

Terror, Sovereignty and Law: On the Politics of Violence

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A. Introduction

This paper examines the ambiguous relationship between violence, law, and sovereignty in the context of terrorism today. It focuses, not on normative questions about terrorist violence, but on its structural relationship to law and the sovereign state. Part of the difficulty in theorising terrorism is its heterogeneous and indeterminate nature. For instance, if terrorism is to be characterised by a form of violence designed to inspire fear, then one can of course speak equally about state terrorism as one can about non-state terrorism. Indeed, one might recall that the very word terrorism derives from *La Terreur* of the post-revolutionary French Republic in the early 1790's. Saint-Just's words stand out as one of the most infamous justifications of state terrorism: "What do you want, you who do not want virtue in order to be happy? What do you want, you who do not want the Terror to be used against the wicked?"¹ That the highest ideals of the Republic were accompanied, and indeed inscribed, through a systematic, yet often indiscriminate, register of violence – that Republican virtue came to be associated with the willingness to be merciless – is more than just a vicissitude of history. It speaks perhaps to the very nature of political discourse itself, unmasking the violence implicit in every political symbolisation, at the base of every law, no matter how democratic.

For Claude Lefort, *The Terror of the French Republic* was a way of masking or covering over the symbolically empty place of power that was left in the wake of the Ancien Régime. In other words, the discourse of Terror was a form of dissimulation – a desperate attempt to give substance to the Revolution, to retroactively invent its foundations, to fill the gap in the place of power that would from now on remain empty. The Terror was therefore characterised by a hysterical need to find more and more enemies of the Republic, more and more insidious plots against the Revolution, in order to continually justify itself, to put off the traumatic realisation of the

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¹ Cited in CLAUDE LEFORT, *DEMOCRACY AND POLITICAL THEORY* 72-73 (David Macey trans., Polity Press, 1988).

ambiguity of its own foundations. Terror embodies the fantasy of a social whole, of a society reconciled with itself, and yet is constantly haunted by the absence of foundation, the abyss of indeterminacy that opens up below one's feet and threatens to swallow the Revolution. As Lefort says:

The image of a society which is at one with itself and which has been eliminated from its divisions can only be grasped during the administration of the purge, or, better still, during the work of extermination...In that sense, the Terror threatened from the outset to be interminable. It is as though the terrorists constantly had to create the ground in which they want the Republic to take root. Their fascination with being is at the same time their fascination with the abyss.²

Is there not something like this fascination with the abyss in contemporary terrorist violence – in both its state and non-state forms? It may be suggested that this abyss – the indeterminacy and ambiguity that haunts any political or social symbolisation – is present in the modern dialectic of terrorism and counter-terrorism. Terrorist violence always threatens to expose the emptiness and indeterminacy at the base of the symbolic authority of the law and the state. It unmasks the violent and mysterious foundations of this authority. Was there not a strange, almost sublime suspension of the Law – a sense of the very impotence and vulnerability of its authority – as we watched the collapse of the Twin Towers? Moreover, can we not see, in the state's response to terrorism both the sovereign violence at the base of state authority, as well as the attempt to disguise this violence through a terrorism of its own? As Giorgio Agamben suggests, the state, which is increasingly obsessed with security, "can always be provoked by terror to become terroristic."³ The desire to continually find new enemies, both external and internal, is more than a mere feature of a new ideological "War on terror" being waged by the modern state. Like *The Terror of the Republic*, it refers to something at the heart of political violence itself, and its shrouded link with law and authority. If, for the terrorists of French Republic, Terror was "law in action" or the "sword of the law,"⁴ and if today's terrorists are characterised by the very "illegality" of their actions, this raises fundamental questions about the validity of the distinction between "legal" and "illegal" violence.

² *Id.* at 84.

³ GIORGIO AGAMBEN, *Security and Terror, in* THEORY AND EVENT, 5: 4 (2002).

⁴ LEFORT, *supra* note 1, at 73.

B. Benjamin's Critique of Violence

This is precisely the question that Walter Benjamin explores in his *Critique of Violence* (*Zur Kritik der Gewalt*). Benjamin's essay is important here, not only because it allows us to reflect on the ambiguities of terrorist violence, but also because it shows the complicity between the two seemingly opposed orders of violence and law or, more precisely, power. Benjamin presents here a genealogy of violence, exposing its ambiguous relationship with the law.

Benjamin begins by showing the different conditions under which an action may be considered violent. Violence may, in the first sense, be seen as a pure means to an end. That is to say that an action may be judged violent if its ends or objectives are *unjust*. This view would be based, according to Benjamin, on the notion that violence is a natural force or capacity that can be put to either just or unjust ends. Indeed, Benjamin uses the French Revolution as an example of this "natural" understanding – wherein violence was justified as long as it served just ends.⁵ According to Benjamin, however, this notion of natural law does not provide adequate criteria for a critique of violence, as it may be difficult to conceive of violence being moral, even if it was for a just cause. Counterpoised to this notion of natural law, then, is positive law, in which the *means* of a certain action, regardless of the justness of its ends, come under legal scrutiny. However, just as natural law leaves unresolved the question of means, so positive law leaves unresolved the question of ends. Nevertheless, despite the shortcomings of positive law, it is this question of means upon which Benjamin's study focuses; positive law providing at least general grounds for critical reflection on a central question – *under what conditions is it possible to make a distinction between legitimate and illegitimate violence?*

The ground for this distinction is found in the sanction provided by the state and the legal system. That is to say, the state tries to establish a monopoly on violence by restricting others from exercising it, even if it is in order to attain "natural" ends. As Benjamin argues, "From this maxim it follows that the law sees violence in the hands of individuals as a danger undermining the legal system."⁶ In other words, what is most threatening to the state is not the legality or illegality of people's ends, but whether these ends are pursued with violence. That is to say, it is the mere existence of violence outside the law that constitutes a threat.

⁵ WALTER BENJAMIN, *Critique of Violence in Selected Writings Vol. 1 1913-1926*, 236, 236-7 (Marcus Bullock ed., Harvard University Press).

⁶ *Id.* at 238.

What implications does this argument have for terrorist violence? Is terrorism considered threatening simply because it is a form of violence outside the order of state authority, engaged in by non-state actors, regardless of whether the ends pursued by terrorists are “natural” and legitimate? The state, according to this analysis, sees in the terrorist a rival to its own monopolistic exercise of violence. Benjamin here talks about the “great criminal” and the admiration that he arouses because of the “unsanctioned” violence that his deed invokes. Do we not see this “great criminal” in the modern figure of Osama Bin Laden, who, while not exactly arousing our admiration, at least arouses our fascination? Bin Laden is a figure heavily invested with fantasies of transgression, of being somehow outside the law and embodying an excessive violence that threatens it.

What Benjamin is endeavouring to do here is study violence on its own terms – as pure means – beyond the normative considerations that would be applied to its ends. Violence, in other words, constitutes a phenomenon that goes beyond the question of its particular objectives. It has its own logic and analytics. To this end, Benjamin introduces a further distinction – between *law-making* and *law-preserving* violence. Law-making violence is violence against existing laws and conditions with the effect of constituting new laws. Therefore violence pursued for natural ends always has the potential to not only conflict with existing laws, but to construct new ones in their place. This is why, according to Benjamin, military conquest always culminates in a peace treaty – in the sanctioning of a new law. Even action that has, as its consequence, the overthrowing of existing legal conditions, inevitably establishes new laws in their place. This form of violence is distinguished from law-preserving violence, where the pursuit of legal, as opposed to natural, ends has the function of maintaining and perpetuating the authority of the existing legal system. Even if violence is directed towards changing or reforming a particular law, it still operates within the paradigm of the legal system and therefore sustains its authority.⁷ For instance, military action – or militarism – embodies, according to Benjamin, both these dimensions of violence. As I have mentioned, it is law-making in the sense that it can lead to the overthrowing of an existing legal system in the pursuit of natural ends, and consequently the establishment of new laws in its place; it is also law-preserving, as it is a form of violence that can be used for legal ends – it can be used, in other words, as an arm of state authority.

Similarly, the modern institution of the police, argues Benjamin, combines these two functions: while most people would see police violence as law-preserving in the sense that it enforces existing laws, it can also be seen as law-making because its violence often functions beyond the realm of the law. The police often intervene

⁷ *Id.* at 243.

“for security reasons” in an arbitrary fashion, outside the parameters of the law.⁸ Rather than this violence beyond the law referring simply to the actions of individuals *ultra vires*, it is linked to the very principle of sovereignty itself. As Agamben argues, sovereignty is defined by a “state of exception” in which the sovereign - whose position is defined, paradoxically, by standing both inside and outside the law - can suspend the normal juridical framework and the legal limits and protections that are enshrined within it. Following Carl Schmitt, Agamben sees sovereign as the one to whom the law has granted the power to proclaim the “state of exception,” which would involve the suspension of the law itself.⁹ Indeed, in *Theses on the Philosophy of History*, Benjamin himself sees this “state of emergency” as *not* the exception, but the rule.¹⁰ So, in this sense, rather than the extra-legal violence of police being anomalous or exceptional, it constitutes what is essential to the institution of the police. In other words, police violence embodies a space of exception - a “no man’s land” between legality and illegality - in which law is both preserved and transgressed through the very violence and arbitrariness with which it is enforced.

There are a couple of points that could be made here. Firstly, the two examples of violence that Benjamin provides - militarism and the police - are examples of state, rather than non-state, violence. Does this perhaps indicate that the problematic of violence lies primarily within the paradigm of state authority? One could suggest, following Benjamin’s formulation, that the sovereignty of the state exists precisely in the ambiguous and two-dimensional nature of the violence it exercises - the “double-edged weapon” of Terror of which Saint-Just spoke.¹¹ In other words, state violence is always characterised by a combination of its law-preserving and law-making function. More precisely, it is this very distinction which is suspended here. The duality of the police violence that Benjamin discusses is perhaps never more apparent today, when the police intervene for “security reasons” in increasingly arbitrary and excessive ways - in, for example, the forced detention of illegal immigrants or “illegal combatants.”¹² As I have suggested, these actions are not illegal as

⁸ *Id.*

⁹ GIORGIO AGAMBEN, *HOMO SACER: SOVEREIGN POWER AND BARE LIFE*, 15 (Daniel Heller-Roazen trans., Stanford University Press, 1998).

¹⁰ WALTER BENJAMIN, *Theses on the Philosophy of History*, in *ILLUMINATIONS*, 255, 259 (Hannah Arendt ed. & Harry Zohn trans., Fontana, 1982).

¹¹ See LEFORT, *supra* note 1, at 73.

¹² As Agamben shows, this deliberately ambiguous category of “illegal combatant” denies the detainee any legal status and, thus, any legal rights, leaving them vulnerable to the unrestricted power of the state. See Giorgio Agamben, *The State of Emergency*, address at the Centre Roland-Barthes, Université Paris VII, Denis-Diderot at <http://www.generation-online.org/p/fpagambenschmitt.htm>.

such, but “extra-legal” - which is to say that they are made possible through a “space of exception” where the normal juridical order no longer applies. The detention camps in Guantanamo Bay are precisely extra-legal spaces which are outside the jurisdiction of US law and instead are under the control of the US military. This form of intervention, which often goes beyond the parameters of the law in the very name of enforcing it, suspends the distinction between law-making and law-preserving violence, and is paradigmatic of the principle of state sovereignty.

If we are to define terrorism by the illegality of its violence, we can say that terrorism and state violence share an analytical structure and logic. They may be seen, in other words, as part of the same dialectic of violence. The violence that they both display is in its very nature excessive, arbitrary and often falls outside the law. Terrorism, because it represents a violence that is beyond the state and outside its control - in other words, an alternate law-making violence - presents a supreme challenge to the authority of the state, thus provoking in the state a kind of terrorism of its own. Benjamin’s analysis of violence allows us to understand terrorist violence on its own terms - as pure means - beyond the question of its ends. This may seem surprising, as terrorist violence is usually associated with a series of political or strategic demands - the release of political prisoners, or the withdrawal of an occupying force, for example. However, I would suggest that September 11 was symptomatic of a new form of terrorist violence that is no longer linked to specific demands or objectives, but is rather a violence of pure means.

The second point is that, despite the differences between law-making and law-preserving violence, they both lead to a perpetuation of the law or, more precisely, *power*. Law-preserving violence, because it acts either to enforce existing laws, or to change only particular laws, maintains the authority of the legal system and the state. Law-making violence, which is directed towards the overthrowing of existing laws, only establishes new ones in their place. In both cases, the symbolic place of the Law is maintained and perpetuated. Law-making violence is particularly problematic for Benjamin because it succumbs to this illusion that one is breaking absolutely with existing forms of authority, only to establish a new authority in its place, thus remaining, inextricably, within the very paradigm it seeks to overthrow. Therefore, lawmaking violence only reaffirms the *place of power*. In fact, law-making violence is irreducibly related to the problem of power, reaffirming the link between violence, law and power. As Benjamin argues, the violence in law-making is paradoxical - it has as its aim, in so far as it seeks that which is to be established as a new system of laws, the dismissal or overcoming of violence; yet, at the same time, violence is instantiated and reaffirmed at the very moment of this establishment of the law. In other words, there is an irreducible violence at the heart of the law, despite the attempt of lawmaking to disavow the violence at its own foundations. Rather than the dismissal of violence, “it specifically establishes as law not an

end unalloyed by violence but one necessarily and intimately bound to it, under the title of power." Power, in other words, refers here to this irreducible connection between violence and the law. Power is the signifier for this inextricable binary link between violence and law – violence against the law always involving a reaffirmation of the law; the law which seeks to dismiss violence always involving a violence of its own, re-instating violence in its very foundations. Power is what presides over this connection. That is why, as Benjamin argues, "Lawmaking is power-making, assumption of power, and to that extent an immediate manifestation of violence."¹³ Benjamin therefore forces us to re-think the question of violence within the problematic of power, and to examine the relationship between violence and power.

Benjamin has presented a genealogy not only of violence, but of law as well. Law and violence have been shown to exist in an ambiguous relationship, in which violence reaffirms the law and the law reaffirms violence. The spectre of an immanent Law looms up behind every act of violence against it; the law is based, in turn, on a disavowed violence which haunts its foundations, making its formulations problematic. One could argue, then, that there is always a violence at the heart of every form of political and legal authority. Derrida, following from Benjamin's *Critique*, makes precisely this point: "the operation that amounts to founding, inaugurating, justifying law (*droit*), making law, would consist of a *coup de force*, of a performative and therefore interpretative violence that in itself is neither just nor unjust..."¹⁴ That is to say, the law must be founded on something that pre-exists it, and therefore its foundation is, logically speaking, extra-legal and violent. The founding gesture of the law - the secret of its being - must be some kind disavowed original crime or act of violence that brings the body of the Law into existence and which is now hidden in its symbolic structures. Terrorism, as a certain articulation of violence, has the effect of exposing this hidden sovereign violence precisely by inciting it, eliciting it in response. Moreover, through this genealogical analysis, Benjamin has introduced the problematic of power – unmasking it in the very nexus of the relationship between law and violence. Power may be seen here as a signifier of this connection. That is to say that all instances of violence as well as the law, must ultimately invoke the principle of power.

However, perhaps Benjamin does not go far enough in exploring this question of power and its connection with violence. In other words, is it possible to see the problematic of power and violence as different or even separate from the problem-

¹³ BENJAMIN, *supra* note 5, at 248.

¹⁴ See JACQUES DERRIDA, FORCE OF LAW: THE "MYSTICAL FOUNDATION OF AUTHORITY," DECONSTRUCTION AND THE POSSIBILITY OF JUSTICE 13 (Drucilla Cornell et al. eds., Routledge, 1992).

atic of law and violence? Perhaps power suggests a different configuration of violence to the one implied by law. While Benjamin has introduced the principle of power into the relationship between law and violence, it remains now to explore this question of power on its own terms, as a different analytic of violence. This move away from the problematic of law to the problematic of power will have important consequences for an analysis of violence. Using Foucault's "strategic" or genealogical model of power relations, I will explore the specific relationship between violence and power.

C. A Violent Analytics of Power

In Michel Foucault's genealogical analysis of discourses, institutions and practices of power, it is clear that violence is a central concept in his thinking. Indeed, genealogy itself is precisely an unmasking of the disruption, discontinuity and violence at the heart of human history: "Humanity does not gradually progress from combat to combat until it arrives at a universal reciprocity. Humanity settles each one of its violences within a system of rules, and thus goes from domination to domination."¹⁵ Like Benjamin's *Critique*, Foucault's genealogical analysis allows us to examine the originating violence at the base of social symbolisations, laws and institutions. Like Benjamin, moreover, Foucault is interested in the question of power and violence as pure means. Power is not conceived here as an instrument or a capacity to achieve "natural" or even legal ends. Rather, power, like violence, must be understood on its own terms. As we shall see, power is a particular encoding of violence which operates at the heart of political and social discourse.

What is important in Foucault's genealogical analysis of power is that it frees the concept from the paradigm of law and sovereignty. The problem with classical political philosophy, Foucault argued, was that it insisted in confining the question of power to a central sovereign place in society, in the formal figure of sovereignty, whether it be the body of the king, or the paradigm of the modern state. Power was symbolised in sovereign institutions, in bodies of law, in statutes and codes. The analysis of power, according to Foucault, remained caught within the "juridico-discursive" framework that had little to do with the realities of modern power relationships, which were much more diffuse and decentralised. Foucault called for a new analysis of these power relations, beyond the question of law and sovereignty: "What we need is a political philosophy that isn't erected around the problem of sovereignty ... We need to cut off the King's head."¹⁶

¹⁵ MICHEL FOUCAULT, *Nietzsche, Genealogy, History*, in THE FOUCAULT READER 91 (Paul Rabinow, ed., Pantheon Books, 1984).

¹⁶ Foucault, *Truth and Power*, in POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS 109-133, 121 (Colin Gordon ed., Harvester Press 1980).

Instead of seeing power relations from the perspective of law and sovereignty, Foucault sees it through the lens of violence. Not only is violence inextricably linked with power, but, for Foucault, violence – or more precisely war – could serve as the theoretical basis for deciphering power relations. Violence, in other words, was not a phenomenon of power – rather power was a phenomenon of violence. In a series of lectures organised around the title *Society Must be Defended* (*Il faut défendre la société*) Foucault examined the discourse of war and conquest through a body of different texts, from those of Coke and Lilburne to Boulainvilliers. In a sort of counter-history, he explored the way that war – as a strategic principle and a practice of violence and conquest – had become, over the course of history, woven into the very tapestry of the social.¹⁷ Rather than war and violence being seen as something external to civil society, it is the very constitutive principle of any social identity. Indeed, our way of seeing society and its political formations is based on a metaphor of struggle and violence, which has its origins in actual warfare. The violence of this war – now seen in metaphorical terms as a clash of representations – has stolen its way into institutions, language, law and power itself. Indeed, Foucault raised the possibility of using violence and war as an analytical tool for understanding power relations: “can we find in bellicose relations, in the model of war, in the schema of struggle or struggles a principle that can help us understand and analyse political power, to interpret political power in terms of war, struggles, and confrontations?”¹⁸

Foucault here reverses Clausewitz’s axiom that war is politics continued by other means: for Foucault, *politics is war continued by other means*.¹⁹ This violence is ongoing – yet it is now codified in institutions, laws, economic inequalities, and even in language. Like Benjamin, Foucault does not believe that violence can be dismissed once the law is established. Rather, the register of the law itself must be seen as a form of violence. Violence speaks through these very laws, and the task of the genealogist, according to Foucault, is to unmask it, to “awaken beneath the form of institutions and legislations the forgotten past of real struggles, of masked victories or defeats, the blood that has dried on the codes of law.”²⁰ Law, sovereignty and political power are merely articulations of an “unspoken” warfare that has raged throughout history. Violence operates as an ontological schema for interpreting the

¹⁷ There is an excellent survey of this course in BEATRICE HANSEN, *CRITIQUE OF VIOLENCE: BETWEEN POSTSTRUCTURALISM AND CRITICAL THEORY* (Routledge 2000).

¹⁸ Michel Foucault, *Society Must Be Defended: Lectures at the Collège De France, Lecture at the College of France* (14 Jan. 1976), in *SOCIETY 1975-76 23* (David Macey trans., Allen Lane 2003).

¹⁹ *Id.* at 1-21, 15.

²⁰ Michel Foucault, *War in the Filigree of Peace: Course Summary, Address (1976)* in *OXFORD LITERARY REVIEW*, at 17-18, (Ian Mcleod trans.,(1976)).

world – war, in other words, is a “grid of intelligibility,” a metaphorical “essential condition” by which different social, historical and political formations can be deciphered: “Must we regard war as a primary and fundamental state of things in relation to which all the phenomena of social domination, differentiation and hierarchisation are merely derivative?”²¹ Power, in this paradigm, is a certain unstable relation or constellation of hostile forces.

Foucault’s strategic model of analysis allows us to see violence as being at the very basis of social identity – creeping into the very structures, laws, hierarchies and institutions that have been established to suppress it. Rather than society being founded on the idea of contract – as in the Hobbesian paradigm – it is based on a constitutive violence, both metaphorical and real, which continues to haunt it. Political sovereignty itself is merely a form of conquest that has fallen silent, and now tries to disavow the violence of its own origins through the discourse of law, contract and rational agreement. War and violence, in this sense, are “the very sum of peace” – the primary condition and single reality from which social and political structures must be understood. Indeed, Foucault’s strategic model implies a new kind of political philosophy – one that ontologically and epistemologically privileges war over peace, and violence over contract and law. The violence that the discourse of political philosophy has for centuries tried so hard to keep at bay, can be seen at the very heart of civil society. As Pasquale Pasquino has argued – following Foucault’s analysis of Hobbes – the starting point of political theory must be the problem of disorder and threat of violence. The possibility of stable political identities, he suggests, is based on the overcoming of the condition of “terror.”²²

Perhaps, in this sense, we may see terrorism as a form of violence which, in the Foucauldian sense, is both “inside” and “outside” civil society. That is to say, if we are to understand terrorism as a certain technology of violence, it is difficult to separate it analytically from the violence that has been codified in laws, institutions and the sovereign power of the state. Indeed, as I have suggested previously, terrorism has the effect of unmasking this constitutive violence. In this sense, the condition of terrorism is internal to civil society. On the other hand, terrorism would be characterised by its absolute and radical exteriority – its “alterity” to civil society. It gives us a glimpse of the “liminal” condition of terror – the absolute violence that haunts society at its limits, simultaneously threatening and constituting the borders of social and political identities. There is forever a spectre of violence and terror

²¹*Id.* at 16.

²² PASQUALE PASQUINO, *Political Theory of War and Peace: Foucault and the History of Modern Political Theory*, in *ECONOMY AND SOCIETY* 22, 84 (1993).

that is marked as a “liminal” trace at the borders of the social – neither entirely outside nor inside civil society, but suspended above it as a permanent threat.²³

D. Security and Biopower

This inscription of violence and war in the framework of the social finds its modern permutation in what Foucault terms “biopolitics.” The “race wars” of earlier periods have now become codified in modern political discourses that have as their central concern the preservation of the biological life of the species. The target of politics in contemporary societies, according to Foucault, is the administration of life itself. This designates a new form of power – “biopower.” The operation of power is now aimed at the regulation, calculation and administration of populations. Violence is still inscribed at the heart of these modern societies. However, the crucial difference with modern regimes of biopower is that, unlike sovereign regimes, where blood was shed symbolically on behalf of the sovereign, now wars are waged on a massive scale by states on behalf of the populations they administer. Sovereign societies, according to Foucault, were characterised by the symbol of the sword and the right of the sovereign to either take life or to spare it. The symbolic register of these societies was a supreme power over life and death: “The sovereign exercised his right of life only by exercising his right to kill... Its symbol was, after all, the sword.”²⁴ Sovereign societies were characterised by the power of the spectacle – witness the “spectacle of the scaffold,” whose grotesque horrors and excessive violence Foucault described in the execution of the regicide Damiens.²⁵ Power was exercised here in a highly symbolic fashion, through a violence that was excessive, spectacular and ritualised. Punishment involved, for instance, the literal sacrifice of the body of the condemned. Foucault argues that this notion of violence as spectacle and symbolic sacrifice is no longer characteristic of modern societies, in which power operates in a quiet, methodical, regulative fashion. Modern societies, by contrast, are characterised by an entirely different register and technology of power – one in which the symbolic power of the sovereign to take life has been supplanted by a power that operates at the level of population and whose principle is to secure life. This modern technology of power is no less bloody, according to Foucault – having produced unprecedented genocides and holocausts. However, its symbolic order is *non-violent*. That is to say, it is based on the principle of the preservation, rather than the sacrifice, of life.

²³ Again we see the parallel between violence and sovereignty – the way that the condition of sovereignty is also this undecidability, in relation to the law.

²⁴ MICHEL FOUCAULT, HISTORY OF SEXUALITY VO. 1, 136 (Robert Hurley trans., Penguin 1990).

²⁵ See MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON (Alan Sheridan trans., Penguin 1991).

That power is organised around the principle of the security and preservation of life is an undeniable fact of contemporary politics. The obsession with security now in the wake of recent outbreaks of terrorism is perhaps paradigmatic of this modern principle of power. As Agamben argues, the concern with security and the preservation of life, while always one of the several prerogatives of modern state power, has now become the fundamental principle of state activity. We can see this new preoccupation with security in the obsession with “terrorist plots” within one’s own borders, with a new invisible enemy that can strike at any time. The security and protection of internal populations from this invisible enemy – that is seen as both an external threat and an internal contaminant – has become the primary concern of political power. Questions of national security and the protection from terror are now the central feature of any political platform. Needless to say, this new *raison d’être* of the modern state has as its flip side the systematic destruction of life – the meaningless military operations, for instance, that are engaged in precisely in the name of the preservation of life.

Moreover, perhaps Foucault’s argument about the essentially non-violent, regulative and life-preserving nature of power in modern biopolitical societies, finds its ultimate justification in the astonishment that the terrorist attacks on September 11 provoked. The only explanation for our transfixed fascination with this spectacle of excessive violence can be that we live in a society where the symbolic sacrifice of life is unthinkable. That the terrorists were prepared to sacrifice their own lives and the lives of others in a highly symbolic and violent fashion, is deeply shocking to a modernity governed by the principle of the preservation of life and the careful, methodical and administrative functioning of power. However, did we not see in the World Trade Center (WTC) attacks a strange anachronism – almost the vague glimpse of an older order of sovereignty, of the symbolism of blood and the sword, of the absolutism of death over life? Did we not see, in this strange, almost inconceivable spectacle of destruction, amidst the flames and the tumbling debris, the uncanny figure of a sovereign violence long thought to be dead? It would seem that in an age where the spectacle of sovereign power has vanished from the register of politics, that it has returned as the power of the spectacle itself – the spectacle of excessive violence that, Medusa-like, paralyses our gaze. The terrorist attacks bore witness to a new form of violence as spectacle – the symbolic dimension of the sovereign sacrifice of life, which is precisely unthinkable in our contemporary times.

So there are a couple of points to be made here about this constellation of violence and power. Foucault’s analysis, by freeing the study of power from juridical questions and notions of the contract, has developed the connection, first hinted at by Benjamin, between power and violence. Violence is not only linked to power, but becomes, in Foucault’s analysis, its very ontological condition. Foucault has placed violence at the heart of social and political identity. Moreover, he has shown the

way that modern bio-political societies are based on a violence that has been rigidified into codes, norms and technologies of regulation – into a political register that, instead of the symbolic right of the sovereign to take life, has as its defining principle the preservation and protection of life. Modern political power, or biopower, Foucault argues, operates through a register from which the violent, symbolic sacrifice of life has been excluded. However, what are we to make of the recent terrorist strikes, in which we see a “return” of the very symbols of sovereign force – the power of the spectacle; the excessive, almost nihilistic quality of the violence; the intense spirituality of suicide and martyrdom; and the symbolic sacrifice of life? That is to say, in this excessive violence and sacralising of death, can we not see the intervention of an altogether different order – one that is no longer intelligible within the paradigm of biopower? One could perhaps go further here. Are we perhaps witnessing a new economy of violence, one which can no longer be contained within the analytic of power? I will suggest that violence – in particular the new forms of terrorist violence that have exploded across our horizons – contains a radically heterogeneous and excessive dimension that is no longer intelligible within the framework of power relations. The study of violence therefore demands a new analytic – a new “micro-politics” – beyond the parameters of Foucault’s theory of power. Foucault’s intervention has been invaluable in establishing the connection between violence and power. By positing violence as the essence of power, he developed a violent economy of politics. By going beyond this paradigm, however, I will seek to establish the conditions for a *political economy of violence*.

E. Violence and Heterogeneity

There are several elements that separate violence – in particular, terrorist violence – from the order of power, and which allow us to see it in its irreducible particularity. Firstly, this form of violence is characterised by its heterogeneity. To speak of the “heterogeneity” here – which is a term borrowed from Bataille – means simply that there is an aspect of this violence that is *unmediated*. For Bataille, the heterogeneous is the “waste-product” of homogeneous society – it includes everything that is unproductive and extraneous, and which is therefore excluded from homogeneous society. *Violence, excess, delirium and madness* characterise the heterogeneous.²⁶ According to Bataille, however, the heterogeneous does not exist as a simple essence outside the order of the homogeneous and strictly separated from it. Rather, there is a dynamic interplay and antagonism between these two forces. Political change in society, for instance, depends upon this interaction – different political articulations draw upon heterogeneous elements in order to constitute an identity. Bataille

²⁶ See Georges Bataille, *The Psychological Structure of Fascism*, in *VISIONS OF EXCESS: SELECTED WRITINGS*, 137-160 (Alan Stoekl ed. and trans., University of Manchester Press 1985).

shows that fascism, for instance, contains elements of both the homogeneous and the heterogeneous – both the construction of order and its dissolution. Heterogeneous elements are present in fascism in the aesthetics of the *spectacle* – marches, street parades, mob activity, etc. There is a certain register of the political here that operates through, or that contains elements of, an enacted excess of violence – a spectacle of violence.

New forms of terrorist violence are characterised by a similar heterogeneity. For instance, the attacks on September 11 represented a violent intrusion of excluded heterogeneous forces into the homogenous order of globalised capitalist society. The stable and commensurable political structures and identities of this order were disrupted by a certain irreducible particularity – in this case a violent articulation of Islamic radicalism – that is excluded from this order. Furthermore, the *aestheticised* element of heterogeneity was evident in the deliberate use of the spectacle by the terrorists. The WTC attacks were a symbolic strike, manufactured for a television audience, and designed for maximum visual impact. Is this not reminiscent, as I have already suggested, of the power of spectacle – “the spectacle of scaffold” – which was the symbolic register of sovereignty? Here it seems the sovereign power of the spectacle has returned in this new *aestheticised* form of terrorist violence. However, now the spectacle of violence, that characterised sovereign power, has become the *violence of the pure spectacle itself*.

Indeed, as Bataille argues, while heterogeneity is usually found in non-state or revolutionary elements – sovereignty itself is also in principle heterogeneous. The very condition of sovereignty lies in an excessive or superfluous power that goes beyond the logic of homogeneous society. This heterogeneous authority often manifests itself, Bataille argues, in a violence against the forces that oppose it: “Situated above homogeneous society... it requires the bloody repression of what is contrary to it and becomes synonymous in its split-off form with the heterogeneous foundations of the law.”²⁷ Here once again we are back to the question of sovereign authority raised by Benjamin, who also brings to light the heterogeneous and violent foundations of the law. It would seem that despite Foucault’s insistence that sovereign power is a thing of the past, it is once again displayed in the state’s equally violent and symbolic reaction to the non-state, terrorist activity that has drawn its sword. This is particularly evident in the state’s use of military power to symbolise its authority. As Bataille shows, military power itself is also heterogeneous in principle – its violence and its phantasmic reversal of slaughter into “glory”²⁸ go beyond the order of homogeneity. The point here is that terrorist violence and

²⁷ *Id.* at 148.

²⁸ *Id.* at 150.

the violence of the state share the symbolic register of sovereignty. They are both examples of heterogeneous excess and spectacle that exceed the logic of a carefully ordered and administered homogeneous society.

A further example that Bataille gives of heterogeneity is religious power. Religion, which functions through the affective power of the sacred, through the veiled and mysterious authority of the divine, contains, according to Bataille, a dimension of “undifferentiated” heterogeneity.²⁹ This power of the sacred is largely unthinkable today. However, the terrorist strikes on September 11 displayed an intense spirituality – embodied in ideas of martyrdom and self-sacrifice – that was utterly incommensurable with our modern, secular and technocratic social reality. Perhaps what was truly shocking about the September 11 attacks, as well as other suicide bombings that are taking place around the world, is that we are witnessing a religious fervour – a spiritual *jouissance* – that is entirely alien to us. After all, here are people who are prepared to die for their cause, to immolate themselves in the most ferocious explosions, to use their bodies as guided missiles, to sacrifice themselves in the absolute conviction that it is God’s will. Suicide and martyrdom are essential to the symbolic force of these attacks. We see in this form of violence the operation of the power of the sacred, beyond all ideologies and direct political concerns. As Baudrillard says about this new form of terrorist violence, “Its goal is no longer to transform the world; rather, as with all, it seeks to radicalise the world through sacrifice...”³⁰ Revolutionary struggles have become, in the case of this new paradigm of terrorism, heterogeneous spiritual struggles characterised by a martyrdom for its own sake.

The deliberate meaninglessness of the act of martyrdom highlights a further dimension of this new mode of violence – its *nililism*. What perhaps most distinguished the September 11 terrorist strikes was the absence of any sense of concrete political or strategic objectives: there were no demands made, no one claimed responsibility for the attacks, those responsible remained nameless and faceless. The effect of this was pure terror, as we were confronted with a violence characterised by its very meaninglessness and absence of content – a violence without purpose or goal. This was perhaps the ultimate answer to Benjamin’s attempt to see violence beyond the question of ends – as pure means. So far from Benjamin’s contention that the violence of pure means would be a kind of “non-violence” (exemplified by the general proletarian strike, or the notion of “divine violence”) here was an instance of pure means as a form of ultra-violence. In other words, in the case of this new form of terrorism, violence itself – the spectacle of violence – is both the means

²⁹ *Id.* at 152.

³⁰ Jean Baudrillard, *The Spirit of Terrorism*, LE MONDE, 2 November 2001.

and ends, or, more precisely, the very suspension of these categories. Previously terrorism, in most cases, was linked to carefully measured strategic or political goals – violence was a means to what Benjamin would call “natural ends.” In this sense, it could be seen, in Foucauldian terms, as an act of resistance, as a form of counter-power. This new form of violence, by contrast, is no longer intelligible in this dialectic. In Alain Badiou words, it is a “fascist” nihilism.³¹ It can no longer be measured by the operation of power it contests. It is a nihilism at whose heart there is nothing but emptiness, the terror of pure form, and the death-drive that approaches the edges of the abyss. The excessive dimension of violence about which I have spoken, refers precisely to this nihilistic void.

The excessive dimension of violence is perhaps the “fundamental fantasy” – to speak in Lacanian terms – of political power. At the base of all forms of political power and authority is the unspeakable abyss of contingency and indeterminacy. Perhaps one could argue that, on the one hand, violence has the function of covering up this traumatic void, of filling it and it giving it meaning – in Benjamin’s terms, the function of law making or law preserving. Yet, as I have tried to show, violence also has the effect of exposing this very abyss, of tracing the hidden discontinuity at the origins of the law and political power. This was the paradoxical nature of The Terror of which Lefort spoke. Violence encircles the edges of this abyss, re-enacting the trauma of its own origins, both disavowing and affirming its symbolic link with sovereignty. In exploring this link – first through the question of law, then through the problematic of power – I have tried understand this fundamental function of violence. This function, I would suggest, is increasingly apparent in the new modalities of terrorist violence that we are witness to today: violence that is characterised by a dimension that exceeds the paradigms of power and law; that is excessive, heterogeneous and spectacular; that involves the sacrifice of life and the symbolism of death, and the terrifying nihilism of “pure means.”

³¹ ALAIN BADIOU, *Philosophical Considerations of Some Recent Facts, in* THEORY AND EVENT, 1-13 (Steven Corcoran trans., 2002).