘over’. It is precisely in this commemorating, then, that resistance is invoked. But since resistance is rendered as invisible and hence located in any place, this invocation condenses resistance as a spectral figure: power now has let ‘itself be inhabited in its inside, [it is now] haunted by a foreign guest’. In this turn, resistance may also be—in fact, needs to in order to be resistance—more than diminished, parasitic, dependent and so on. This conception, beyond the imperial, ‘not only prevents, say, power or a power overwhelming it but is also integral to that power. Resistance ... is not, or not just, parasitic on power. Rather, power depends on resistance’.

Now how can we understand that power depends on resistance? First of all, as was suggested, we need to ask the interesting question regarding power, that is, to ask for the ‘how’ of power instead of the

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18 Golder and Fitzpatrick (n 11) 73.
19 Gilles Deleuze, *Foucault* (Bloomsbury Academic 2014) 71.
Fitzpatrick (n 6). Emphasis added.
22 Fitzpatrick (n 13) 12.
'what' of it. 23 This leads us to abandon, as Foucault argues, the repressive hypothesis and to see power in its creative modality. 24 Following Nietzsche, for Foucault, power functions as 'the moving substrate of force relations' 25 such understanding of power allows a whole new ground of emancipatory possibilities as power has no 'central point ... a unique source of sovereignty from which secondary and descendant forms would emanate' 26 but is altogether immanent to the social field. Thus Santos is right to some extent when he reads Foucault's account of disciplinary power as one that disappears power: '[i]f power is everywhere, it is nowhere'. 27 But he misses the point when he says that this way of not exercising power 'from the top down nor from a center to a periphery' 28 is an account where 'there is no strategic framework for emancipation [and therefore ...] Foucault is forced to think of resistance to power outside his overall conception of power and power relations, as a kind of ad hoc afterthought'. 29 In fact, rather the opposite conclusion, as stated above, follows from Foucauldian power's dispersion: the emancipatory strategies are indeed possible:

'There is a plurality of resistances, each of them a special case: resistances that are possible, necessary, improbable; others that are spontaneous, savage, solitary, concerted, rampant, or violent; still others that are quick to compromise, interested, or sacrificial; by definition, they can only exist in the strategic field of power relations. But this does not mean that they are only a reaction or rebound, forming with respect to the basic domination an underside that is in the end always passive, doomed to perpetual defeat. 30

23 Michel Foucault, ‘Society Must Be Defended’ in Lectures at the Collège de France, 1975-76, Mauro Bertani and Alessandro Fontana (eds) (Picador 2003) 24. See also Deleuze (n 19) 60.
24 Foucault (n 17) chapter 1.
25 ibid 93.
26 ibid
28 ibid 405
29 ibid 406. For further analysis of Santos’s critique of Foucault, see (n17) chapter 1.
30 Foucault (n 17) 96.
Now, if power does not have a centre, if it is ‘the moving substrate of force relations’, we may only comprehend power in and as relation. It is in the sense that we must understand the ‘omnipresence of power’: power is everywhere, however, not in a consolidated manner but in a constant relational flux where it is ‘negotiated and renegotiated, produced and reproduced’ in every relational point. This is what eludes Santos and many other critics of Foucault’s work. Foucault indeed leaves no doubt of his power’s conception:

Power is everywhere; not because it embraces everything, but because it comes from everywhere. And ‘Power,’ insofar as it is permanent, repetitious, inert, and self-reproducing, is simply the over-all effect that emerges from all these mobilities, the concatenation that rests on each of them and seeks in turn to arrest their movement.

Following from this, we may understand now what the thesis ‘power depends on resistance’ means. If power is seen in and as relation, as emerging from the moving substrate of force relations that conform the social field we can perceive that ‘[p]ower’s condition of possibility’ are these very force relations immanent to society. And these force relations are nothing but different means of resistance. In this sense, we may think of power as having no real existence, all we have is resistance:

[I]f there was no resistance, there would be no power relations. Because it would simply be a matter of obedience. You have to use power relations to refer to the situation where you’re not doing what you want. So resistance comes first, and resistance remains superior to the forces of the process; power relations are obliged to change with the resistance.

Thus, as with power, the interesting question concerning resistance is not ‘what is resistance?’ or ‘where does it from?’ but ‘how it is exercised?’. I shall return to this problematic in the third heading

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31 ibid 93.
32 Golder and Fitzpatrick (n 11) 73.
33 Foucault (n 17) 93. The quotation marks are original; the italics are mine.
34 ibid
of this paper but before it I would like to try to be clearer about the idea that power does not exist since it is of great importance for such a problematic.

II. The power does not exist: Grasping the outside

For Foucault, then, power is always in relation. What is more power is ‘something that functions only when it is part of a chain. It is never localized here or there, it is never in the hands of some, and it is never appropriated in the way that wealth or a commodity can be appropriated. Power functions’.

The imperial conception of power where power is seen as having a centre perceives power as being all-encompassing in order to homogenise a certain state of force relations and reproduce it as the same. This imperial conception tries ‘to cut’ the chain of power relations, it attempts ‘to arrest their movement’. And in so doing tries to keep resistance in an external position regarding power.

Thus, such arrest of movement implies at the same time a reproducibility and a contraction of time that makes a fold between the past and the present that is, for instance, the function of the founding myths, which present the power of then as being the same as the power of now. Nonetheless, every single repetition has in it the manner of becoming something more. Thus, even in a ‘perfect’ domination, in a never-ceasing repetition of the ‘same’ states of power relations, given the circulation of it, there is always something new, something that escapes exact reproducibility. In this sense, if we understand power in its imperial vein as an all-encompassing reproducibility of certain states of force relations, i.e. those states that allows a specific domination—such as Spanish colonisation of the Americas or contemporary global capitalism, for instance—power does not even exist since no state of force relations is reproducible as exactly the

36 Foucault (n 23) 29. If we remember this is quite different from the perspective that sees power as a commodity or as a superstructural effect of relations of economic production where power is not observed in relation but in a substantial manner. See (n 23) 5.

37 (n 17) 93.
same but solely in an ideal or abstract way.\(^{38}\) All states of power are, by
definition, non-reproducible as such: power is always 'produced from
one moment to the next, at every point, or rather in every relation from
one point to another'.\(^{39}\)

It is impossible to reproduce as the same any state of power
since states are always unsteady; force relations are continuously
‘unbalanced, heterogeneous, unstable, and tense’.\(^{40}\) To understand that
power does not exist as such or that, at least, it ‘can never be ultimately
secured’\(^{41}\) is what allows Foucault to say that ‘[w]here there is power,
there is resistance, and yet, or rather consequently, this resistance is
never in a position of exteriority in relation to power’.\(^{42}\) Therefore, as
was said before, ‘the final word on power is that *resistance comes
first*’.\(^{43}\)

As I have suggested, if power does not exist as such all we have
is resistance. Thus the ‘points of resistance are present everywhere in
the power network’.\(^{44}\) Power is secondary, and may even be
unnecessary, for resistance: ‘power formations ultimately derive their
very content, their very being, from the impelling movement of
resistance’.\(^{45}\) This of course does not mean that one does not in fact
behave before power as if it were not all-encompassing. In fact, most of
the time we think of and behave before power as if it were
unsurpassable but the only thing that this shows is that the subject
‘becomes the principle of his own subjection’.\(^{46}\) Here it is important to
see this Foucauldian idea of one’s own subjection beyond the critic’s
classic view, namely, in passive nihilistic terms. As Golder and
Fitzpatrick argue:

Foucault’s notion of subjectivity was always somewhat more
nuanced than such a view would allow ... there must

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\(^{38}\) We can see this since the very invention of modernity: one of the telling instances is the so-called ‘New Spain’.

\(^{39}\) Foucault (n 17) 93.

\(^{40}\) ibid

\(^{41}\) Golder and Fitzpatrick (n 11) 74.

\(^{42}\) Foucault (n 17) 95.

\(^{43}\) Deleuze (n 19) 74. Emphasis original.

\(^{44}\) Foucault (n 17) 95.

\(^{45}\) Golder and Fitzpatrick (n 11) 75.

necessarily be some part of the subject able to stand apart, as it were, and to integrate and bring to bear upon itself in some way the diverse demands of disciplinary power ... Without something more, without the subject’s ability to orient and respond to the demands of disciplinary power, the result would be an irredeemably fractured modern subject not fit for disciplinary purposes.\textsuperscript{47}

Moreover if power depends on resistance or, more accurately, resistances, if the latter are generative of power it is because ‘freedom may well appear as the condition for the exercise of power (at the same time its precondition, since freedom must exist for power to be exerted, and also its permanent support, since without the possibility of recalcitrance power would be equivalent to a physical determination)’.\textsuperscript{48} Even in the most humiliating and cynical ways of exercising power—such as that of the conquerors of the Americas—there is always something that resists, there is always some space for freedom.

Now if all that we have is resistance, and power may be considered as irrelevant or, at least, as terminal; if ‘points of resistance are present everywhere’ how does this idea not render resistance superfluous? Well, reversing resistance’s order of priority regarding power is interesting as this scheme changes entirely the manner in which we approach the possible emancipatory potential of a particular social phenomenon. That is to say, only in this sort of ontology is it possible the transgression in order to undermine a certain regime of power from within. Just from a world of resistances, transgression seems possible and even necessary; in a world where power is seen as unsurpassable transgression is not possible at all. It is from this grasping the outside that we may find a way out to ‘the impasse ... where power itself places us’.\textsuperscript{49} I shall now in the next heading expand the answer to this question further.

\textsuperscript{47} Golder and Fitzpatrick (n 11) 42-43, note 35.

\textsuperscript{48} Michel Foucault, ‘The Subject and Power’, in Michel Foucault: Beyond Structuralism and Hermeneutics, Hubert L. Dreyfus and Paul Rabinow (eds), (University of Chicago Press 1983) 221.

\textsuperscript{49} Deleuze (n 19) 79.
III. From ontological resistance to political resistance: A difficult becoming

Until now I have been talking of resistance in a general manner. Nonetheless, it may be useful to advance a distinction. A distinction that allow us to keep following the traces of this ontology of resistances and in so doing try to see how it may become transgression, how it becomes political resistance. In this sense, this distinction will attempt also to enlarge my answer regarding the problem of whether resistance is rendered superfluous.

It is an important delineation to acknowledge resistance’s priority over power, especially if resistance, like power, is not merely reactive but rather active. Yet, we cannot be content with the fact that there is always something that resists. This is precisely the ontological resistance. But we cannot equate it to political resistance. If we do so we would fall into what Santos criticises of Foucault: in ‘hyperlucid passivity’. Michel Foucault is to some extent ambiguous when he considers resistance, ambiguous in the sense that his notion of resistance is always oscillating between ontological resistance and political resistance. I shall say from now that I have no intention of ‘correcting’ Foucault as he has this distinction in mind; however, I think that many of his critics do not.

The distinction can be made without major problem and it has a twofold purpose. First, it recognises that ontological resistance is necessary for political resistance as the former is the condition of possibility of the latter. It is precisely in this sense, as Fitzpatrick claims following Foucault and Deleuze, that resistance is ‘(also) an unconfineable [sic] “power of life”’. This is crucial here since it reveals that resistance can be more than backing up to power. Secondly, the distinction helps us to discard the ‘hyperlucid passivity’ or ‘passive nihilism’ critiques. It is clear for Foucault that it is not enough to stay here; we must go further and turn this pure vitalism, this ontological resistance, into political resistance. Yet answering such a problem is not easy.

50 Santos (n 27) 406.
51 Fitzpatrick (n 2) 43. The quotation marks are original and come from Deleuze (n 19) 77.
52 See the discussion about the etymology of the word at the beginning of this chapter.
Despite not being an easy problem, Foucault—extravagant as it might seem—indeed advanced an answer: such a transformation may be achieved by way of (a) fiction. This is a simple but radical manner of inverting the relation between the epistemological and the political, between truth and power, in the western capitalist society. This inversion goes against two ideas: a) it is right to ‘take’ power—to create forms of hegemony—if such forms are grounded in truth; b) because of this, politics cannot be a popular issue. Thus, western society sees the link between power and truth as a necessary one and, as a consequence of such link, power is not of interest to all, it corresponds just for the ones who ‘know’ the truth.

It is important to highlight that Foucault is not going against such ideas because they are wrong or false but because they have the power of saying what is right and what is wrong. Thus, it is not a question of truth but of power, it is not a question of knowledge but of politics. It is then an issue of conflict. Thereby, for Foucault, relying on Nietzsche, history is an endless conflict of forces:

[O]nly a single drama is ever staged in this ‘non-place’, the endlessly repeated play of dominations. The domination of certain men over others leads to the differentiation of values; class domination generates the idea of liberty; and the forceful appropriation of things necessary to survival and the imposition of a duration not intrinsic to them account for the origin of logic.53

In this sense war never submits itself to law or politics. The latter are but the same war by other means. Thus, given this new war’s configuration and the de-centralisation of power identified in preceding headings it is possible to take the step to political resistance:

The nature of these rules allows violence to be inflicted on violence and the resurgence of new forces that are sufficiently strong to dominate those in power. Rules are empty in themselves, violent and unfinalized; they are impersonal and can be bent to any purpose. The successes of history belong to those who are capable of seizing these rules, to replace those who had used them, to disguise themselves so as to pervert

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them, invert their meaning, and redirect them against those who had initially imposed them; controlling this complex mechanism, they will make it function so as to overcome the rulers through their own rules.  

Therefore, what is at stake here is not a matter of who is right or wrong, who has the truth on his side, in order to impose a particular way of exercising power but rather it is a matter of who can exercise power in order to create truth. Therefore, it is possible to invert the second idea, that is to say, the struggle for the political power does not exclusively belong to a specific social class, thus, the masses are also involved in the struggle for the exercise of power:

Official knowledge has always represented the political power as the centre of a struggle within a social class (dynastic disputes in the aristocracy, parliamentary conflicts in the bourgeoisie); or even as the centre of a struggle between the aristocracy and the bourgeoisie. And as for popular movements, they have been presented as produced by hunger, as if the masses could dream of eating well but not of exercising power.  

In sum, ‘[t]here is a battle “for truth”, or at least “around truth” ... it’s not a matter of a battle “on behalf” of the truth, but of a battle about the status of truth and the economic and political role it plays’. And it is precisely here where the fiction enters since by truth Foucault did not mean ‘the ensemble of truths which are to be discovered and accepted’, but rather ‘the ensemble of rules according to which the true and the false are separated and specific effects of power attached to the true’. Where does such ensemble of rules for separating the true and the false come from? It comes from fiction or illusion as:

Truth is [a] movable host of metaphors, metonymies, and anthropomorphisms: in short, a sum of human relations which have been poetically and rhetorically intensified,

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54 ibid 151. Emphasis added.
55 Michel Foucault, ‘Más allá del bien y del mal’, in Microfísica del poder, Julia Varela and Fernando Álvarez-Uría (eds), (La Piqueta 1979) 32. Translation is mine.
57 ibid. Emphasis original.
transferred, and embellished ... Truths are illusions which we have forgotten are illusions.58

Yet this Nietzschean attitude to truth should not be understood in terms of removing truth but of ‘forgetting’ its origins. Some nuance, however, shall be introduced here. This forgetting is a positive constituting force: it is indeed ‘by means of ... unconsciousness and forgetfulness [that man] arrives at his sense of truth’.59 A truth then whose condition of possibility is fiction—what is ever beyond? Forgetting then becomes constructing. In this sense man is but ‘an artistically creating subject’ 60 of truth. And it is precisely in such manner that the Foucauldian ‘battle for truth’—and its ‘specific effects of power’—finds its proper place.

IV. Revolutionary legality

Where does the legality of law comes from?61 According to Correas there is no answer to this question in modern legal theory. And there is no answer because it ‘has made elision about the question of legality’.62 Namely, legal theory does not ask what is, or what it means, the legal or juridical. Theory can only determine what law is not:

Everything happens as if, to understand what is law, or legality, all we have to know is what law is not. And then some different normativity from the dominant normative system, such as moral ... is theorized. That way, everything that is not the bourgeois order is outside, as the other, of law.

59 ibid
60 ibid 893. Emphasis original.
61 In what follows I summarise Correas and Fitzpatrick’s conceptions of law. For a discussion in greater detail, see Ricardo Miranda, ‘Si el derecho fuera un mito’, in La crítica del derecho desde América Latina, Napoleón Conde y Víctor Romero (eds), (Editorial Horizontes 2016) 103-133.
But, we should note, it has not said what law is; only it has been theorized what the bourgeois order is not.\textsuperscript{63}

Thus, one may argue that legality depends on non-legalities. Consequently, what is acknowledged as legal is the result of ‘a game of hegemonies between legal systems’,\textsuperscript{64} all we have are ‘hegemonic and dominated systems’\textsuperscript{65} and since ‘hegemony is lost and won every day’\textsuperscript{66} and ‘the ground norm is a fiction’\textsuperscript{67} it is up to the dominated, to those considered non-legal to make this fiction the new Grundnorm; the new truth. In this sense, Bentham was right when he said that fictions poisoned and rotted law.\textsuperscript{68} He indeed was right since such contamination went so far that now we may say that ‘[t]here is something decayed or rotten in law, which condemns it or ruins it in advance’.\textsuperscript{69} But this, as Fitzpatrick argues, is not to seek or evoke law’s dissolution or nihilism—were this the case law would have become extinct long before Bentham’s time—rather, it is to accept, as said before, the aporetic character of our modern condition and law. It is to accept that law’s ‘position’ is ever unresolved; to evoke law’s rottenness is therefore ‘to place’ law ‘in-between fiction and truth’.\textsuperscript{70}

In this sense, law is the way in which a potential hegemony attempts to make its fiction become truth since, by means of law, society pretends that there is someone legitimised to establish the legal system.\textsuperscript{71} And it is just because law depends on ‘beyond-law sustenance’\textsuperscript{72} that all legality may become revolutionary or self-resistant:

\begin{itemize}
\item \textsuperscript{63} ibid 90. Emphasis original.
\item \textsuperscript{64} ibid 92.
\item \textsuperscript{65} ibid
\item \textsuperscript{66} ibid
\item \textsuperscript{67} ibid 93.
\item \textsuperscript{68} Peter Fitzpatrick, “In the Exigency of His Longing”: Freud’s Discovery of Law and Fiction in Totem and Taboo, in New Formations: A Journal of Culture/Theory/Politics (1997) 32, 144.
\item \textsuperscript{69} Jacques Derrida, ‘Force of Law: “The Mystical Foundation of Authority”’, in Deconstruction and the Possibility of Justice, Drucilla Cornell et al. (eds), (Routledge 1992) 39.
\item \textsuperscript{70} Fitzpatrick (n 68) 143.
\item \textsuperscript{71} Correas (n 62) 93. See as well Derrida (n 69).
\item \textsuperscript{72} (n 62) 93.
\end{itemize}
The very formulation of the law, its delimited content, is provoked and instituted by what is ‘other’ to it, by what continually, transgressively ‘attempt[s] to attract the law to itself’, ever challenging law’s determinacy. On the other side as it were, so as to accommodate its ‘exteriority as law’, law has to be responsive to alterity, has to be receptively formative. Caught between determinacy and alterity, law becomes self-resistant.73

Hence whoever considers himself legitimate for creating some order through law has to appeal to the indeterminacy ‘of the terms of legal control’,74 ‘to convince of the rightness’75 of such order. Law then has a ‘radical political nature’76 thus it is always an open ‘space for political struggle’77 as ‘[r]ules are empty in themselves’.78 Thereby law has a ‘polyvalent vacuity’. 79 And it is precisely such vacuity, paradoxically as it may seem, that makes all domination through law vulnerable and reveals a door for political resistance. This is what allows us to lead ‘right up to the edge of the abyss (the limits of law itself)’ and to be able to ‘envision the next step’.80

Yet it is important to keep in mind that law is not the final result of class struggle,81 we must not think of political power as it was not necessary to keep struggling for preserve it once taken,82 since nobody wins without conditions there is never a clear winner or loser. Put it simply, resistance is a spectre of law, namely, the former is something

73 Fitzpatrick (n 13) xiv. All emphasis and interventions are original.
75 Correas (n 62) 93.
77 ibid
78 Foucault (n 53) 151.
79 Golder and Fitzpatrick (n 11) 83.
82 Correas (ibid) 29-30.
that both visits and haunts the latter.\textsuperscript{83} In this manner, there is never a clear victory (this would be to return to the imperial conception of power), there is no permanent state of affairs, even for something to remain the ‘same’ some change is necessary; or as Marx says ‘all that is solid melts into air’.\textsuperscript{84} Thus the conditions for the emergence of the new are ever open.

Conclusion

All that has been said in the present article can be summarised in the idea that law, in order to be law, needs to rely on what is other to it, that is to say, law needs to be self-destructive. Law is not the natural univocal outcome of some rational process—called legislation or adjudication—grounded on truth or scientific parameters but is an imprecise product of the flux of force relations. This of course does not mean that law actually ‘says’ everything but it may say everything, law is necessarily an interruption of the flux of force relations, that is to say, some position from where we can orient ourselves.\textsuperscript{85} Nonetheless, since this position that interrupts the social flux is based on a forceful exclusion of what does not comply to this position, the process of exclusion reveals to us that what is non-legal is at the foundation of law and thence any legal determination takes place within the parameters of what is beyond legality.

We must then see law as a contestation space. A space not based on truth but on illusion or rather as a space caught in between fiction and truth in so far as is the manner of ‘our being-together in and as society’.\textsuperscript{86} Law always entails a particular way of exercising power and because of that it cannot be grounded on truth rather it is a space for creating truth. Law as a political sphere is a continuation of war by other means. In this sense, it is important to keep fighting for law and to take advantage of its creative dimension. Law and power are not stable but rather they are in constant undoing through a variety of social practices.

\textsuperscript{83} Derrida (n 21), chapter 1.
\textsuperscript{84} Karl Marx, \textit{The Communist Manifesto} (Penguin 2015) 6.
\textsuperscript{85} Peter Fitzpatrick, ‘‘In God we trust’ can relieve us of trusting each other’, in \textit{The Believer} (2005) 3(8), 3.
\textsuperscript{86} Golder and Fitzpatrick (n 11) 100.
In muted summary, there are three important conclusions. First, legality cannot be founded without *non-legality*, without disavowing what is not legal; second, if non-legality is at the foundations of legality, then we cannot reject *its intelligibility*; and third, such exclusion of non-legality from the realm of intelligibility is located in-between truth and fiction; it comes into being through forgetting, through considering-something-legal *for now*. At the end, law then feigns that it has some ground when actuality it has none; that is why we should not be *responsible for* law rather we must be *responsible to* law since, as Blanchot observes, ‘responsibility is [solely] rooted where there is no foundation’.

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87 Maurice Blanchot, *The Writing of the Disaster* (University of Nebraska Press 1986) 26. This thesis needs further elaboration, for now is enough to say that what I am trying to highlight here is that understanding our relations to each other, through law, should not be done in terms of being *responsible for* law (being responsible for others) since this idea entails that one speaks in representation of others (that would be to pretend that law ‘speaks’ with one and only voice) therefore taking the others as subjected not as subjectivities. On the contrary, if we are *responsible to* law (responsible to others), we may respect every other as ‘infinitely other’ in the Derridian sense, that is, as absolutely other, as singular and unique (law’s vacuity demands that law ‘speaks’ infinite voices).