

# Rethinking Political Violence, Memory and Law: Introduction

Ozan Kamiloglu and Federica Rossi

The liberal humanitarian tradition constructs the concept of the human and his or her right to be protected against any form of violence. Western democracies build their justice on the principle of enlightened universal rationality that is supposed to distinguish their source of the rule of law from that of the ‘barbarian Other’ whose law is considered to be entangled with violence. As physical violence is rejected as the hallmark of the Other – the irrational, pre-modern, ideologised or indoctrinated, anti-democratic enemy – the Western liberal discourse flaunts the imperative of its moral and legal condemnation for the sake of the preservation of those *universal* values of individual freedom and human rights. The consensus upon these values draws upon the claim of the rationality of the law, thus justifying the violence inscribed in its own very foundation, or ‘spirit’, in the mechanics of its social, economic and political structure and in its strategies to prevent and control illegitimate violence. Consequently, any form of violence perceived as challenging the dominant neoliberal *doxa*,<sup>1</sup> questioning the need for individual (physical) ‘freedom’ and its protection as the self-evident, only possible basis for a prosperous and ordered society, is considered illegitimate.

It is this understanding of violence – allegedly universal – and its practical implications in different contexts that are discussed,

---

<sup>1</sup> The term *doxa* is here used in Pierre Bourdieu’s acceptance: a society’s taken-for-granted, what appears to be self-evident and “goes without saying, because it comes without saying”, unquestioned and unquestionable truths that conceal domination. Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge: Cambridge University Press, 1972), 167.

questioned and analysed by the articles presented in this collection. These texts challenge the common assumptions about political violence, unveil the processes, practices and discourses through which the Sovereign's violence is legitimised and the *demos*' violence is delegitimised, and let the dynamic links between violence and law emerge. Therefore, the intent of the collection is less to unmask the violence lying at the heart of Western capitalist societies than to rethink, through the study of specific cases, how the sense of 'violence' is constructed, reconstructed, and deconstructed here, and to shape the ways in which societies read their own memory, history and politics.

The legitimisation of the violence executed by the holders of power inevitably passes through the construction of the Other as the perpetrator and repository of illegitimate violence. This process takes place in the dominant discourse and entails a double and concomitant movement of denunciation (of the violence of the Other) and denial (of the violence of the capitalist system). The denunciation of the Other's violence thus presupposes that groups, cultures, religions or states included in this category come to be designated as perpetrators of a violence that lacks the principle of rationality that, on the contrary, allows Western powers to call it justice or law. Thus, the use of violence by the *demos* is not only considered unlawful, but also unethical. The humanitarian discourse developed over the last thirty years delegitimises the use of physical force in any form that stems from the *demos*. In the logic of the Sovereign, the *demos*' violence is irrational: it cannot be legitimised because it represents the product of evil, the uncompromising promise of a radical change in the order of power. Alain Badiou refers to this 'ethical ideology' as the endemic tendency of the Western world to conceive of humanity as powerless and in need of protection from the evil of the barbarian that only the Sovereign can guarantee. The contemporary form of this 'monopoly of violence' is shaped through the denunciation of any attempt at emancipation as evil. The human gets trapped within a static status quo, while the State and power are preserved in the never-ending process of defence rather

than liberation.<sup>2</sup>

If the history of the people's courts in Hungary in the transitional period between 1945 and 1947, as explored by Máté Zombory in his contribution to this collection, is considered (or silenced) in today's regime of historicity as a 'shameful' history, it is exactly because it challenges the contemporary normative order of 'democratic justice'. Denouncing and judging the violence of the previous regime, these courts were designed to make the people the new sovereign subject of political justice. They effectively addressed the question of legitimate political violence: a foundational violence, the retaliation against those who led the country to the 'national catastrophe', was seen as necessary to build the new society on a more just and egalitarian basis and to create its new moral values.

The question of legitimate violence in class struggle in the context of capitalist exploitation is also central to the reflection that Brendan Hogan develops through the analysis of Gramscian thought and the concept of 'economic violence'. Violence, as intrinsically embedded in the capitalist economic system and its political infrastructure, is highlighted by his text: particularly, he points at the general denial of economic violence, as for example in the devastating effects on the populations of countries where neoliberal policies are imposed and enforced.

The denial of the violence of economic and political systems is also raised by Joy's article, where she underlines the contradiction between Australian democracy and the systemic violence exerted on its Aboriginal population. The denial of this systemic violence is here strictly connected to the denial of the colonial foundation of the Australian state and of any Australian responsibility. She explains how the violence of the occupation and dispossession of Aboriginal lands

---

<sup>2</sup> Alain Badiou, *Ethics. An essay on the understanding of evil* (London: Verso, 2002), 13. '[I]f the ethical "consensus" is founded on the recognition of Evil, it follows that every effort to unite people around a positive idea of the Good, let alone to identify Man with projects of this kind, becomes in fact the real source of evil itself. Such is the accusation so often repeated over the last fifteen years: every revolutionary project stigmatized as 'utopian' turns, we are told, into totalitarian nightmare. Every will to inscribe an idea of justice of equality turns bad. Every collective will to the Good creates Evil.'

is then denied – or ‘forgotten’ – while Indigenous people are refused any claim to sovereignty. The complex relation between past and present, collective social memory and history, is often at the heart of nation building processes, national liberation movements, and transitional periods: the search for and transmission of truth was one of the main functions of the Hungarian people’s courts, but it can also become a strategy for Australian artists to support the recognition of Indigenous peoples’ sovereignty and challenge the dominant narrative of the national identity.

The three articles of this collection offer us a common ground to rethink political violence in its articulation in law and memory; each of them individually, as well as together through the discussion they generate, show that the question of what constitutes legitimate political violence is still actual and able to foster engaging debates and critical thoughts.

All forms of violence that are not controlled or controllable by the Sovereign or the holders of power are doomed to be physically repressed and symbolically disqualified, and more importantly rejected outside the limits of the *thinkable*. Since the thinkable – the construction of acceptable hierarchies, of who is audible, of whose words count, and of what makes sense<sup>3</sup> – has to be rational, it is always controlled by the Sovereign through different ways of creating acceptable narrations.<sup>4</sup> Joy underlines that the ‘Australian community refuses to see such acts [the systemic violence against Aboriginal communities] as symptomatic of a contemporary program of occupation because it views itself as a tolerant multicultural sovereign democracy to which such systemic violence is supposedly antithetical’. What she underlines as systemic violence is invisible, and this invisibility is secured by very rational constructions such as the myth of *terra nullius*. If we take on the challenge of extending Weber’s definition of the modern State by its monopoly on the legitimate use

---

<sup>3</sup> Jacques Rancière, *Disagreement: Politics and Philosophy* (Minneapolis: University of Minnesota Press, 2004).

<sup>4</sup> For a detailed analysis of the relation between the Enlightenment and the rational mind see Theodor Adorno and Max Horkheimer, *Dialectic of Enlightenment* (London: Verso, 1986).

of physical force, we can claim that the use of legitimate violence characterises the very nature of all dominant groups and their discourses. The hegemonic logic of liberal speech first reduces the definition of violence to mere harm, then identifies the only way of preventing that violence as unbounded counter-violence, which is, in Walter Benjamin's words, the law-preserving violence.<sup>5</sup> What is at stake both in state violence and in some forms of revolutionary violence is the famous discussion over justification through means (positive law) or justification through ends (natural law). Benjamin warns us in his essay *The Critique of Violence* that this opposition between two different ways of legitimising violence, in the end, is simply not a critique of violence any more, but the application of violence.<sup>6</sup> If there is a presupposition regarding the legitimisation of violence as a means for a just end, or lawful means as ends in themselves, it is only possible to talk about how the application does not bring what it promises. This is why Joy's article calls for the occupiers' subject position to be dismantled through a constant renegotiation of the self. Her call for asking ourselves 'how we can unsettle our Occupier subjectivity' is a way of breaking the Benjaminian cycle of violence.

Overcoming this problem is also possible when the focus is put on how the legitimisation of violence changes over time, not only together with the economic and political structures of a society, but also in relation to the ethics of a specific period that these structures generate and preserve. All three articles in this collection do this. Consequently, the articulation between ethics and law with respect to violence leads us to interrogate three main areas where the two get entangled: the law of the Sovereign, the law of the rebel, and the law of the past.

## The Law of the Sovereign

---

<sup>5</sup> Walter Benjamin, "Critique of violence" in Walter Benjamin, *Selected writings, Vol. 1* (Cambridge: Harvard University Press, 2002).

<sup>6</sup> Ibid.

Jacques Rancière theorised the idea of an ‘ethical turn’ occurring in the last thirty years. He conceptualises this as the loss of the distinction between ‘*what is* and *what ought to be*’ or the distinction between fact and law.<sup>7</sup> This results in the inclusion of ‘all forms of discourse and practice beneath the same indistinct point of view’. In Rancière’s terminology this amounts to seeing the world through the perspective of *the distribution of the sensible*.<sup>8</sup> After the ethical turn, coinciding with the fall of the Soviet Union, law and ethics become inseparable: the enemy becomes evil, the victims become the absolute Good. With the end of the Cold War era and what has been called the ‘loss of the utopias’,<sup>9</sup> it became more and more arduous to condemn state violence when it claimed to be used to prevent other forms of violence and to protect individual security<sup>10</sup>. Any critical attempt was relegated to the sphere of radicalism, rejected as ‘antidemocratic’ or labelled as ‘terrorist’. Thus, this brings about the depoliticisation or *ethicisation* of society. From this perspective, Zombory’s article highlights exactly this turn: the People’s Courts, as institutions of legal and political retribution, were seen, in the period following World War II, as necessary and politically legitimate in order to condemn fascism and to transition to a new society. However, the justice they wanted to embody – associated with political emancipation and people’s sovereignty – is judged today as ‘summary’ and illegitimate; the democratic project of revolutionary social change they aimed to inaugurate deemed antidemocratic. The extreme atomisation of

---

<sup>7</sup> Jacques Rancière, “The Ethical Turn of Aesthetics and Politics,” *Critical Horizons* 7 (2006), 1- 20.

<sup>8</sup> The original expression is *partage du sensible*. The French word *partage* has two meanings ‘to share’ or ‘to divide’.

<sup>9</sup> Rancière uses this term in “The Ethical Turn of Aesthetics and Politics.” The idea of the loss of the utopias can be tracked to the book of Francis Fukuyama where he declared the end of history. *The End of History and the Last Man* (London: Penguin, 1992).

<sup>10</sup> Alain Brossat underlines how contemporary Western democracy promotes an ‘immunitarian condition’ in which laws and freedoms are more and more defined in terms of individual protection from exposure to violence and rights to individual security. Immunitarian democracies are consequently characterised by an increasing atomisation of their citizens and their passive disengagement and depoliticized approach to forms of violence occurring elsewhere. Alain Brossat, *La démocratie immunitaire* (Paris: La Dispute, 2003). Also see Wendy Brown, “Human Rights as the Politics of Fatalism”, *South Atlantic Quarterly* 2(3) (2004), 451-463.

individuals and management of societies raised a whole new set of questions over the sense of democracy, but also over the significance of new social movements over the past thirty years. As Žižek states, we are now living in a world of ultra-politics in which competition ‘for power is replaced by a collaboration of enlightened technocrats (economists, public opinion specialists etc.)’<sup>11</sup> Therefore, the law of the Sovereign is more and more entangled with ethics and inseparable from it, while politics is reduced to a matter of administration of people (migration), capital (austerity) and violence (terrorism). It is this ethics which allows Australians to live peacefully in silence. As Joy states, ‘occupier Australia keeps the public secret that we all know but refuse to speak; there has been a failure to witness occupation, a silencing’.

### **The Law of the Rebel**

As a result of power relations, often criticisms addressed to the Western hegemony over the definition of violence, or even the critique of Western critical thought, use the very Western language of late capitalism that is humanitarianism. An example of this might be the evolution and transformation of some important sectors of 1970s political activism in Europe into human rights movements and institutions in the following decade.<sup>12</sup> The constant urgency that social movements like Occupy feel to define themselves as ‘peaceful’ or ‘non-violent’ might be another example of this search for legitimisation in the neoliberal logic of ‘democracy’ even by those who question it. Consequently, and inexorably, those who reject this logic are marginalised and stigmatised even by those to whom they are the closest. The violent outbursts of some protests, as they are staged in dominant media, crystallise the grotesque line of distinction between the ‘good protesters’ and the ‘troublemakers’, between those who accept the monopoly of legitimate violence and those who challenge

---

<sup>11</sup> Jacques Rancière, *Disagreement: Politics and Philosophy* (Minneapolis: University of Minnesota Press), 103.

<sup>12</sup> For a detailed account of this transformation in France, see Michael Scott Chirstofferson, *French intellectuals against the left* (Oxford: Berghan, 2004). Also see Julian Bourg, *From Revolution to Ethics* (Montreal: McGill-Queen’s University Press, 2007).

it. Broken windows, burnt cars or stolen TVs prompt screams of moral indignation and scandal, while police brutality against protesters creates indifference or even a sense of ‘justice’ and protection. So in which social and historical conditions can political violence be legitimised and the violence of the capitalist system exposed? Hogan’s text invites us to re-read Gramsci to find in his concept of ‘war’ the basis for a discussion of legitimate class struggle and counter-hegemonic action, as well as to consider the necessary role of the periphery.

If today even radical thinkers or activists discourage the use of violence, it is also because the *demos* becomes totally bound by the ethicisation of life and the new ethics that focuses on the detection and avoidance of ‘evil’ - physical violence or approval of it. A society that is bound by the teleological understanding of *humanity*, whose absolute rights are even codified, gets blinded in front of class, social, gender and ethnic inequalities and considers any violence from the *demos* to be directed at society as a whole. In this sense, the example of the Hungarian people’s courts reminds us of the existence of another ethics, of a humanity that exists *through* and *in* its political being, which also means conflict, violence and conflicting ideologies.

Further, in her analysis of the role of art, Joy invites us ‘to create an ethical space [which] is a new sort of action, a kind of thinking without place, a creation that can be transnational and nomadic in the Deleuzian sense. This needs to exist beyond place, in a way it should be inexistent, deterritorialised’. And art can give us this because, she states, ‘affective non-representational art resists linear narrative structures of storytelling’, the stories of good against evil, saviours and barbarians.

### **The Law of the Past**

Not only current attempts to subvert the order of power but also the interpretation of past struggles and their memory become a field of struggle which reflects the tensions between the politics of emancipation of the oppressed on one side and the liberal right to individual security on the other. Benjamin argues that ‘ends that in one situation are just, universally acceptable, and valid are so in no



other situation, no matter how similar the situations may be in other respects'.<sup>13</sup> So how do we look back and consider past violence from today's perspective? How can alternative memories emerge and what role can they play today?

Máté Zombory's study of the people's courts aims precisely at uncovering the social conditions that made these institutions possible in order to offer a critical understanding of that historical period without falling into today's normative and moral order.

Parallel to the hegemonic narrative built upon the dominant ethico-political discourse that delegitimises emancipatory claims and their significance (through a double and circular process of depoliticisation and criminalisation), the memory of past revolutionary, anti-colonial separatist movements is shaped. Different struggles for equality and justice are reduced to their violent means and their critique of the social and political order is neutralised by the ideology of liberal democracy, with its freedom of speech and civil liberties presented as the least worst system in a dichotomy that opposes it to 'totalitarianism' or 'authoritarianism'. Therefore, their use of violence can only be condemned: legally, because it infringes upon the law; politically, because it attempts to subvert the *natural* neoliberal order; and finally morally, because it touches individual bodies and properties. The increasing emphasis on victims, their pains and suffering, and the evilness of the perpetrator reflects the predominance of the humanitarian discourse and is used to disqualify emancipatory projects on the basis of their relation to physical violence. The Sovereign law creates an economy of narrations that confronts and opposes the good victims to the bad perpetrators on the ground of the memory of the effects of violence and censors its reasons and historical conditions. Thus, memories that defy the myths of the current 'rational' democratic world are condemned to silence; they are not sayable, but they are also hardly audible.

For Joy, it is the medium of visual arts that can 'make space for a social memory that refuses to historicise or memorialise events out of existence but rather draws the viewer into a relationship of witnessing'. For her, the witnessing demanded by the art work (an

---

<sup>13</sup> Walter Benjamin, "Critique of violence".

active witnessing indeed) can spare us from the myths of history, and narrations of the Sovereign. Her own art work slows the viewer in order to get involved, to be moved, to 'give something of themselves to it', as 'this is witnessing, it is acknowledging someone else's pain'. So the art work can tear the horizontal structure of the Sovereign's narrations and invite the spectator to experience what used to be invisible to them before.

It is probably because the Other's memories still contain the germ of a radical critique of the neoliberal order that they are so strongly and continuously delegitimised. They still represent a form of resistance to domination and hegemony, particularly on the discursive and narrative level, which can scrape the legitimacy of present Sovereign violence. Memories, then, can become a tool as far as they are able to offer new meanings or frames to current claims for equality. On the first layer, examples from the past can offer the perception of the possibility of another world, and other ways of seeing and doing become possible. If other ways of doing and living, or distribution of the sensible, were possible and legitimate in the past, new ones are also possible in the future. The stillness of the status quos, preserved by the hegemonic emphasis of ethics, can and will change. The memories of individuals, but also of state bodies and institutions, open a view on the possible. And the first result of these memories is to show that, at other times, there were different laws, different *naturals* and different morals. The very existence of a world with different sayables and thinkables breaks the claim of the universality of the one we live in.

On the second layer, memory allows individual stories and experiences to confront the dominant ethos of the world, which lets us question again the validity of the claim over the universality of that ethos. Encountering individual memories, and the fact that these memories have been experienced in a real body during the life of an individual, threatens the sharpness and power of hegemonic universal myths. However, Sovereign power keeps the doors of what is audible and sayable by letting certain narrations express and gain recognition: it tames the history of individuals by using myths and assigning truth values to experiences. Individual memories gain truth value and enter the economy of meaning as far as they are able to adapt to the

hegemonic language of the Sovereign. Therefore, individuals also start to reshape their memory according to audible myths (like guilt, shame, redemption, good and evil, etc.), reinforcing hegemony.

The three articles presented in this collection all represent an attempt to break these chains, starting with critically rethinking our history, politics and law.