

CITIZENS, ALIENS AND SUSPECTS IN THE AGE OF THE WAR ON TERROR:
THE QUESTION OF EMERGENCY POWERS
IN WESTERN POST-DEMOCRACIES*

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Abstract

If the nexus between post 09/11 counterterrorism and the encroachment of citizens' civil rights and individual and collective liberties seems to be already well established in the professional literature, there are other aspects of world politics in the age of the *war on terror* which deserve to be investigated. The connection between the 2001 turning point and the current international, economic crisis is of course one of them. Yet, the most interesting aspect might be the way in which the international, financial turmoil has been used for private interests around the world to advance their own agenda of privatization, deregulation, fiscal discipline and balanced government budgets. While the advancement of this agenda has often been wrapped in a type of rhetoric which time and again refers to the imperatives of governance in exceptional, hard times, this paper explores the possible implications of the *war on terror* tactics on the quality and sustainability of our democracies. By focusing on the notions of emergency powers and on the old, twentieth century controversy on the state of exception, this paper points to the difficulties inherent to violence control, to the emergence of private governments, and to the nation-state's loss of centrality in both domestic and international politics

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as the three main avenues through which the state of exception might become – as Walter Benjamin foreshadowed – a permanent trait of our systems, and our current crisis of governance might be recycled into something like the government of the crisis.

TABLE OF CONTENTS

1. The Politics of Terror	312
2. The Control of Violence From the Prevention of Terror to Pre-emptive State Terrorism	318
3. Citizens, Aliens, Suspects and the Transformation of Government	327
4. Political Violence and Truth.....	338

1. The Politics of Terror

A decade after the September-11 attacks, it seems to be about time to assess the balance-sheet of the *war on terror*. Under this label, one needs not to understand just the standard, state counter-terrorist strategies. The *war on terror* rather refers to a full constellation of policy measures, which include counter-terrorism, but go well beyond conventional counter-insurgency. Although the war on terror has taken different shapes across western countries, its most prominent features include participation on international, armed conflicts; extra judiciary executions; use of *intensive interrogation* techniques and justification of torture; creation of clandestine detention facilities; or even the enforcement of laws against the single citizens' civil rights, such as street video-monitoring, exhaustive controls and invasive searches at the airports, inspection of private communications (mobile phone conversations or messages, e-mail, internet searches, etc.), and a full array of other controls from GPS-monitoring of single citizens' movements, to the tracking of credit cards' activity, the introduction of new, digitalized and compulsory I.D. documents containing chips with personal information non accessible to the carrier, preventive measures against individual citizens and groups labeled as "radicals", restrictions to the mobility of certain groups across international borders, and restrictive immigration controls which criminalize immigrants.

Terrorism – understood as the use of terror with political objectives – is not either a clear-cut term to describe the full constellation of phenomena in which the deployment of violence – either on the part of

the state, or on the part of organized, non-government, opposition groups – is present. It should not be forgotten that the state is frequently the first agent to make use of violence – normally under the usual conditions of legitimacy, which invariably include the state’s monopoly. Ambiguities concerning terror and terrorism come to be visible as soon as one looks not at those situations in which a conflict takes place within the state, but at those, different scenarios, in which the state exists within the conflict. A short detour follows.

On the one hand – as it was said – terrorism seems to point to the use of violence with political objectives. These objectives, however, may be military goals of the state regarding targets which may lie either in or out of the state’s territorial jurisdiction; or they may be military objectives of the opposition groups promoting an agenda for the alteration of the balance of power within the state. Such seemed to be the case for both the radical leftist and extreme right-wing groups operating within the European societies during the late sixties and the seventies, but such profile hardly fits – if at all – the contemporary, Islamic *jihad*.

On the other hand, the term terrorism seems to refer to that type of situation in which the objective appears to be that of spreading panic and eventually induce a shock on the public opinion or on a selected part of the population. There is the critical edge: terrorist groups looking to bring some *statu quo* to an end in order to sponsor an alternative rarely – if ever – have deployed that sort of nihilistic, indiscriminate terror. The only exception: nationalist terrorists when attacking the populations of those states considered as “oppressors”.

This sort of contrast has been with us ever since the aftermath of the French Revolution. Against the Jacobin idea emphasizing the necessity of terror for the defense of the revolution, conservatives and monarchic legitimists looked at the Revolution as an atheistic catastrophe, while liberals entertained the idea of a revolution without terror. True, terrorist violence does not appear, in Robespierre, as blind or lacking objectives:

“Without, all the tyrants encircle you; within, all tyranny’s friends conspire; they will conspire until hope is wrested from crime. We must smother the internal and external enemies of the Republic or perish with it; now in this situation, the first maxim of your policy ought to be to lead the people by reason and the people’s enemies by terror. If the spring of popular government in time of peace is virtue, the springs of popular government in revolution are at once *virtue and terror*: Virtue, without which terror is fatal; terror, without which virtue is powerless. Terror is

nothing other than justice, prompt, severe, inflexible; it is therefore an emanation of virtue; it is not so much a special principle as it is a consequence of the general principle of democracy applied to our country's most urgent needs"¹.

Are we dealing here with a genuine form of *reine Gewalt* in the sense envisaged by Walter Benjamin back in 1921?² Benjamin's tenet was that there is a form of violence which can be described neither as a foundation of law nor as a mean to preserve it – it clearly goes beyond the Bodinian dialectic between *puvoir constituant* and *puvoir constitué*. This type of violence neither establishes nor maintains law – it rather suppresses it. If lawful and juridical violence are heavily dependent on instrumental reason, this form of *reine Gewalt* might be described as some sort of *means without ends*³.

The answer to the former question is probably negative. Outbursts of revolutionary wrath, which cannot be described as means to an end, but rather as an extra-legal expression of the right of violence affirming itself against violence of the laws, seem to be closer to Benjamin's view of *reine Gewalt*. Yet, we would not probably be discussing Benjamin's view nowadays if it was not because of the exchange of ideas that it was subsequently originated with the German legal theorist Carl Schmitt. Schmitt wanted to bring dictatorship out of the realm of absolute politics and rewrite it as a constitutional means to preserve liberty. After all – Schmitt protested against the Russian Bolsheviks – it is impossible to work out a definition of dictatorship, if every legal order is seen as a dictatorship. Schmitt wanted to recycle the term dictatorship into a juridical concept and thus situate a, by then only imagined, German sovereign dictatorship, that would terminate the Republic of Weimar, into the broader context of historical development. That is why Schmitt's theory of sovereignty has often been read as a reply of Walter Benjamin's *Zur Kritik der Gewalt*. The state of exception (*Ausnahmestand*) was the space Schmitt imagined to bring back Benjamin's *reine Gewalt* into the juridical order. Against the notion of pure violence, which Benjamin probably drew on Sorel, Schmitt opposed the idea of sovereign violence which is meant not to establish or to preserve the law, not even to

¹ Maximilien Robespierre, Discourse of February 5th 1794/17 Pluvios, year II of the Revolution (1987).

² Benjamin, (1921) 179-203.

³ As in Agamben (2003), 80.

suppress it – it is rather meant to suspend the law. So violence is brought back into the sphere of law just in order to make possible the very self-exclusion of law: “Sovereign is he who decides on the state of exception” – such was the famous *lemma* at the opening of his *Politische Theologie* (1922).

The sovereign is thus legally out of the law – and Robespierre seems to agree:

“Let the despot govern by terror his brutalized subjects; he is right, as a despot. Subdue by terror the enemies of liberty, and you will be right, as founders of the Republic. The government of the revolution is liberty’s despotism against tyranny”⁴.

Yet, the sovereign seems to be within the legal order as well. It is at this point that the paradox of Schmitt’s *decisionist* theory comes to the surface: the sovereign – who is both in and outside the legal order – might have to defend the existing laws by suspending them, or to enforce the existing legal order when it is no longer in force. The sovereign’s decisiveness soon turns into the sovereign’s indecisiveness, and the state of exception stands out as the awkward scenario in which he who ought to decide cannot do it, and he who can decide ought not to do it⁵.

We may now go back to terror. British historian Paul Preston has comprehensively accounted for violence during the years of the Spanish War of 1936-39 and its aftermath⁶. He describes violence in both the republican and the fascist rearguards. It is interesting to see how his description of the civil and military violence unleashed against the insurgents within the republican zone closely fits Benjamin’s *reine Gewalt*: a defensive and spontaneous reaction against the military *coup d’etat*, which episodically brings to a halt the normal restrictions on violence which are a constant in every civilized society. In fact, Preston describes these outbursts of popular violence as the reaction against a right-wing which represented the oligarchy and had been putting every possible obstacle against the II Republic’s agenda for social reform. It is a chaotic, non programmed reaction which takes place despite authorities’ efforts to prevent it, and almost never thanks to the public authorities.

Preston also describes enforcement and repression of civilians within the areas under the control of Spanish fascists after the July 1936 *coup*.

⁴ Cfr. Robespierre, *ibid, infra*.

⁵ Agamben (2003), 71-73.

⁶ See Preston (2011), *passim*, for the following ideas.

The British historian provides a different description here: a sudden, paralyzing and devastating violence, that the regular, colonial troops under the command of the insurgents now deployed systematically against civilians in the framework of an operation which had been planned in every detail in order to produce terror and annihilation. The idea – which Preston attributes to a prominent official of the insurgent military, General Mola – was of course investing in terror in order to establish a dictatorship without resistance. In Mola’s words: “the extermination of all those who do not think like us”. In fact, Preston reports, this type of planned violence caused three times more casualties than the spontaneous violence unleashed in the republican rearguard. It left a trail of humiliation, economic deprivation, torture, rape and physical and psychic sequels.

This is an interesting contrast. If the first setting resembles Benjamin’s *reine Gewalt*, the second one appears to be a clear case of *exceptionality* that brings regular political continuity to a halt. We may refer to those scenarios of human experience where usual norms are no longer in force. Primo Levi’s well known *motiv „hier ist kein Warum“* may now migrate from the concentration camp, to the colony, to the detention facility, to the city under siege or under air attack, or to the civil rearguard under exceptional measures of enforcement and repression.

However, this is by no means the violence of the outcast, of the pariah who – exhausted and not able or willing to stand up for their rights – decide to take the law in their own hands, and they end up taking not simply justice but revenge: *vox populi, vox dei; fiat iustitia et pereat mundus*. We are in front of a different creature: a non humanistic terror, which often presents itself with a rhetoric couched in terms of the republican defense of the common good, and a *consequentialist* account of its own *modus operandi*. Everything will be understood, and eventually justified, from the standpoint of the forthcoming, prospect society⁷. The common good – as Saint Just said – is always terrible. And politics becomes an activity which is not just in the pursuit of emancipation, but also in the pursuit of truth.

Needless to say, this Robespierrean politics of truth cannot be pluralistic. Not just because it deploys violent means, but also because truth has a genuine totalitarian proclivity. Yet, if we accept the terrorist

⁷ See Žižek (2008).

history of the modern state, should we accept its legacy and lean on the side of Saint Just? Shall we say – with Robespierre and Saint-Just – humanism *and* terror? Žižek suggests that such question stands on a verdict on the causes that brought to an end the majority of the revolutionary regimes: if humanistic goals remained unattained, might it not be so because the ideological projects of societal transformation still required an additional dose of terror⁸?

Žižek rhetorically asks if it was not the struggle against Stalinism, or the defense of Human Rights against totalitarianism, the right way to confront the humanism *or* terror dilemma. But there are those who assert that the *consequentialist* defense of the republic in terms of the common good no longer applies, and that it is, therefore, about time to affirm not humanism, but terror. Hawks, not doves, praise the power of the decision, the capacity to plough up history, to look at the human history from the standpoint of the Final Judgment. Rather than the common good, they say, the ends of history are the real consequences our judgments should care about. Those who believe that human history waits out there to be taken cannot afford to ask for permission – unless we forget that our modern liberal states are all the product of the revolution.

We are dealing – Žižek believes – with a state which is terrible in order for its single citizens not to ever be forced to become terrible themselves – a transfer of competences which we today call *depoliticization*. If the rebelling man cannot be explained, the state, imagined community opposed to every single imagination, can explain it all. Now that the state is widely discredited; when nobody believes in its power to cut on the course of history, it wants to persuade us that, deep inside its body of *Quasimodo*, it has a noble soul – as if it wanted to convince us that the problem lies, not on the state, but on the virtue of the single citizens. From Robespierre to General Mola ... to the allies' *Shock & Awe* air-strike campaign over Bagdad in 2003 – explicitly designed to make people physically and psychically unable to fight back or to care for their interests, no matter what these were⁹ – sovereign power invariably takes on the form of a decision on the state of exception where politics aim not to the institution of justice but to the imposition of some form of truth.

⁸ *Ibid*, also for the following comments.

⁹ On the topic of disaster capitalism, see the much criticized, but widely discussed contribution of Canadian activist Naomi Klein (2007).

2. The Control of Violence From the Prevention of Terror to Preemptive State Terrorism

The recent news is that our modern states are no longer the only actors on the stage – not even the main ones. In the mean time, academic empirical research has widely discussed the causes, the effects and the countermeasures which it would be lawful to resort to in order to meet the challenge of violence and terrorism. A short detour follows.

Concerning the etiology¹⁰, the received view was that terrorist groups may be seen as the result of the alienation of one fraction of the intelligentsia with respect to the ruling classes and with respect to the population at large. That seemed to be the case of the Jacobin current in the French Revolution, but it also fits the profile of many anti-colonialists, in particular, the liberation movements' armed branches. A variant of the same view has it that the intelligentsia's alienation occurs when a program for social and political reforms has failed with a loud clash: that might well have been the case of the *jihad* in the Arabic world, which may be seen as the fundamentalist response to the failure of the Arabic nationalistic, socialist project¹¹. This view is limited insofar it does not provide a full account on why the failure of the reformist program needs to result in the rise of *jihad* terrorism and not in some other denouement. Even if that has often been the case, in fact, it needs not. Be it as it may, the focus on national societies seems to be a good prevention against the risks of overlooking the fact that (even if its manifestations are clearly transnational), the not-so-new fundamentalist terrorism has strong local roots.

The abovementioned limitations call to develop more in-depth, empirical research. For instance, at the micro level, one should ask questions on the motivational structure that lies behind the single activist's political drive¹². An interesting case in point is of course the

¹⁰ A full-fledged account of the academic literature on the causes of pre-09/11 revolutionary movements was provided in Moscoso (1997).

¹¹ On these topics, the contribution by the Algerian anthropologist Sophie Bessis (2001) seems to be particularly eloquent.

¹² Both with macro- and with micro-level research designs, the so called *sociology of emotions* moves here on the ultimate frontier for empirical research on political activism and other forms of human action (see, *inter alia*, Scheff 1990, 1997; Barbalet 2001; Turner & Stets 2005; TenHouten 2007). Not just because it leaves behind the simplistic portrait of the *rational maximizer of private utility functions* which has lead so many sociologists to go blindfolded over the past three decades, but also because it emphasizes the importance

suicide bomber and, in general, the case of all ready-for-martyrdom activists, where one should look at those micro-situations of hindrance in which the agent finds impossible to proceed with social and interpersonal relations as usual. Confronted with gloomy outlooks, lacking any prospect of personal accomplishment, and unable – as the literature on *quality of life deficits* often points out – to proceed with the normal life-course of personal achievements, the kamikaze seems to handle a different (although not less *rational*) scale to assess the short and long-run consequences of her actions. At the macro level, in turn, research should proceed to the exam of the political ideology-religious beliefs nexus. This connection should be investigated, of course, at the level of organizations and their leaders' discourses, but it should also be confronted with the degree of awareness the activists show on the political-religious connection itself¹³.

Concerning the effects now, the study of the *new* manifestations of political violence requires, on the one hand, reconsidering the problem

of emotions, passions, sentiments and other, non rational, components of human action. The possibility that our self fails to meet the others' expectations, or one's own, may be seen as the great drama of modernity. When values cannot be easily dismissed but the rupture with social order is not at hand either, the social process is likely to produce an internal readjustment of the self. Shame – the most social of all emotions (that is likely to be why Socrates, Aristotle, Descartes, Spinoza, Hegel, Nietzsche, Darwin, Freud and other philosophers paid so much attention to it) is now again – as it was for Georg Simmel or Erving Goffman – very much at the forefront of sociologists' empirical research (Lewis 1992). The shame-wrath circuit has in fact been investigated as the driving force behind cases of warmongering (Scheff 1994). The connection of shame with identity and recognition, as both a cognitive and a moral demand, draws now our attention to topics such as visibility-invisibility, inclusion-exclusion, the sense of belonging, and stigma. The possibility, for instance, to read again Fanon (1961) under the socio-emotional key may cast a new light on Fanon's classic *loci*. For example, the idea that colonizers impose a derogatory image of the colonized peoples; that, in order to set them free, the colonized peoples have to overcome this derogatory image; that violence has to be exerted against the colonialists to set back the original violence of colonization; that the violence of the oppressed targets not just the oppressor but his conscience and the conscience of the oppressed – for, in the last analysis, colonialism is also a form of colonization of consciousness.

¹³ Michael Walzer (1965) was probably the first scholar to see the strong links existing between an ideological party – which combines fanaticism and discipline – with radical religious fundamentalism. The connection between religion, sentiment, political radicalism and violence stands at the origins of radical politics and revolutionary movements, and inaugurates the era of what Alessandro Pizzorno has often labeled (2001, 2008, 2010) as ideological politics or the “station of programmatic politics” designed for the transformation of the system from outside.

of the rationality of action. Observers are well aware that suicide-bombers attempts are not tactic – they therefore cannot be accounted for in terms of the calculation of any utility function. The balance account of costs and benefits for the martyr is estimated, so to speak, *sub specie aeternitatis* – hence the enormous difficulties *experts* on violence face to predict (not to say prevent) this type of episodes. On the other hand, terrorist violence brings the observer back to the normative problem concerning the explanation/justification of political action through its consequences. If some political actions may find a warrant in their consequences, then the same principle might be applied when the time comes for the validation of counter-terrorist measures. Provided that its effects turned out to be as expected, would it be legitimate to vindicate the *war on terror* exclusively on the grounds of its effects? The answer is clearly negative as soon as other considerations are introduced, besides the government’s responsibilities with the physical security of its citizens. Even under the threat of terror, societies have responsibilities with the humanity of the single activist, with the humanity of the activist’s organizations, and with the humanity of their original communities. The use of beneficial effects/legitimate goals as an alibi to warrant the choice for immoral or illegitimate means eliminates whatever restrictions might remain for the party of violence to resort to the same scheme.

A final consideration might be in order concerning the moral quality of controls – no matter whether cultural controls or downright coercive ones – to the exercise of violence. The fight against terrorism has always remained under the shadow of inefficacy (Bauman 2006). Whatever the means deployed, they never yielded the expected results. It is the very lack of effectiveness of cultural, judiciary, or police controls on terrorism what casts doubts on our possibilities to control the exercise of violence both at the interpersonal and at the macro level. Consider, for example, the massacres perpetrated by students in American and German schools over the past few years. Further instances might be recalled at the macro level: consider the utter lack of control on the exercise of violence in the, so called, *failed states* such as Somalia, or those post-colonial states in which the process of decolonization did not turn the *good government* into an objective of the post-colonial rulers for – not having their borders under the threat of foreign powers – then, domestic security and public order was not on anybody’s agenda either¹⁴. Consider, finally, the not so

¹⁴ That the breakdown of state institutions needs not mean the complete breakdown of

low intensity violence in occupied Iraq and Afghanistan. Allies went into Iraq, among other declared objectives, to “prevent terrorism” and ended up generating more local terrorism than what they were meant to eradicate. Before the recent withdrawal of American troops – although not of all the private security contractors – we have been witnessing how the number of insurgents’ violent attempts diminished while the overall figures relative to casualties in each attempt were on the rise. And here comes the moral consideration.

The question is in fact a well known one ever since the *fin de siècle*, when criminologists began to talk of crooks, tricksters, con artists, etc.,. Nowadays, neurobiologists look for deterministic explanations that undermine the credibility of the explanations offered by social scientists. Historical experience shows, however, that it has been neither the marriage of single activists, nor the imprisonment of the great majority of a terrorist organization’ members, nor even the criminal laws that actively seek out the social reintegration of terrorist inmates, the main factors behind the decline of the activity of violent groups. It has more often been social change, not criminal laws or enforcement, the main predictor of the end of violence. What social change often leaves behind itself is a trail of ideological evolutions and reassessments, which leak into the internal atmosphere of violent organizations, and ultimately induce their members to give up their objectives or to continue in the pursuit of them by exclusively political, non violent means¹⁵.

By violence, it should be understood the infliction of physical harm to others. Modern political violence exhibits a huge variability; it is often not preceded by warning signals; and still worse – we have a very limited

society is visible as soon as one looks at the proliferation of civil society organizations such as the groups of *vigilantes* in Nigeria. Not always, in violent societies, are these civil organizations entirely non violent. On the contrary, as the experiences of Colombia’s paramilitary gangs, or the paramilitary *escuadrones* which perpetrated the genocide on the indigenous population of Guatemala clearly show, quite often, civil society organizations, responding to the organized violence of the state, or to the armed violence of non-government organizations operating in a territory where the state’s authority is limited or has been openly challenged, are also non-government organizations, but certainly not civil organizations at all. In a period, as we will be discussing in turn, of contraction of nation-states’ activity and leeway, it seems legitimate to ask up to which point is it reasonable to continue supporting state-building as a means to achieve control over the exercise of violence.

¹⁵ See Reinares (1997), who also offers a sound description of the entire life-cycle of the militant.

knowledge on its triggering causes. Our old Machiavelli had already written on the unrealistic assumption of a conflict-free society: “*coloro che sperano che una repubblica possa essere unita, assai di questa speranza s’ingannano*” (*Istorie Fiorentine*: VII: 1) A lack of realism that might lead us to overlook the positive effects which even violent conflicts originate: “*coloro che danno i tumulti intra i nobili e la plebe mi pare che biasimino quelle cose che furono prima causa del tenere libera Roma, e che considerino più a’ romori ed alle grida che di tali tumulti nascevano, che a’ buoni effetti che quelli partorivano*” (*Discorsi*, I: 4, 1). Ever since Machiavelli, the question of social and political violence has been formulated in terms of which are the available resources that may be exploited in order to prevent its occurrence: socialization and redistribution, state monopoly of violence, and the law.

These are, in fact, the basic ingredients of every policy package designed for the prevention and control of violence. Two remarks are worth making here, however. The first: the above mentioned triad of controls presupposes the existence of a greater power – whether it be physical, military or legal – which is exercised through the spreading of collective diffidence, enforcement or the legal process. The state – a problem which will be dealt with below – is, therefore, back in. The second remark: every violence controlling-device may – no matter how sophisticated its engineering happens to be – feed back on the very scenario it was designed to keep under control, and bring about unintended consequences whose effects on violence will be a function of the institutional setting. In other words, attempts to control or limit the exercise of violence will inevitably result either in the raise or in the decline of violence – that the final result will be one thing or the other will depend on whether the controlling mechanism has been used in an authoritarian setting, or else, in a situation dominated by the rule of law, etc.¹⁶ Even if the specification might appear obvious, it will be worth recalling one of its most important corollaries: Only under specific conditions will the introduction of control policies result in the inhibition of violence. The rest of the time, particularly when the socialization, redistributive and legal devices have failed, we will be sent back to the usual setting where violence only

¹⁶ For these and the following remarks my discussion heavily relies on the contributors to W. Heitmeyer, H.G. Haupt, S. Malthaner & A. Kirschner (eds.) (2010). Although the entire book sets out a valuable, empirical research agenda, I found particularly illuminating Andrea Kirschner’s and Stefan Malthaner’s contribution.

engenders more violence, and where those sets of self-controls Norbert Elias once referred to will be replaced by the far more depressing scenario described by Max Weber: even if force is certainly not the only instrument available to the state, one should not forget, however, that force is distinctively an state-resource. Therefore, as long as states remain with us, even in the presence of other, new actors, the close connections between state and violence should not be underestimated.

True, the state may also try consensus, and it often does. Yet, it will be worth recalling that compromise may come to the surface along with a totalitarian or belligerent government's or parties' discourse. Consider the various courses recently taken by some European, right wing political parties – which visibly announce the type of political monsters we are going to have to deal with in Europe soon. With local variations, it would be easy to detect a *nativist* reaction in the domain of rights and labor market opportunities (“our folks first”), an authoritarian reaction (“let’s get tougher” on such or such group or category which often have been previously associated with, for instance, rising crime rates), and a *populist* reaction (usually under the form of a moral indictment against such and such cases of political or corporate corruption, but which, on a closer scrutiny, turn out to be a genuine scapegoat and an easy target for a revenge perpetrated on the entire political, corporate and intellectual elite of the society). Be it as it may, in order for consensus to emerge, institutions (such as the schools, the organized religions, or the media), organized groups (such as those the police might want to infiltrate, including social networks, and every hierarchical, interpersonal relationship of supervision), the language (particularly the public discourse in the media, which has promoted the replacement of the *freedom fighter* label by that of the criminal gang) and the public spaces (such as public transportation, residential quarters or notorious public places amenable to be used for gatherings or demonstrations) must be mobilized and thus become a part of the controlling device.

No matter, however, the extent of socialization and redistribution, state monopoly of violence, and the presence the law, from school and mall shootings to the more diffuse fears concerning terrorist threats, it looks like violence is everywhere. Even if mass media often exaggerate the threats (not just those coming from terrorist groups: consider de 2009 international campaign on the A-flu pandemic threat) and blow the precautions out of every proportion, thus giving the impression of a general loss of control, the bad news is that most attempts to control the

proliferation of violence often fall short from bringing it to a halt and, still worse, they sometimes become themselves a source of conflict and violence. The violence-control-violence vicious circle casts no few doubts on whether unpredictable, or even random violence, may be efficiently arrested by traditional, controlling institutions oriented to either prevention or deterrence, such as the classical monitoring institutions of the state (the police, or the government's intelligence), the enforcement state-machineries (the police, or the military), multilateral institutions or international legislation¹⁷. In other words, relationships between prevention/control and political violence might be formulated under a trilemma.

First, there seems to be a type of situation in which the withdrawal, the reduction or the relaxation of controls may be seen as the immediate cause of violence. The interesting question is here that of under what set of conditions has the slackening of controls ever been the triggering factor in the causation of violence. Hypotheses have been advanced that emphasize on the nexus between structural disorganization and violence. The connection might work through the effects disorganized societies may have on would-be activists' capacity to control their own life-choices. The above mentioned, emotional perspective would inquiry into the effects that a drawn-out experience of humiliation and exclusion, or a prolonged deprivation of social relations and recognition, might have on the life cycle of prospective activists. Under these conditions the observer is likely to expect that the consideration of the consequences of one's own actions over the others will loose salience as an inhibitor of violence.

Second, there are those situations in which the very violence-control mechanisms may be seen as violence's triggering events. A case in point here is – both at the local and at the global level – the classic setting of the struggle against terrorism and its “collateral” effects. The Mexican experience under the administration of President Felipe Calderón since 2006 shows how the introduction of control mechanisms against violence (in this case, control was meant to be achieved through the militarization of public order in some regions in which public security was already very deteriorated) may easily be interpreted as violence-inducing events. The critical, triggering event that was to unleash pervasive violence here was not so much the increased police's pressure that was brought to bear upon the criminal gangs, but rather that this was going to be accom-

¹⁷ See, again, and also for the following three paragraphs, (except for the cases of Mexico and Madrid), Kirschner & Malthaner's contribution in Heitmeyer *et al.* (2010), cit.

plished *manu militari*. Insofar as the selected device for control was itself violent (and there is, *prima facie*, no more violent state institution than the army), then it made no difference whether violence was meant to be used preventively (in which case, the violent reactions seek to eliminate controls), or as a *post hoc* dissuasion device (in which case we have a violent tool that is exploited in order to introduce new controls or to expand existing ones). Be it as it may, both scenarios immediately call in the question of legitimate means.

Third, it would still be possible to consider violence as the main predictor of a situation characterized by pervasive loss of control. Here, it is possible to begin with the old, Thomas theorem: once a situation has been defined as real, it will be real in its consequences, because what is important is not so much what happens but what the interpreters believe that is happening. Incomplete evidence, beliefs and prejudices will be real facts as long as they produce real effects – for it is the interpretation what causes the action. The classical view asserting that diffidence will be more pervasive in high crime rate societies seems to be consistent with a liberal, contractarian tradition, which had always seen the state as a guarantee for citizens' security – even to the extent that it was on the performance of precisely this type of assurance of citizens' physical integrity that the state's exceptional powers *vis-à-vis* its citizens had often been grounded. Now, when this function is no longer performed as usual, citizens under siege feel that the authority of the state has collapsed, that the threats are so unpredictable that they are no longer able to plan their own life, and that – as it was the case on March 11, 2004 in Madrid – the legitimization of government must be called into question. If the state seems not to be able to protect its citizens' life, it is only sound that its legitimization be reviewed, and citizens ask what do they want the government for.

Yet, as announced before, the state is no longer alone. Let's approach the end of this section with a few remarks on the private actors. Globally, the existence of a state's monopoly of violence seems to be more the exception than the rule. In many regions of the planet, control and governance is not the business of the state agencies. On the contrary, public order and violence monitoring may involve non state agents – which sometimes cooperate with existing state structures, and sometimes compete with them. Public-private cooperation, or conflict, where state hierarchies do not prevail but actors do nonetheless try to influence the citizens' behavior, looms in the near future as the most pervasive form of governance.

The public-private government scenario will take different roads to come to different parts of the globe. While some observers already point to a genuine withdrawal of the state in the governance of advanced democracies, others have identified an *exit from the state* in regions where the nation-state never came to be. In any event, the role of informal controls (such as those originated in the social classes, the popular cultures, or the life experience in suburban, not so marginal, residential quarters like the American *favelas*, the European *banlieus*, or the African and Asian *bidonvilles*), the cohesive function of family ties, and the rest of mechanisms that feed moral norms and set in motion the dynamics of inclusion and exclusion, they are all inclined to conflict with state controls, in particular when war, rebellion and uncertainty loom in the immediate future. Not even the role that organized religions, as private agencies, are likely to play in the future as violence-controlling devices is easy to elucidate. If, on the one hand, organized religions may amplify the existing drives towards the use of violence (as it has been the case in much of the postcolonial world, or as it was the case when religion was violently deployed against the moral enemy¹⁸), on the other hand religion may have, and it often does, a significant impact on prevention and control of violence.

A question that is often formulated is whether the coming future of violence against the institutions, as well as institutional, indiscriminate, violence will take us through both a qualitative change and a quantitative increase of violent attempts; and whether this new scenario might eventually lead to an unpredictable escalation that our societies will not be able to arrest by resorting to the conventional control tools such as the police, preventive monitoring, enforcement or the rule of law. It is in this setting that we have to think of the not so weak ties between the prevention of terrorism and pre-emptive terrorism. One of the emergent effects of the world-wide, aid-to-development industry has been the global growth of the constellation of corporate activities related to the prevention of terrorism and the strengthening of controls over the individual citizens. If our democratic, liberal states are bound to face the dilemma consisting in gaining additional capacity to set limits to the dangers inherent to the mere existence of terrorist groups, but only at the price of a significant expansion of police controls over single citizens, and the intensification of enforcement mechanisms, then the efforts made

¹⁸ On this last case, again, Walzer (1965).

to gain in capacity of control will be likely to end up with the introduction of new restrictions on the exercise of civil liberties, the infringement of individual rights, or even with the division of state powers in jeopardy. It should not go unnoticed, moreover, how political movements and publicized opinions fomenting the approach based on *tough* responses to the challenge of social and political violence very much lean towards the obnoxious use of warmongering expressions and the partisan abuse of the victims and their rights for political purposes¹⁹.

3. Citizens, Aliens, Suspects and the Transformation of Government

How far may go the encroachment of civil and political rights? Can our liberal democracies afford it? The question would be settled if it was not because, on these matters, the distinction between totalitarian and pluralistic regimes is less obvious than what one would expect. The deployment of violence-control and monitoring devices rather seems to be a permanent trait of all modern states²⁰. Even if we recognize the complete defeat of Nazism, Roberto Esposito contends, its cultural defeat was not as complete. That is the reason why he openly proposes a *biopolitical* characterization of our liberal regimes. The central role played

¹⁹ This is, in my view, the case of the very much brought into play ticking-time bomb scenario: Would you approve torturing a detainee if this was going to serve to save the life of hundreds of innocent citizens who happen to take a walk where the device is going to blast? The consequential thinking behind the question is obvious. If it wasn't because the imagined situation is dramatic, the question might seem hilarious. Incidentally, when terrorists use a ticking-time bomb they usually communicate the place where the device is going to detonate, in order for the spot to be evacuated. That's the rationale behind the chronometer device. And, when they do not communicate their targets in advance, does it make any difference that they employ a ticking-time device, a train or an airplane?

²⁰ Esposito (2008: 173 *et passim*) suggests that, if Nazism was defeated in 1945 and Stalinism collapsed in 1989, there are those who might have wanted to see that – in the end of these two forms of totalitarianism, there was a chance to return to the liberal political language. Yet, here again, he goes back to the end of World War II to affirm that this denouement did not mean the triumph of democrats and communists against fascists, but rather the victory of an alliance between liberals and Stalinists – both of whose political systems were founded on analogous *biopolitical* regimes. He goes even further to affirm that the conflict of the twentieth century was not one between totalitarianism and democracy, but a dilemma on whether making history out of nature (read Marx) or making nature out of history (read Spengler). For the Nazis, nature, in what it means for biology, is not, an anti-history, a philosophy or an ideology. Rather, nature is the negation of philosophy, and Nazism itself is not a political philosophy, but a political biology (177).

by the *bios* as both object and subject of liberal politics is confirmed – under the liberal view – not through the appropriation of the body by the state, but through the appropriation of the body by the individual (2008: 178). In other worlds, if for the Nazis man *is* nothing but a body (recall Agamben’s *bare life*), man, for the liberal thinking, *has* a body. Yet, there is no rupture with the biopolitical lexicon – only that property has been transferred (when not?) from the state to the individual.

It is precisely the *biopolitical* characterization of liberalism that rules out any chance to bridge the gap that keeps it apart from democracy. Really existing liberal democracies have never become those democracies they originally claimed to be. The liberal logic (non egalitarian, individualistic, naturalistic) stands for something very different from democracy’s universalistic and egalitarian drive²¹. Even the language of liberal democracy gives away its true *biopolitical* character. Liberal democracies have always ruled over a group of subjects that were thought equals because they had been separated from their bodies and conceived as atomized individuals – each endowed with a rational will (180). Abstract individuals so *dismembered* find their political correlate in the proposition

²¹ Discussing Hannah Arendt’s view, Esposito of course wants to do it away without the concept of totalitarianism. He claims that if every non liberal system has to be totalitarian, then, pretty much for the same reasons (say, that they both oppose liberalism in different ways and for equally different reasons) communism and Nazism cannot both fit together under the totalitarian category: “If we refuse to accept the premises of positivist historicism, and reject the idea of a time-sequence of totalitarian and liberal democratic regimes alternating each other over time, and replace it by a genealogic or a topologic approach, then it is possible for us to realize that the real breakthrough is not the vertical one that separates totalitarianism from liberal democracy, but the horizontal gap which separates democracy and communism (as the realization of democratic equality) from the Nazi tic and liberal states’ *biopolitics*” (2008: 178). On several counts is Esposito right: The Nazi state’s *biopolitical* inclinations should be clear as one examines eugenics and the Nazi obsession with the cleansing away of every “degenerated” form of life. Liberalism’s *biopolitical* character is to be found, therefore, in its tendency to the governance of life, of the biological life of individuals and entire populations – a tendency which antagonizes every universalistic procedure of democracy and that can be detected in every significant political decision. It comes as no surprise that the model of medicine stands out at the core of each project. Medicine has become not just a privileged object of politics, but its most pervasive form. When the living or dying body becomes the symbolic and material epicenter of every dynamic of control and political conflict; when the single individual is more and more interrogated and objectively involved in questions having to do with the conservation, the confines or the exclusion of their own bodies, then we face a dimension which cannot any longer be called post-democratic, not even “beyond democracy”. We are properly outside of democracy. (Esposito 2008: 179-80).

which wants (as in Thomas Hobbes' *Leviathan*, XVI) the *person*, not the body, at the center of political, democratic praxis. A person understood according to its original meaning: a *disembodied* mask, an emaciated subjectivity not under the influence of bodily necessities, impulses, or desires. Only under liberalism's *biopolitical* turn has it been possible for the body of the subject to be *remembered*. Yet, it is precisely this turn, which brings the bodies back into visibility as authors of the government, what ultimately puts in jeopardy the equality principle that cannot be applied to something – like the body – which is invariably different.

Once the equality principle has been jeopardized, Esposito writes (*cit., infra.*) doubts are cast on every distinction on which modern politics rests: Law and theology, public and private, artificial and natural... When the body comes to replace the abstract subjectivity of the artificial, legal person, it becomes difficult to distinguish between whatever refers to the public sphere and whatever refers to the private sphere. Public and private, natural and artificial, politics and theology are so closely intertwined in the flow of human life that no majority decision will ever be able to disentangle them. Esposito believes that to be the reason why the centrality of the body is not compatible with democracy's conceptual lexicon. The centrality of the body has rather been compatible with the decline of democracy and its conversion into a *biopolitical* democracy. Liberalism's *biopolitical* character is to be found, therefore, in its tendency to the governance of life, of the biological life of individuals and entire populations – a tendency which antagonizes every universalistic procedure of democracy and that can be detected in every significant political decision.

Our own reading of Esposito's, shrewd contribution is that it is the reflexive power of politics – that is, the capacity the political sphere has to determine its own confines from within – that explains how politics may become biology. From smoking bans to the regulation of drugs, from highway speed limits to biotechnology applied to the prosthetic or non prosthetic redesign of the human bodies, from human fertility technologies to the control of immigration, from dying with dignity to bioethics, from *neuropolitics* to *neurodidactics*, it is difficult to deny the pervasiveness of the biological element within contemporary political discourse. It remains to be seen, however, the extent to which these biotechnological innovations will make of totalitarianism a useless or a residual category, as Esposito believes. Yet, what is clear is that we are no longer going to talk politics as we used to do it before the *biopolitical* turn

that took place in the twentieth century. Furthermore, it was precisely this *biopolitical* element what the old discussion on the state of exception largely overlooked. For, if we reconsider again the logic of the concentration camp, the clandestine detention facility, the colonized territories where peace may not even be an objective for the colonialists, the city under siege or under punitive air strikes, or the civil rearguard under exceptional measures of enforcement, then it is clear that, under the state of exception, *biopolitics* may easily turn into *thanato-politics*.

Although the connection between *biopolitics* and *thanato-politics* has been well addressed by Esposito (2008, 177), it is Achille Mbembe's discussion on *necropolitics* (2003) that will be rescued here. Mbembe's tenet is that the transformation of contemporary politics has not been brought to a halt as it approached its *biopolitical* stage. Far from that outcome, transformations were meant to go far beyond. Yet, *necropolitics* must not be understood as the type of setting in which, say, an scared Russian Tsar orders his guards to shoot down the people gathering outside the Winter Palace during 1905, Bloody *Sunday* in St. Petersburg. Contemporary forms of life's submission to lethal powers include the acceptance, no matter whether consented or enforced, conscious or unconscious, regarding decisions and non decisions which may compromise the continuity of life for entire human populations. These decisions may even be non-political in the sense that they be taken in a non political-setting (for instance, in the markets), but they bring the liberal, *biopolitical* regime, to metamorphose into something different and unnoticed insofar. The recent, already visible trend of opinion, which openly recommends a coming back to torture, is a case in point here. Torture is wrong on many grounds well beyond the physical or moral pain inflicted to the victims and its sequels – as the doctrines which lend support to article § 5 of the 1948 Universal Declaration of Human Rights clearly indicate. Among other grounds, it is wrong because it infringes the principle of liberty (no one can be free under excruciating pain), and so it does with the principle of equality (the situation of the victim of torture and the executioner is obviously far from being symmetrical)²².

²² Having ignored freedom and equality, the executioners have also completely forgotten the entire humanity of the prisoner. The refusal to recognize the absolute other – an enemy alien, for instance – as a human being lies very much at the core of the logic of the ethnic cleansing, the concentration camp, etc. On the ethics of recognition, see Sparti (2003); on the moral implications of the oblivion of recognition (reification), see Honneth (2005).

However, the recent debate on torture (Ignatieff 2004; Harris 2005) clearly points towards some other kind of considerations, much closer to liberalism's *biopolitical turn*: namely, those having to do with the particular rapport between violence and truth, or between the politics of the body and the *body politique*.

It is in this sense that it would appear legitimate to talk of *necropolitics* as an entirely different setting of individuals or groups subjected to the arbitrary will of a *thanato-power* – a setting in which the existence of subjugated subjects could hardly be distinguished from the existence of genuine walking dead individuals (Mbembe: 2003). In other worlds, the same experience of the colony that directed Franz Fanon's glance towards the *damnés de la terre*, returns now in Abu Ghraib, Guantánamo Bay or Islamabad²³ under the form of extra judiciary executions, *intensive interrogations*, clandestine flights to hidden detention facilities, new limitations to the exercise of citizen's civil and political rights, invasive searches, validation of torture²⁴, restrictions to the free circulation of individuals around the world; criminalization of immigrants, or even, in Europe (as in Denmark, spring 2011), the reintroduction of police-border controls within the Schengen-area.

Are all these events the ultimate expression of the adoption, on the part of Western democracies, of a genuine emergency legislation? How far on this direction the 2001, American *Patriot Act*, or the 2002, German *Terrorismusbekämpfungsgesetz* go? Will exceptional measures become permanent? Recall that such was Benjamin's (1942) depressing prediction in his thesis § VIII on the philosophy of history: "The tradition of the oppressed teaches us that the "state of emergency" in which we live is

²³ The May 2011, Islamabad military operative designed to assassinate Osama bin Laden and kidnap his body presents of course many interesting sides. Why now, when hundreds of thousands claim in the streets of the Arabic countries for the end of the authoritarian and corrupt regimes that Western diplomacies had been actively supporting? Is it that – as some conservative media claim – the Arabic world is not ready for democracy? Might it not be that the Western world is not ready for democracy in the Arabic world? Western experts on the *jihad* assert that – after the Islamabad operative – the *jihad's* backfire will inevitably follow. Will such defensive response follow because the *experts* say it will, or do the *experts* say there will be a backfire because it will come? Be it as it may, it is difficult to stay away from the thought that the true, undemocratic aim behind the *experts'* comments can be nothing but the reinstallation of fear.

²⁴ Even if the above mentioned events require no further specification, on this particular question of *hard interrogation* of detainees, it will be useful to refer, as a remainder, to the explicit contributions of Harvard law professor, Alan Dershowitz (2002, 2006a, 2006b).

not the exception but the rule. [...]. The current amazement that the things we are experiencing are ‘still’ possible in the twentieth century is *not* philosophical. This amazement is not the beginning of knowledge – unless it is the knowledge that the view of history which gives rise to it is no longer tenable”. Insofar, very few facts about emergency powers appear to be conclusive, and besides it is difficult to assess when enough time has elapsed so as to declare that something has become “permanent”. Agamben (2003, 24-25) warns that, if the Nazis eventually made it to seize power, that was in part due to the fact that, under article § 48 of the 1919, *Weimarer Verfassung*, most articles of the constitution concerning civil and political liberties²⁵ had been suspended for years before the Nazis took the power of the state – thus anticipating the modern tendency to use the exceptional character of a protracted economic crisis as an alibi to impose the political and military emergency.

Do we face something like this? In most cases, the blacklisting of suspect organizations or individuals, and the endorsement of *ad hoc* legal and administrative measures seems to be present. In both the United Kingdom and in the United States, there are indications in the sense that extra judicial arrest might have been implicitly sanctioned. Moreover, in the United States, a special jurisdiction has been pre-fabricated in order for the principle of *habeas corpus* to be easily abandoned when it is seen fit, and the same principle has undergone severe *de facto* restrictions in the United Kingdom.

Even if these developments do not indicate that we are sliding down into the permanent state of exception, they do suggest, however, a dangerous drift towards pre-emption and preventive enforcement against individual profiles which cannot, as such, fulfill the requirements of a punishable behavior. Here, some observers have often referred to G.W.F. Hegel’s prediction in his remarks on the consequences of the French Revolution concluding his monumental *Vorlesungen über die Philosophie der Geschichte*, where he wrote that when one moves – as it was the case under Jacobin terror – from the fact-informed suspicion to the attribution of intentions to suspects, the rule of law will, sooner or later, be replaced

²⁵ Notably articles 114, 115, 117, 118, 123, 124 and 153. Except the last one, which refers to the protection of private property, the other articles refer to such sensitive issues as, for instance, censorship and freedom of speech (§ 118), freedom of assembly (§ 123), or freedom of association (§ 124). Once the state of exception was last declared in 1933, it was of course never revoked until the complete defeat of Nazism (Agamben 2003, 75).

with the rule of the guillotine. This is the case when the investigation of suspects is no longer under the lead of the district attorneys or the public prosecutors, but under the control of police authorities; or when criminal law is deployed on the basis of a subjective conception of procedural truth, in which – after the fabrication of the “right” profile of behavior for terrorist criminals – judicial certainty is obtained by simply *fitting* the suspect into that, fabricated profile, so that penalties do not ultimately come to punish singular, well investigated crimes but the *terrorist-like* profile of the alleged perpetrators, and the procedure of empirical substantiation of the prosecutor’s allegations inevitably degenerates into an inquisitorial prosecution of the suspect. Our legal systems are designed to prosecute and punish offences and criminal acts, not individuals, and much less their ideas, beliefs or “intentions”, nor do they assemble the courts of justice depending on who the suspect happens to be. Should it be otherwise, we would have moved from the prevention of terrorism to the terror of prevention.

One interesting point about state terrorism was made by Michael Walzer (2006). He claims that the ends and scope of political action cannot validate the means employed, nor do they serve to single out the agents according to the ends they pursue. Political ends are pursued by right and wrong means alike, and it is, precisely, the disapproval of some of them that allows us to lend support to the same objectives that violent organizations or individuals promote employing the wrong means. Yet, and here comes the puzzle, if terrorists are judged according to the consideration deserved by the means they employ, and are never simply condemned because we do not agree with their objectives, if there are – in other words – no illegitimate objectives, then it is hard to understand why we obstinately want to look at the state’s action only from the standpoint of its – presumably legitimate – goals, and not from the consideration of the means it employs. Terror – Walzer writes – is a choice, not the general will of any group²⁶. The question remains as to whether terror is a strategic choice which is later on validated on moral grounds, or it is rather a moral choice which is later on justified on strategic considerations²⁷. That is,

²⁶ And this is a good, *prima facie*, reason to think that Benjamin’s *reine Gewalt* may hardly be considered a form of terrorism. Even if it takes place outside every possible law, as long as it is aimless, it will also be short of the intentional, purposive element.

²⁷ Truth has always been the first victim of every war, and in no other occasion the inconsistency of the values we are proud to cherish becomes as clear as during the war.

General Mola *versus* Robespierre. Are there any two better illustrations of *necropolitics*?

The future of every society is a function of its capacity to avoid violence or to channel its exercise through some alternate sacrificial ritual. Modern states have historically claimed exclusive rights over the exercise of violence. As the international, state system came to be regulated, the critical issue was no longer that of the conflict between states (certainly not because these, inter-state conflicts ceased to exist, which they of course did not, but rather because there was a clear route-map after the notion of sovereignty was worked out), but that of the conflict within the state. That was the viewpoint of Machiavelli and Hobbes. It was not until Marx that the state was rediscovered as part of the conflict: then it was possible to talk again, not of the conflict within the state, but of the role of states as parties involved in conflicts. Not just class conflicts, however; as the clashes originated in disputes concerning self-determination rights of various stateless communities across Europe offer an unambiguous example. When the state becomes itself a party in the dispute, the entire image of the civilizing process, according to which physical violence is bound to be exclusively incorporated to the state's *potestas*, will inevitably fall apart. The recent, above mentioned discussion on the legitimacy of torture may be seen as a clear indicator of a coming crisis of state's authority and, still worse, of the collapse of the ensemble of attitudes which stand, historically, at the critical core of the way in which tolerant societies have dealt with violence²⁸.

Michael Walzer (1977), who exploits the distinction between just and unjust wars, sees truth as a victim when war is unjustly declared or when the rules of the *ius in bellum* have been infringed by combatants and statesmen alike. For example, *ius in bellum* is often cited as a warrant of the immunity of non-combatants. However, as soon as we look at the wars of our twentieth century ancestors, we quickly realize that most of the victims were disarmed civilians. The same goes, of course, for the Balkans and Iraq. That is the reason why Walzer finds comforting that soldiers and politicians try to hide their wrongdoings from the sight of the public opinion (consider, for instance, the case of Abu Ghraib). As if that was an indicator that there is some kind of shared moral subsoil. The idea is quite simple: hypocrisy is not an indictment we are ready to use against the absolute other. With the radical alien there is no moral negotiation, and resentment – as philosopher P.F. Strawson saw – is an indicator that the crime is seen as something engendered within a shared moral community. That explains the pervasiveness of hypocrisy as the bottom-line of every form of moral critique, which shows that – beyond partisan alignments – there still remains a compromise between the critic and his target.

²⁸ Even if, according to human rights organizations, torture has been, and still is, a routine in too many societies, a legitimate question might be to ask about the institutional contexts

We may now go back to the link between the bodily policies and the *body politique*; for, in fact, torture and the liberal state's *necropolitical* turn are not the only two dimensions this rapport exhibits. An additional dimension may be found in the deployment of the human body as a weapon for the exercise of violence – sometimes, indiscriminate violence. As we have mentioned, the attempts which, over the past decade, have taken place in New York, Bali, Casablanca, Madrid, London, or Mumbai are increasingly difficult to predict and prevent. This brings in the question concerning the extent to which the threats we face now are substantially different from the threats we used to face in the past. On this aspect, remarks are frequently made that point to the fact that the “new” violent threats challenge the controlling capacities of state and non state institutions alike. The view has it, on the one hand, that the increasing transnational dimension of the “new” terrorist threats makes it far more difficult to trace its origins. On the other hand, Al' Qaeda and their associates seem to be a pretty *modern* creature: if terrorist organizations were, in the past, well established within the territorial confines of nation-states (consider, for instance, most of the Latin American *guerrillas* during the sixties through the eighties, and their surviving remnants), and therefore they had well known objectives within that territorial domain, such as the alteration of the *statu quo* within the society in which they operated, it looks as if their nowadays' counterparts were short of any such objective²⁹. A genuine case of Benjamin's *reine Gewalt*, that is, of

in which torture occurs. At the aggregated level, the question of course resembles that one which asks whether the new, unconventional counter-terrorist policies are compatible with the continued viability of our rule-of-law governed, democratic states. On these matters see, *inter alia*, Cole (2003), and J. Hocking & C. Lewis (2007).

²⁹ Likewise, as mentioned before, control and monitoring of violent actions may have as an objective either the continuity or the change of power structures. Recall that a threat may be used to shock the population and find an alibi to impose a dramatic turn of the institutional arrangements. Yet, from the standpoint of political continuity, the control of violence is a strategic component of every policy that wants to be sustained over time. That seems to be the case, in particular, during times of instability or discontent, or when the shocks that put the *statu quo* under threat are propagated by the media. Under these conditions, threatened institutions become vulnerable if they fail to manage the time and space dimensions of violence control. On the temporal dimension, if violent organizations proceed rapidly towards the consecution of their objectives (however short of *ends* these might happen to be), then state institutions will be forced to fine-tune on the time lag between decision and action in order to efficiently respond to the challengers' own time lag. On the space dimension, when the city has become the dominant form of organization

violence outside any law? The answer should now be probably affirmative. The massive coming back of kamikaze warriors, ready for self-sacrifice, whose rationality cannot be assessed with the language of *Zweckrationalität*, as well as the religious scheme behind violent activism, might lead us to speak of *means without ends*. If we ignore the critical question concerning the fighter's identity, then, in fact, as the old ideology-supported, *programmatic politics* loses salience; as the old *guerrillero* is transferred to the past, made part of history, and quickly replaced – in particular in the suicide-bombings – by women and extremely young combatants; this *fuga in avanti* seems to indicate that we face an unprecedented transformation.

Now, the problem is that agents involved either in the exercise or in the control of violence may all fail. This is probably where our current concerns with governance have originated. Governance, however, also stands for monitoring the activity of all those value-charged institutions, among which there are schools and other civil society institutions that are responsible for the primary and secondary socialization of the would-be violent activists. Yet, as the array of monitored organizations increases, and an increasing diversity of controls is needed, then, direct, state controls seem to be bound to give way to civil society, indirect controls. These developments appear to question the ubiquitous presence of the nation-state.

Over the past few years, analysts have begun to speak of post-democracy³⁰. The scheme may be controversial as it somehow takes a time-sequence for granted, even if it is plain that some of the traits of post-democracy are, in fact, rather pre-democratic. Yet the scheme manages to introduce some order on a number of useful insights. First, there is the suspicion that powerful minorities' interests receive a far greater consideration than the common interests, or the interests of normal citizens, when the time comes for making political decisions. Second, a well entrenched belief seems to propagate, which has it that state institutions are inefficient, while private corporations are better

of working and residential spaces for the large majority of mankind, state institutions will have to understand how sub-spaces of social discontent (such as ghettos, slums or *banlieues*) have massively accrued within the complex, contemporary urban setting, and what sort of specific problems of control do they entail when rapid social change turns these spaces into the backstage for the activity of violent organizations which operate at a not very well defined territorial level.

³⁰ On this matters, see Colin Crouch's seminal contribution (2003).

designed and more resistant against collusion and corruption – the corollary being that public sectors around the world should be downsized and governments should adopt private sector criteria when it comes to the provision of public services. Third, if the rapport between citizens and governments takes place through the electoral process, but the rapport between government and the outsourced, public service providers takes place through a complex fabric of regulations, then it appears that voters have no leverage whatsoever over the service providers while these, in turn, are not subjected to any form of accountability. Last, if we consider the classic, concentric model of political involvement whereby voters originate affiliates; affiliates originate activists, and the leaders' elite emerges out of this last group, a radical innovation sets in – now leaders include powerful owners of corporations, consultants and a legion of *experts* in the pursuit of money, prestige, power, or any blend of the three.

The current transformation of party politics; the extraordinary relevance of private corporations; the weakening of citizens' political influence, are all elements that point towards a more radical metamorphosis underlying the ongoing changes. This deeper metamorphosis refers to the state and reflects – as Pizzorno suggests³¹ – a trend which is internal to the development of the nation-state, and not just an emergent effect of globalization. The idea is that the state is no longer the authority it used to be – an authority which does not trade with private interests, while private interests are not directly present in the making of state-decisions that concern them. On the contrary, Pizzorno speaks of state's *contractualization* (“*contrattualizzazione dello Stato*”) and “negotiated rulemaking” that replaces public representation with private representation. It is as if a different, private body, which is at the same time legislative and judiciary, was going to replace the legislative and judiciary powers of the state. The consequences of this new position of the state are felt in the very nature of the legal process: mobility of the normative universe (continuous creation of *ad hoc* regulations coming from different sources and built “from the bottom up”, not supported by a broader doctrine or legislation, and constantly reinterpreted and redesigned in the courts through litigation or judicial review); self-legislation (in which private agents make it to impose through contract negotiations with the state the most favorable set of regulations); expansion of self-governing

³¹ Cfr. Alessandro Pizzorno (manuscript).

legal activity (where the law is originated in the headquarters of consultants, *experts*, but not exclusively in the legislative institutions of the political system whose legislative power declines). Obviously, the tendency exacerbates when it is considered at the international level – where, as Pizzorno writes, there seems to be a genuine return to the pre-industrial *lex mercatoria*.

4. Political Violence and Truth

Do the revolutionary and the Fabian portraits of liberal democracies' recent developments exclude each other? The former, as indicated, turns its sight towards exceptional powers and the *biopolitical turn*, while the latter mainly point to the detectable losses in the quality of our democratic, representative systems. Liberalism's *biopolitical* turn seems to constitute a better portrait of recent transformations than the old, radical assumption concerning the increasingly permanent character of exceptional measures. Even if some of the recent legal, political and military developments closely resemble the Benjamin-Schmitt state of exception scenario, it still remains to be seen whether current transformations have come to stay. Instead, the *biopolitical* component does seem to have produced, since the last century, some permanent social and political changes. While the state of exception hypothesis needs to rely on the assumption that nation-states will stay with us as we have known them during the past two centuries, the *biopolitical* qualification is fully compatible even with a stateless scenario in which nation-states and public governments would have disappeared, or lost much of their centrality, and left the stage for other, private actors to come to the foreground. Whether the new coming, private governments will become the agents of some form of *necropolitics* – even to the extent that would make them look like, not just emergency governments, but genuine states of exception – it will depend on the way citizens will react to the changes already under course. That is obviously a question on whether citizens around the world and, in particular, in advanced democracies, will easily let go the world they have known hitherto – that is, the world of individual and collective rights they might be about to lose.

Writing before the 09/11 events, Alessandro Pizzorno said that there was to be expected a return of politics into ethics (2001). This turn needs not simply mean that in the coming future politicians will be increasingly judged according to a variety of moral standards. This is nothing but

logical if one considers that morality is much easier for the average citizen to handle than other, more complex technical questions referring to, say, economic governance, which is often used as an excuse for the growing privatization of government activities. The new politics of the *ethos* will in fact be originated in a different set of transformations: when the decisions concerning the material life of the populations appear not to offer relevant alternatives; when the capacity of the state to influence and change the structure of inequalities and social exclusions is limited to short-term, cosmetic effects; then, a return to the local *ethos* is to be expected (2001: 231-ff). If not for other reasons, so it would be because – facing the loss of the world they have known – people will most certainly cling to the values of the societies they thought they had a right to live in. Their defensive response will be the reaction of those who want to continue living in a society in which certain, non negotiable rules are still in force. Even if symbols built on a distorted, or just imagined past that never was, these rules are of course a sign of their identity, and everything taking place in the political sphere will be judged according to them. It is from here that one can foresee the type of political creatures we are likely to live with in the near future.

If not on other counts, Walter Benjamin was right to point to the strong nexus between violence and the law. First, law is a form of violence. This is not just because – to the extent that it should be possible to talk of legal violence – most of the latent violence which is present in our societies adopts a judicial appearance. Second, violence invariably stands at the origin of any law. Whether violence establishes the law or simply conserves it, the resulting legal body can only intend to either preserve the life as bare life (Benjamin's *das bloße Leben*) or to destroy it (*necropolitics*). Yet, it will not let it manifest itself as a common life or as a just life (not to say a good life). Politics is, in this respect, one way human beings have employed to correct the laws' scarce sense of justice.

But consider again war as a form of organized violence having the objective of creating law or of keeping the existing legal system. Are we in front of a case of *reine Gewalt*? Most certainly not; for war is a purposely conducted business with a clear design to accrue power, profit or both. That is why – no matter how conspicuously our actual wars usually infringe every possible law – our concept of war is so difficult to separate from the law.

Now, can war, impelled as it is by force and fraud, remain within the law? Not even the Grocian notion of just and unjust wars is endorsed by

the majority of the citizens in our liberal democracies³². Many of them believe instead, with Kant, that there cannot be a just war—that war cannot, in other words, be the activity of decent citizens. According to this view, war stands beyond any regulation, beyond the distinction between good and evil, or between justice and injustice. War would just express pure necessity, a primary impulse for self-preservation which rules out every chance for justice and keeps moral laws silent. *Salus populi suprema lex* is not very different from Hobbes' first law of nature (*Leviathan*, XIV) which prescribes that “every man ought to endeavour Peace, as farre as he has hope of obtaining it; and when he cannot obtain it, that he may seek, and use, all helps, and advantages of Warre”. Once war is not a matter of justice, but a matter of necessity, it looks like the only way to fight in a just war is being the victim of an aggression.

Yet – as Judith Shklar wrote (1984, 80) – every enemy can easily be made to look the aggressor. The 1964 affair in the Gulf of Tonkin or the business of the alleged MDW in Iraq provide two illustrative examples. The natural law based, Grocian distinction between just and unjust wars conceives war as the opposite of consent and concord – yet, war is to be found at the end of the same continuum. This is the reason why war cannot stand out of the reach of morality and the law. The Kantian *doves* see clearly that justice and morality cannot depend on what we believe about the world (not even on what we believe we can possibly do on it), and will charge the party of the just war as guilty of moral hypocrisy.

If unable to defend themselves morally, *hawks* will try to appeal to necessity, whose military expression is *strategic imperative*. Strategic choices will later on be validated on moral grounds, of course: whatever brings about the common good is always terrible – Saint Just once said. Of course, the strategic imperative is hypothetical and depends on the assessment of consequences (recall that Robespierre asks what would the effectiveness of virtue be without terror). Personal motives and persuasions are ruled out, and the strategist has to coldly distance himself from his own values. Only results count, and the failure to attain the desired outcomes is not seen as hypocrisy but as ineptitude. Instant, strategic decisions do not bear on hypocrisy or on brutality – they just dwell on efficacy. The strategist stands to necessity. For him, necessity does not boil down to just the constrains of human nature or the imperatives of

³² On the following topics, see Shklar (1984, 78-ff).

history. Necessity is the inextricable bond between means and ends. Nature and history are of course not moral; that is why virtue without terror is powerless.

In the sometimes called *open societies*, war may be openly discussed in the public sphere – even while the military campaign is under way. This means that what is to be understood by strategic imperative or necessity will also be subjected to interpretation³³. The public debate sets back in, and the *public opinion*, as it is fabricated and publicized by a legion of non-elected *experts*, is bound to play a prominent role in the business of war. Such role consists in the establishment of some form of public, accepted truth that prevents citizens from asking why the commanders in charge of the air campaigns over Faluya or Tripoli should not be considered as criminals as the commands that planned and executed the air-strike against NYC's twin towers.

Finally, there is the moral crusade. The opposite to the employment of morality at the service of politics (what would otherwise be the rationale of *virtue* in politics for Machiavelli or Robespierre?) is the use of politics at the service of a moral, or even a religious cause. A moral choice that will be justified on strategic considerations: not Robespierre, but Mola. Moral imperatives are not hypothetical, and take the form of an end that has to be accomplished by any means. Under a moral imperative, necessity does not manifest itself as a relationship between means and ends. Necessity is an absolute. Here, the enemy is not just a stranger, an unarmed dissident, or the foreigner's institutional otherness. The enemy is the absolute other – with whom there is no room for negotiation³⁴. When the absolute other is identified as evil, then its eradication will imply to exterminate every ideological opponent. Under Mola, Queipo de Llano or Franco, that was not ethnic or racial, but ideological cleansing – even, as Preston reports (2011), where there was no resistance at all.

Under the strong consensus of a moral crusade, protests against the hypocrisy of war will no longer be heard. When violence has been

³³ Including Walzer's own interpretation (1977) according to which soldiers' military ideology and considerations on strategic necessities are often nothing but an alibi to promote the strategists' careers.

³⁴ See Pizzorno (2007, 278) for the scheme on the stranger's various possible situations. There is much more on this in the rest of Pizzorno's book, but on citizens and aliens see also Benhabib (2002, 2004).

employed to promote a moral cause, it will be hardly possible to claim that there is no right use of violence – not, in particular, if the cause is already triumphant. Out there, there is only the absolute other, the radical alien, the unfaithful, the unredeemed, with which there will be no negotiations. Under the perspective of the politics of the *ethos*, enemy aliens can only be exterminated, because their bid is not for power or profit – it is a bid for truth. Many European veterans have already been there. In the language of Spain’s insurgent officials, the *rojos* were not just the enemy, but the radical alien – they were the *anti-España* that the crusade was going to annihilate. If the definition of the enemy is an important component of every ideology, a somewhat more worrisome signal appears when those definitions begin to be couched in moral terms.

No war can be legal. What war determines is, precisely, who will decide on the state of exception and, therefore, on the laws. Yet, war takes place between societies and societies cannot claim to stand, in relation to each other, in the state of nature. Even if war created the state (not the other way around) wars are waged by more or less organized societies. That is why the shared, moral subsoil is still there; and that explains why today’s Spanish right wing extremists keep on opposing the laws that order the exhumation of the communal graves where thousands of republican civilians, killed during the Spanish War and the post-war, still rest more than seventy years after they were executed.

While some have seen ideology and collective identity as the immediate antecedents of violence (Sen, 2006), it is clear that some of the horrors we have seen in the twentieth century may as well be originated in the innocuous moral persuasions of the common citizen. Hannah Arendt carefully distinguished between political power and political violence (1969). The latter may take place in the absence of any visible, organized political power. That is also the distance between *biopolitics* and *necropolitics*, between political continuity and exceptionality, between the rule of law (however oppressive it might be) and the law of the ruler. Exceptional political power shows a clear totalitarian proclivity: it not only expects citizens to put up with the laws of the rulers, but also craves for them to believe and think in a certain, preordained way. Exceptional powers seek to produce some form of truth. Such request is not just wrong and illegitimate; it is *impolitic*. Politics, however, is about facts and how to change them. Only science has to do with truth. Yet, truth is not very democratic either. Even if it was desirable that truth was the basis of every political persuasion, politics has not the truth among its

goals (Arendt, 1967). The ends of politics are rather practical – and some of them may appear to us more acceptable than others on moral grounds. Morality may sometimes become the objective of politics, although we would all be better off if it was just its premise. When truth and morality become the objectives, rather than the premises, of public life, it is only normal that some will want to situate their points of view beyond the reach of every critical scrutiny. Then, as expected, some others will try to turn facts into opinions.

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