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Introduction

Interpreting the Violent State

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If we were conjuring a fantastic nightmare, we would describe the state as a bloodthirsty beast that spends much of its time on the prowl, making war, imposing the death penalty, and spilling blood. We would see this beast busily covering its tracks, clothing its bloodletting in a rhetoric of necessity, the common good, or high moralism. Indeed, it is this combination of bloodthirstiness and rhetorical sleight of hand that would give the state its horrible power in our dreams.

In waking life, the state appears more benign, although it surely comes as no surprise to say that violence of all kinds is done every day with the explicit authorization of state institutions and officials or with their tacit acquiescence. Some of this violence is done directly by those officials, some by citizens acting under a dispensation granted by the state, and some by persons whose violent acts subsequently will be deemed acceptable.[1] Because the bloodlust and bloodletting done, authorized, or condoned by state institutions occurs with all of the normal abnormality of bureaucratic abstraction, responsibility for the blood spilled is often untraceably dispersed. Because state violence seems so ordinary, so much a part of the taken-for-granted world in which we live, it is sometimes difficult to see the human agency involved. Indeed it is this distinctive combination of bloodletting and bureaucracy that makes the violence of the modern state possible in our daily lives.[2]

[1] Self-defense provides perhaps the best example of such after-the-fact authorization of violence. See *People v. La Voire*, *155 Colo.* 551 (1964); *State v. Gough*, 187 Iowa 363 (1919) and *People v. McGrandy*, 9 Mich. App. 187 (1967).

[2] See Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil.* New York: Viking Press, 1963.

Identifying how, where, and when states turn to violence has been a subject of academic interest for a long time. Much of the academic literature devoted to it has been critical of state violence, although recently with the emergence of non–state terrorist activity some might long for the days when states had much more of a monopoly on the most lethal forms of violence.[3] In that literature most scholars have concentrated their attention on one or another kind of violence (*e.g.*, war, punishment, structural violence, etc.). The work collected in *States of Violence: War, Capital Punishment, and Letting Die* draws these phenomena together, laying them side by side to see how one illuminates the others.

From the State of Nature to State Violence

In the liberal political tradition, the state authorizes itself and its violence as a response to our inability to live in a world of ungoverned or ungovernable violence. In this tradition the state is constructed and justified on the basis of narratives of life outside or before the state in a place or time when life is "nasty, brutish, and short." In this context, state violence is thought of as the lesser of two evils: a life without violence might be impossible, but at least in a state a whole life might be lived. To understand such a state-constructing narrative, one must almost inevitably begin with the state of nature and with Thomas Hobbes.[4]

The Hobbesian understanding of life outside the state presents persons as driven by ungoverned will and desire. If persons are to survive the war of all against all to which this condition inevitably gives rise, all power must be transferred to a single entity (or person). This understanding reveals perhaps the cruelest dilemma of the human condition, namely whether human beings should act as they wish but in a perpetual condition of

[3] For a discussion of this view see Michael Ignatieff, *The Lesser Evil: Political Ethics in an Age of Terror*. Princeton: Princeton University Press, 2004.

[4] Thomas Hobbes, *Leviathan*, C. B. MacPherson ed., New York: Penguin Books, 1968. Hobbes described the state of nature as a condition of life in which men might live "without a common Power to keep them in awe" (at 185). That condition is one, as every undergraduate knows, of violence or the perpetual fear of violence. Given rough equality of desire and power, men "endeavour to destroy or subdue one another," and are, as a result, " . . . in a condition which is called Warre; and such a warre, as is of every man against every man." (at 184–185) As Hobbes noted in one of the most famous passages in his work, life in the state of nature is "solitary, poor, nasty, brutish and short" (at 186).

insecurity or whether this freedom should be relinquished in the name of a greater security.[5]

For Hobbes, the solution was unequivocal and unconditional. Leviathan, in whom sufficient power is vested to keep "all in awe,"[6] is Hobbes' device for rescuing us from the will, desire, insecurity, and violence of the state of nature. The state or law (in Hobbes the two are hardly distinguishable) is presented as a way of taming violence by producing, through social organization, an economy of violence.[7] It is Leviathan's awesome force, not its moral commitments, that in this account makes it socially valuable. Violence lurks just below the surface, a violence so great and overwhelming as to produce a frozen acquiescence. Should the need arise, however, Leviathan can be counted on to spill blood willingly to prevent an even more gruesome bloodbath. In sum, what brings us to the state and holds us there is fear of what life would be like if the state did not or could not effectively deploy this terrible violence.

Other early modern political theorists understood that if the state were to be powerful enough to keep anarchy at bay, humans would have to relinquish more than their natural powers of self-preservation and punishment to it; they would also have to give up their powers of judgment.

In John Locke's philosophy, for instance, they would have to do so because in the state of nature all persons have equal right to decide their own disputes in accordance with their own interpretations of the natural law. What is more, all people have equal right to enforce their verdicts and to punish those who do not acquiesce.[8] Confusion and disorder naturally ensue. The only solution is a political society in which "every one of the members hath quitted this natural power, resigned it up into the hands of the community."[9] In the hands of the community, this natural power is used to make laws that are interpreted by impartial judges and enforced by the state. People are no longer free to decide their own cases and to punish

[5] Duncan Kennedy argued that this dilemma poses a fundamental challenge for liberal political theory. See "The Structure of Blackstone's Commentaries," 28 *Buffalo Law Review* (1979), 205, 211–213. See also Roberto Unger, *Knowledge and Politics*. New York: The Free Press, 1975.

[6] Hobbes, note 4 at 185.

[7] This image is labeled *repressive law* by Philippe Nonet and Philip Selznick, *Law and Society in Transition: Toward Responsive Law*. New York: Harper Colophon Books, 1978, chapter 2. See also J. H. Hexter, "Thomas Hobbes and the Law," 65 *Cornell Law Review* (1980), 471.

[8] John Locke, *Treaties on Civil Government and a Letter Concerning Toleration*, ed. Charles L. Sherman. New York: Irvington, 1979, 56.

[9] Id., 56.

transgressions as they see fit, but they are able to preserve and enjoy their lives, liberties, and estates.[10]

Still, social contract theorists like Locke recognize what earlier theorists like Hobbes also knew: one of the greatest threats to the achievement of political society, is posed by the individual members whom the people have selected to be their trustees or deputies in government. Locke observes that "ill affected and factious men" might spread among the people the idea that the prince or legislative body acts contrary to their trust when in fact "the prince only makes use of his due prerogative."[11] Locke also understands, however, that legislators could "either by ambition, fear, folly or corruption, endeavour to grasp for themselves or put into the hands of any other an absolute power over the lives, liberties, and estates of the people."[12] Hobbes maintains that men never give up the right to preserve their lives, even when the Leviathan is justified in taking them. Similarly, although on a collective scale, Locke sees no alternative but to defer to the judgment of the body of the people, "for who shall be judge whether the trustee or deputy acts well and according to the trust reposed in him, but he who deputes him?"[13] Therefore, despite giving up their natural power to judge their own cases, the people must still be able to judge whether a trustee or deputy acts well.[14]

Sovereignty and State Violence

Social contract theory is not the only liberal political tradition to imagine the state in terms of a relation to violence. In his account of the state, Max Weber also emphasizes its relation to violence. Indeed, according to Weber, what makes a particular association political per se is its relation to physical force. This is clear when Weber defines the state as "a human community that (successfully) claims the monopoly on the *legitimate* use of physical force within a given territory."[15] Weber claims that the state, like all

[10] Id., 82.
[11] Id., 82.
[12] Id., 165.
[13] Id., 165.
[14] Id., 162–163.
[15] Max Weber, "Politics as a Vocation," in *From Max Weber: Essays in Sociology*, eds. and trans. H. H. Gerth and C. Wright Mills. New York: Oxford University Press, 1946, 78.

political associations, is a relation of humans dominating humans. Because this relation is supported by means of violence, one might expect people to resist. They do not, Weber argues, because they think this violence is legitimate.[16]

According to this line of thinking, the state gets into trouble only when the violence it exercises cannot be distinguished from criminal violence. In *Discipline and Punish*, Michel Foucault suggests that the sovereign, who once played a central role in public executions, retires from the scene beginning in the eighteenth century when, in the eyes of the public, executions came to resemble the acts of violence for which death sentences were being imposed.[17] Focus shifts away from the execution to the trial and to the sentence as the sovereign distances him- or herself from the violence that is bound up with the practice of justice. In this way, the sovereign comes to appear as a disinterested party whose primary concern is the integrity of the process of judgment rather than its outcome.[18]

State violence is, of course, intimately connected with ideas of sovereignty.[19] As Foucault describes the sovereign of classic political theory, when external or internal violence puts its existence in jeopardy it responds by exercising power, directly or indirectly, over the life and death of its subjects.[20] Specifically, when a subject transgresses the law, the sovereign replies with lethal force, putting the offender to death as

16 Id., 78.

17 Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan. New York: Vintage, 1979, 9.

18 In *Violence and the Sacred*, René Girard offers a slightly different analysis of the rationalization of political power. According to Girard, the judicial system is not concerned with justice but with general security. Its specific concern is to limit and isolate the effects of violence, in particular the effects of violence that are the product of cycles of revenge. The judicial system seeks to stifle the impulse to vengeance rather than spreading or aggravating it. To achieve this goal, the system "rationalizes" revenge. It does so by confronting violence head on so that violence falls on the right victim, the perpetrator of the violence rather than a substitute (as in sacrifice.) When the judicial system is backed by a firmly established political power, it can act with such force that no (vengeful) response is possible. In such a situation, the judicial system possesses "a monopoly on the means of revenge." René Girard, *Violence and the Sacred*, trans. Patrick Gregory. Baltimore, MD: Johns Hopkins University Press, 1977, 22–23.

19 Austin Sarat, "Capital Punishment as a Legal, Political, and Cultural Fact: An Introduction," in *The Killing State: Capital Punishment in Law, Politics, and Culture*, ed. Austin Sarat. New York: Oxford University Press, 1999, 3.

20 Michel Foucault, *The History of Sexuality: An Introduction*, trans. Robert Hurley. New York: Vintage, 1990, 135.

punishment for daring to challenge its authority. Even if this course of action is justified in the name of preserving and caring for the conditions that make collective life possible, let alone meaningful, in the exercise of state violence the classic sovereign has been subtly displaced by what Foucault calls "biopower," a power whose main role is to "ensure, sustain, and multiply life."[21] In a regime dedicated to putting and keeping life in order and safe, the state may still exercise the right to death associated with the classic sovereign. To do so, however, it has to describe those who will be put to death as incorrigible monsters or as biological hazards so that their demise and final disposal can be represented as an unpleasant but necessary task that the state reluctantly but decisively undertakes for the well-being of its citizens.[22]

Overview of the Book

The scholarship collected in this book recognizes that violence, as a fact and a nightmare, is integral to the life of the modern state because the state is a creature of both literal violence and threats, real or imagined, of force. Each of the authors acknowledges the complicated character of the state's relationship to violence and so understands the difficulty of accurately naming and defining state violence as well as the difficulty of disciplining that violence and subjecting it to a clarifying academic theory.

What is more, different states hold different capacities for, and dispositions toward, violence. To complicate matters further, an ambivalent "charge" comes with contemplating how the use of lethal force is justified. The authors in this collection recognize that we can easily condemn actors whose exercise of violence is justified in the name of consolidating or preserving state power, but at the same time we want to be able to exercise such violence ourselves. As long as we repress the pleasure associated with such wishes or otherwise defer working through the desire for mastery and the sense of vulnerability that move us to critique the state, the "charge" remains. Wherever the state acts violently, however, the legitimacy of its acts must be engaged with the real facts of war, capital punishment, and the ugly realities of death. The urgency of the contemplation of those facts

[21] Id., 138.
[22] Id., 138.

depends, as we hope to show in the chapters that follow, on mounting a sustained effort at interpretation, sense making, and critique.

This book is divided into two sections, the first, "On the Forms of State Killing," provides an overview of various modes through which state violence appears in the world. The second, "Investigating the Discourses of Death," focuses on one particular form of state violence, capital punishment.

The first section begins with a chapter by Robin Wagner-Pacifici, who argues that despite the necessary role of violence in state formation and governance, the recent transformation of the framing of that violence – from policies of "war" and aggression to strategies for "defense" and protection – has created an odd situation in which the lethality of the state might actually be deemed innocuous. Her chapter examines how the discussion of sovereignty and violence has been transformed by several United States government policy documents, beginning with the Bush administration's *National Security Strategy of the United States of America (NSSUSA)* for 2002. Wagner-Pacifici suggests that the defensive strategies modeled in these documents challenge Weber's conception of the state by breaking down the borders that are understood to limit a state's monopoly on violence "within a given territory."

For Weber, Wagner-Pacifici argues, "the monopoly of force is qualified as legitimate, and its success seems to hinge on this legitimacy," yet Wagner-Pacifici points out that although Weber claims to focus his definition of the state exclusively on means, that is, physical force that can be used for any end, the concept of legitimacy inevitably introduces "ends" criteria. According to Wagner-Pacifici, Weber's assertion that states monopolize violence "within a given territory" implies a necessary demarcation of borders that were once drawn using violence before that violence was monopolized and legitimized. She notes that established states' "deployment of force beyond the borders of the domestic sphere" is presumptively illegitimate. To avoid this charge of illegitimacy, she argues, states qualify their extraterritorial deployment of violence as a measure of defense for their legitimate borders.

This rationale helps to explain the shift toward a more defensive understanding of violence. The 2002 *NSSUSA* announced a new "preventive war" policy, which called for the United States to act against threats "before they are fully formed." The 2006 *NSSUSA*, in turn, reaffirmed

the "reasonableness" of the preventive war model. Wagner-Pacifici notes that these documents attempt to reassert the power of the United States in post-9/11 politics but actually work to transform violence into "something nonviolent, nonlethal, innocuous." The actions outlined in the documents are always "defensive, rather than aggressive." The United States is also painted as a conventional state – as opposed to a "failed" or "rogue" state that does not have an effective monopoly over legitimate violence in its given territory – and as such is depicted as "paradigmatic" of "innocuous or nontraumatic" sovereign statehood. In this self-dramatization, the United States is no longer an imperialist nation but rather one that responds to the actions of others. Wagner-Pacifici contends that as a result, in the context of new "wars," "the public may no longer be able to recognize victory when it arrives." The documents in question, by re-situating the United States' means of legitimately using violence, "actually problematize and actively reinterpret many of the key terms of state sovereignty and power."

The next chapter by Jeremy Arnold takes up the issue of reinterpreting sovereignty with an examination of the United States' invasion of Iraq. That invasion, he claims, reveals the buried logic of what he calls "Oedipal sovereignty." According to this logic, "*sovereignty is the cause of the very problems it claims the right to solve.*" To better understand the paradox that characterizes this logic and its centrality to the concept of sovereignty, Arnold directs our attention to the story of Oedipus.

According to Arnold, the Oedipus trilogy is intended to teach us that "the figure of death signifies . . . *security*." The figure of death signifies security insofar as "*death is a limit upon human existence which cannot be transgressed.*" Before this limit of human existence is reached, however, there is no death; therefore, there is no security and life could be destroyed. According to Arnold, the Oedipus trilogy teaches us that sovereignty is the political structure that prevents this from happening. The sovereign understands that humans are "destined for ruin," but it is his goal to limit the tendency toward ruination because the context of misery and suffering that surrounds life makes possible experiences of happiness and joy by comparison. To protect life, however, the sovereign must have access to secret knowledge about death. The sovereign must have this access because death is what secures existence, and, to secure the best possible life, the sovereign must "maintain that knowledge as its own."

Arnold argues that the Oedipus trilogy is so instructive about the character of sovereignty because it shows us how sovereigns fail and thereby set in motion the logic characteristic of sovereignty. Specifically, the Oedipus trilogy shows us that when the sovereign forgets or fails to protect his knowledge, he is transformed "into a man of passion." For example, trying to escape what he knows to be his fate, Oedipus ends up on the path that leads him to kill his father and marry his mother. This decomposition "is the origin of the political ills that infect the body politic." Once this decomposition occurs, the sovereign begins to create or cause the very problems he must confront.

According to Arnold, the invasion of Iraq by the United States demonstrates this logic. Oedipal sovereignty, according to Arnold, teaches us that the effects of sovereign power could "undermine the very ends of sovereignty." As Arnold points out, in Sophocles' famous tragedy, Oedipus is simultaneously "the cause of, and solution to, the problem of the political." Arnold shows that in Iraq, when the United States claims the right to expel violence from a violent space, the United States is similarly responsible for the violence it seeks to eliminate. When this paradox comes to light, Arnold claims that the war in Iraq cannot be seen as a war of defense; rather it must be recognized as an action that creates the very problem that it is employed to solve. The invasion of Iraq has produced a space of violence where one did not previously exist. In an effort to ensure security, the United States created insecurity for both Americans (by causing terrorist backlash) and Iraqis (by creating a violent space within their borders).

As evidence that "the meaning of death, and the knowledge death provides, is crucial to the success of the sovereign," Arnold turns his attention to how the dead in Iraq are counted. Arnold is specifically concerned with the lack of attention given to the violence against Iraqi bodies and why these bodies do not seem to count. He criticizes the liberal-humanitarian justification for the invasion of Iraq – the notion that the United States is bringing universal rights to the country – for ignoring the human being "in its singularity." According to Arnold, singular dead bodies do not count because (1) they are dead and can no longer bear rights and (2) there is nothing universal in *a* dead body. Arnold's discussion of how different deaths are represented differently by the sovereign – specifically how Iraqi bodies either do not count or are counted "only as part of a *calculus* in which certain bodies can be *sacrificed* for the greater end of liberation" – anticipates

Taussig-Rubbo's argument in the next chapter. It also raises "a criticism of the *instrumental effectiveness* of sovereign power," as Arnold suggests that "the entire logic of means-ends rationality in the context of sovereignty" must be questioned because the ends are always in contradiction with the means. Arnold concludes his reinterpretation of sovereignty by proposing that the best way to "formulate deeper challenges to sovereign power" is to assert that sovereignty kills not as a means, contra Weber, but as an end in itself.

In the next chapter, Taussig-Rubbo is particularly interested in contemporary state efforts to "unbundle itself from sacred meanings." Focusing on state efforts to manage the logic and rhetoric of sacrifice, he explores how the suffering attendant to state violence is presented (by the government) and received (by the public) when that suffering is borne by nontraditional heroic figures, namely (1) private military contractors in Iraq, (2) the families of government-recognized servicemen, and (3) detainees in Guantánamo Bay.

Taussig-Rubbo chooses sacrifice as his focus because the "logic and rhetoric of sacrifice can function as a form of accountability" for citizens to ground claims against the government. When the state recognizes deaths as sacrifices, those deaths come to represent something sacred or significant. Consequently, the state seeks independence from its citizenry when it comes to labeling certain deaths as sacrifices. According to Taussig-Rubbo, the state jealously guards this prerogative so that it alone may designate which deaths are meaning*ful* and which deaths are meaning*less* to reinforce its monopoly on violence. Taussig-Rubbo asserts, however, that the state, despite its best efforts, cannot completely escape the reality "that sacrifice is central to the citizen's relation to the sovereign."

Taussig-Rubbo's first case study involves private military contractors in Iraq. Taussig-Rubbo identifies the use of private contractors as an attempt by the U.S. government to outsource sacrifice to actors whose deaths might not resonate as strongly with the public as the death of a uniformed soldier. When four armed Blackwater contractors were brutally killed in Fallujah in 2004, however, it was difficult for U.S. government officials to continue their designation of private military contractors as "unsacrificeable subjects." Prior to this event, sacrifice in the military sense was usually viewed as something only a soldier could do for his or her nation. In the post-Vietnam era, however, with its gap between the military and society,