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**A HISTORY OF TERRORISM IN THE AGE OF FREEDOM**

Thesis submitted for the degree of Doctor of Philosophy (DPhil)

August 2011

I hereby declare that this thesis has not been and will not be submitted in whole or in part to another university for the award of any other degree.

Signature: .....

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DPHIL IN SOCIAL AND POLITICAL THOUGHT

A HISTORY OF TERRORISM IN THE AGE OF FREEDOM

SUMMARY

This thesis constitutes a critical intervention in contemporary research on terrorism. It seeks to address the problems resulting from a reductive understanding of terrorism and from a predominant concern with terrorism after 9/11. For this purpose, this thesis charts and critically engages certain watershed moments in the history of terrorism since its emergence in the French Revolution. The aim is to show that terrorism is not a historically constant and readily identifiable form of violence but a variable element in a wider context of power relations.

The discourses of terrorism examined in this thesis show that conceptions of terrorism are tied to and function within a wider context of changing political interests and an evolving modern economy of power. I show that there are reasons for the different meanings and roles of terrorism across time and between societies, and that these reasons shed light on larger social, political, cultural or economic developments. It is in this context that particular discourses of terrorism help to legitimate political and legal regimes and allow for the selective exclusion of individuals, groups and ideologies from the political realm.

I argue that a historically grounded and theoretically thorough analysis of terrorism can provide important insights into how the state has been able to sustain itself by incorporating and mobilizing different types of power. By way of a genealogical study of terrorism, my project attempts to map these forms of power as well as their dependence on various frameworks that are used to legitimize violence, to dismantle legal norms, and to expand power in the name of freedom and democracy. This thesis thus not only responds to the epistemological, methodological and temporal limitations of contemporary terrorism scholarship but is also of practical political relevance.

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## **Acknowledgments**

In his 1969 essay “What Is an Author?” Foucault discusses the status of the author in contemporary literary and philosophical discourse. Foucault takes issue with the dominant view of the author as the originating subject of a text. Instead, he argues, “the author is an ideological product, since we represent him as the opposite of his historically real function” (Foucault 1998, 221-222). In order to grasp the author function, questions such as “Who really spoke? Is it really he and not someone else? With what authenticity or originality? And what part of his deepest self did he express in his discourse?” have to be replaced with “other questions, like these: What are the modes of existence of this discourse? Where has it been used, how can it circulate, and who can appropriate it for himself? What are the places in it where there is room for possible subjects? Who can assume these various subject functions? And behind all these questions, we would hear hardly anything but the stirring of an indifference: What difference does it make who is speaking?” (Ibid., 222).

In academic discourse, the identity of the person speaking typically makes all the difference. The originality, authenticity and credentials of the author determine the authority of the work. As a consequence, biographical and psychological details are significant – not, as Foucault rightly points out, “in order to reestablish the theme of an originating subject but to grasp the subject's points of insertion, modes of functioning, and system of dependencies” (Ibid., 221). It is in this sense that I wish to thank a number of people who have offered their advice and support at different stages of the PhD.

I want to thank my supervisors Gordon Finlayson, Darrow Schechter and Univ. Prof. Dr. Heinrich Schmidinger for their guidance and support, and Tom Flynn for

sharing his expertise on Foucault. Their knowledge and advice allowed me to refine and improve the arguments developed in this thesis. Colin McQuillan has read and commented on chapter drafts and numerous versions of the entire thesis. I am grateful for his constructive criticism as well as his patience and support through periods of lunacy and nervous breakdown. I thank Patrick Liebl for his friendship and for his help with the translation of original documents when my knowledge of French proved to be seriously inadequate for an appropriate understanding of eighteenth century texts. For their contribution to this thesis at different points of the research and writing process I want to thank Tom Akehurst, Chris Allsobrook, Andrew Benjamin, Szu-hung Fang, Peter Fitzpatrick, Andrei Gomez-Suarez, Phillip Homburg, Tarik Kochi, Chris O’Kane, Katya Salmi, Nadine Voelkner and Arthur Willemse. I am also grateful for the generous financial support of the Austrian Academy of Sciences.

Without the encouragement and understanding of my family and friends I would not have been able to finish this thesis. I want to thank my parents, Hannelore and Wilhelm Erlenbusch, for their love and support in spite of the challenges my life and work confront them with. My friends, Tom Akehurst, Andrei Gomez-Suarez, Patrick Liebl, Shamira Meghani, Julia Prammer, Katya Salmi, Gunjan Sondhi, and Yuliya Yurchenko, kept me sane and grounded. They make sure I do not give in to the “obscure desire of the person who writes” that there will be “rays of light streaming from his person and that everyone on the street would be able to see that he had written a book” (Foucault 2004b, 184).



# **1 Introduction: definition, genealogy, critique**

## **1.1 The difficulty of defining terrorism**

What is terrorism? Although this seems to be a rather simple and straightforward question, attempts to provide an equally simple and straightforward answer have troubled legal, political and academic debates for the most part of the twentieth century. Since the beginning of the twenty-first century in particular, the question what terrorism is has been posed with new urgency and more than ever demands an unequivocal solution. Nevertheless, contemporary discourses on terrorism, in academia and elsewhere, are characterized by a lack of consensus about how to define terrorism. Instead, there is an assumption that what terrorism is, is what terrorists do, and that the question of who and what terrorists are is an ahistorical and context independent one. This problematic view of terrorism has particularly unfortunate consequences in legal and political practice. Backed by run-off-the-mill conceptions, terrorism is understood as a number of criminal actions that, under certain circumstances and when perpetrated by certain individuals or groups, count as terrorism. Yet it is not only political and legal practice that is marked by a dangerously vague idea of what terrorism is. Even within the academy, the disciplines most likely and most challenged to formulate a definition of terrorism, i.e. (Critical) Terrorism Studies, legal theory and security studies, suffer from an inability to fulfill this task. Given the pressing need to respond to an increasing number of ever more violent terrorist attacks, the failure to generate effective instructions for public policy based on a clear definition of terrorism is all the more disastrous. The result is a vicious circle in which responses to terrorism that result from a lack of understanding fuel rather than interrupt cycles of ever increasing violence.

In very general terms, four major approaches to the problem of determining what terrorism is have crystallized in academic debates on terrorism. The first approach is manifest in scholarship known as Terrorism Studies and began to develop in the late 1960s.<sup>1</sup> Its main objective was to establish a definition of terrorism that would be able to furnish and inform political and legal debates in a context of increased political violence. As a consequence, scholars produced an incalculable number of definitions that sought to identify the necessary features for an act of violence to qualify as terrorism. In very general terms, Terrorism Studies answers the question “what is terrorism?” with the “indiscriminate use of violence against a civil population with the aim of spreading panic and pressurizing a government or an international political authority” (Zolo 2009b, 126).<sup>2</sup>

The research undertaken by scholars associated with Terrorism Studies gave rise to a taxonomy of terrorism that classifies terrorism in terms of chronological periodization as well as with regard to its aims and ideological motivations. Continuities between manifestations of terrorism are established on the basis of “similar

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<sup>1</sup> Classic examples of conventional Terrorism Studies scholarship are Chaliand, Gérard and Arnaud Blin, (eds.) *The History of Terrorism: From Antiquity to Al Qaeda*. Berkeley and Los Angeles: University of California Press, 2007, Guelke, Adrian. *The Age of Terrorism and the International Political System*. London and New York: I.B. Tauris Publishers, 1998, Laqueur, Walter. *A History of Terrorism*. New Brunswick: Transaction Publishers, 2009, Rapoport, David C. “Fear and Trembling: Terrorism in Three Religious Traditions.” *The American Political Science Review* 78, no. 3 (1984): 658-677, Ibid., “Religion and Terror: Thugs, Assassins, and Zealots.” In *International Terrorism: Characteristics, Causes, Controls*, edited by Charles W. Kegley Jr, 146-157. New York: St. Martin’s, 1990 and Waldmann, Peter. *Terrorismus. Provokation der Macht*. Munich: Gerling Akademie Verlag, 2001.

<sup>2</sup> Examples of this approach are Chalk, Peter. *West European Terrorism and Counter-Terrorism: the Evolving Dynamic*. Hampshire and London: Palgrave Macmillan, 1996, Crelinsten, Ronald D. “Terrorism as Political Communication. The Relationship between the Controller and the Controlled.” In *Contemporary Research on Terrorism*, edited by Paul Wilkinson and Alasdair M. Stewart, 3-23. Aberdeen: Aberdeen University Press, 1987, Czempiel, Ernst-Otto. “Der politische Terrorismus.” *Internationale Politik* 7 (2004): 74-81, Gearty, Conor. *Terror*. London and Boston: faber and faber, 1991, Laqueur, Walter. *Terrorism*. London: Redwood Burn Ltd., 1977, Ibid., “Reflections on Terrorism.” *Foreign Affairs* Fall (1986): 86-100, Rapoport, David C. “The Politics of Atrocity.” In *Terrorism: Interdisciplinary Perspectives*, edited by Yonah Alexander and Seymour Maxwell Finger, 46-61. Maidenhead: John Jay Press, 1977, Thackrah, Richard. “Terrorism. A Definitional Problem.” In *Contemporary Research on Terrorism*, edited by Paul Wilkinson and Alasdair M. Stewart, 24-41. Aberdeen: Aberdeen University Press, 1987, Waldmann, *Terrorismus* and Ibid., “Terrorismus im internationalen Umfeld.” *Internationale Politik* 2-3 (2004): 21-28.

activities [that] occur in several countries, driven by a common predominant energy that shapes the participating groups' characteristics and mutual relationships" (Rapoport 2004, 47). The consequent categorization of terrorism, which has become customary in Terrorism Studies, largely distinguishes between (1) anti-colonial, ethno-nationalistic, or separatist terrorism, (2) social-revolutionary or "New Left" terrorism, and (3) religious terrorism.<sup>3</sup>

Moreover, this approach has led to the identification of similar manifestations of violence throughout history and has resulted in numerous attempts to universalize terrorism as a ubiquitous phenomenon. A whole strand of literature now compares and even equates modern terrorism with resistance against the Roman occupation in ancient Judea, to the Islamic sect of the Assassins in the Middle Ages, or to Thuggee activities in eighteenth-century India.<sup>4</sup> It seems to me that it does not make much sense to call the Zealots of ancient Judea or medieval Assassins terrorists *avant la lettre*. As we will see in due course, such an anachronistic use of the term terrorism decontextualizes the currently dominant understanding and imposes it on violent actions that had different aims, used different tactics and were interpreted in a different way at the time.

Even if it were possible to unambiguously define terrorism on the basis of a set of constitutive elements, the discipline of Terrorism Studies nevertheless faces two

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<sup>3</sup> See Clutterbuck, Richard. *The Future of Political Violence. Destabilization, Disorder and Terrorism*. London: Palgrave Macmillan, 1986, Crenshaw, Martha. "The Causes of Terrorism." In *European Terrorism*, edited by Edward Moxon-Browne, 379-399. Aldershot: Dartmouth Publishing Co Ltd, 1993, Gearty, *Terror*, Guelke, *The Age of Terrorism*, Hoffman, Bruce. *Inside Terrorism*. London: Victor Gollancz, 1998, Juergensmeyer, Mark. *Terror in the Mind of God. The Global Rise of Religious Violence*. Berkeley and Los Angeles: University of California Press, 2001, Laqueur, *Terrorism*, O'Neill, Bard, William Heaton and Donald Albers. *Insurgency in the Modern World*. Boulder: Westview Press, 1980 and Shultz, Richard. "Conceptualizing Political Terrorism." In *International Terrorism: Characteristics, Causes, Controls*, edited by Charles W. Kegley Jr, 45-50. New York: St. Martin's, 1990.

<sup>4</sup> For such an account of terrorism see most notably Rapoport, *Fear and Trembling*, Ibid., *Religion and Terror*, Ibid., "The Fourth Wave: September 11 in the History of Terrorism." *Current History* 100 (2001): 419-424, Ibid., "The Four Waves of Rebel Terror and September 11." *Anthropoetics* 8, no. 1 (2002) and Ibid., "The Four Waves of Modern Terrorism." In *Attacking Terrorism: Elements of a Grand Strategy*, edited by Audrey Kurth Cronin and James M. Ludes, 46-73. Washington, D.C.: Georgetown University Press, 2004.

main problems: first, on a purely descriptive level, it seems that state conduct all too often appears as identical to terrorism. Second, the criterion by which a certain criminal act is established as terrorism is imposed by those political actors who have a stake in a particular way of defining terrorism. By deciding who is to be identified as a terrorist, states also posit that this term can never apply to themselves. In other words, it seems that if terrorism is understood as a set of criminal or illegal actions, then states are terrorists if they engage in these same actions. This is impossible, however, because the criterion by which terrorism is distinguished from state violence is a normative one that is always imposed by those who make the law.<sup>5</sup>

In the same vein, Tarik Kochi argues that judgments about war and violence are “moment[s] of positing” and are, therefore, “most often partisan judgments” (Kochi 2009, 250). This is to say that the definition of terrorism always already contains its evaluation. As Butler maintains in her interpretation of Talal Asad’s recent book “On Suicide Bombing” (2009), such definitions function as means of justifying some forms of violence while disallowing others. Butler seeks to explain “how the domain of justifiability is preemptively circumscribed by the definition of the form of violence at issue” (Butler 2009, 155). She contends that even though we think that our evaluation of a phenomenon is based on a definition that is purely descriptive, the situation is different in cases like terrorism when “the very definition of the phenomenon involves a description of it as ‘evil’” (Ibid.). Then, Butler argues, “judgment is built into the definition (we are, in fact, judging before knowing), at which point the distinction between the descriptive and the normative becomes confused. ... We judge a world we

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<sup>5</sup> I follow Judith Butler in her understanding of normativity as “pertaining to the norms that govern” terrorism as well as “ethical justification, how it is established, and what concrete consequences proceed therefrom” (Butler 2007, xxi).

refuse to know, and our judgment becomes one means of refusing to know that world (Ibid., 155-156).

Indeed, the ideological allegiances of Terrorism Studies come into sharp view in the biased description of the alleged motives of terrorists as morally despicable and evil. By professing to present a neutral view of terrorism that, however, includes its moral condemnation, terrorism scholars in fact conceal their complicity in normative evaluations of certain acts of violence behind claims to scientific objectivity. Moreover, they seek to provide valuable lessons for counter-terrorism policies through the investigation of historical examples. It is thus obvious why it is important for Terrorism Studies scholars to unequivocally define terrorism: if one knows what terrorism is, one can identify historical cases of terrorism in order to garner useful information for practices of counter-terrorism. The assumption is that if one understands how terrorism was fought and defeated in the past, effective counter-terrorist strategies can be developed on the basis of this knowledge. The interest in historical examples of terrorism is, therefore, guided by an ideological concern with counter-terrorist practices.<sup>6</sup> In short, the main problem with these traditional attempts to define terrorism

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<sup>6</sup> See for example Alexander, Yonah and Dennis Pluchinsky. *Europe's Red Terrorists: The Fighting Communist Organizations*. London: Routledge, 1992, Bjorgo, Tore. *Terror from the Extreme Right*. London: Routledge, 1995, Chalk, *West European Terrorism*, Clutterbuck, *The Future of Political Violence*, Crelinsten, *Terrorism as Political Communication*, Crenshaw, *The Causes of Terrorism*, Ibid., "Organized Disorder: Terrorism, Politics, and Society." In *The Democratic Imagination. Dialogues on the Work of Irving Louis Horowitz*, edited by Ray C. Rist, 137-157. New Brunswick and London: Transaction Publishers, 1994, Ibid., *Terrorism in Context*. University Park: Pennsylvania State University Press, 1995, Guelke, *The Age of Terrorism*, Howard, R.D. and R.L. Sawyer. *Terrorism and Counterterrorism: Understanding the New Security Environment: Readings & Interpretations*. Guilford: McGraw-Hill/Dushkin, 2003, Kegley Jr, Charles W., (ed.) *International Terrorism: Characteristics, Causes, Controls*. New York: St. Martin's Press, 1990, Livingstone, Neil C. *The War against Terrorism*. Lexington: Lexington Books, 1984, Martin, C. Gus. *Understanding Terrorism: Challenges, Perspectives, and Issues*. London: Sage Publications, 2003, O'Neill, Heaton and Albers, *Insurgency in the Modern World*, Rapoport, David C. and L. Weinberg. *The Democratic Experience and Political Violence*. Portland: Frank Cass, 2001, Schmid, Alex P. and Janny de Graaf. *Violence as Communication: Insurgent Terrorism and the Western News Media*. London: Sage Publications, 1982, Scott, Andrew M. *Insurgency*. Chapel Hill: The University of North Carolina Press, 1970, Shultz, *Conceptualizing Political Terrorism*, Sing, Baljit. "An Overview." In *Terrorism: Interdisciplinary Perspectives*, edited by Yonah Alexander and Seymour Maxwell Finger, 6-17. Maidenhead: John Jay Press, 1977, Taylor, Lewis. "Counter-Insurgency Strategy, the PCP-Sendero Luminoso and the Civil War in Peru, 1980-1996."

by reference to certain violent behaviors with particular political aims is that they partake in what might be called a history of the victors. Such a history fails to recognize the complex practices and mechanisms surrounding terrorism that go beyond mere criminalization. In other words, the suspension of rights and liberties not just with respect to the terrorist but to the population in general, the use of torture, or the waging of wars of aggression against so-called rogue states deemed to harbor terrorism cannot be explained by adopting descriptions that are based on allegedly neutral common sense presumptions about terrorist violence.<sup>7</sup> Such assumptions conceal the relations of power that are at work in conceptions of terrorism. The danger is that scholars who unquestioningly adopt the dominant understanding of terrorism reproduce a reductionist, essentializing and ahistorical account that plays into the hands of the powerful. Perhaps the most damaging effect of Terrorism Studies thus lies in a decontextualization of the notion of terrorism that does not pay sufficient attention to history. By defining terrorism on the basis of its contemporary appearance and identifying similar forms of violent behavior in the past, scholars anachronistically impose current conceptions of terrorism onto historical examples instead of learning from the various meanings or the complete absence of the concept at different moments throughout history.

It did not take long for the weaknesses of counter-terrorism policies based on conventional definitions of terrorism to materialize. Because terrorism was on this view

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*Bulletin of Latin American Research* 17, no. 1 (1998): 35-58, Thackrah, *Terrorism. A Definitional Problem*, Waldmann, *Terrorismus*, Weimann, Gabriel. *Terror on the Internet: The New Arena, the New Challenges*. Washington, D.C.: United States Institute of Peace Press, 2006, Wilkinson, Paul. *Political Terrorism*. New York and Toronto: John Wiley & Sons, 1974, Ibid., *Terrorism and the Liberal State*. London: Macmillan, 1977, Ibid., "Proposals for Government and International Responses to Terrorism." *Studies in Conflict & Terrorism* 5, no. 1 (1981): 161-193, Ibid., *Terrorism Versus Democracy: The Liberal State Response*. Abingdon and New York: Routledge, 2006, Ibid., "Overview of the Terrorist Threat to International Security." *Terrorism and Disarmament, DDA Occasional Papers* (2001): 5 and Wilkinson, Paul and Brian M. Jenkins. *Aviation Terrorism and Security*. London and Portland: Frank Cass, 1999.

<sup>7</sup> For a deconstruction of the notion of rogue states and a sustained reflection on the processes by which sovereigns become rogues see Derrida, Jacques. *Rogues*. Stanford: Stanford University Press, 2005.

recognized by way of identifying certain constitutive elements, it could only be confirmed retrospectively if a case of terrorism had happened. A drastic increase in terrorist attacks in the 1970s along with an internationalization of terrorism exacerbated the need for a way of identifying terrorists unequivocally. In order to prevent terrorism from occurring in the first place, policy makers pushed for a means of singling out terrorists before they actually became terrorists and carried out their violent acts. They insisted on a “fixed and unambiguous ‘terrorist profile,’ a list of characteristics that permit identification of actual or potential terrorists” (Crenshaw 2000, 407). It was in this context that a new approach took hold from within the social and natural sciences that sought to define terrorism by way of examining the terrorist personality and individual rationality rather than determining terrorism through a description and evaluation of the violence exercised.

The first comprehensive socio-statistical attempt at terrorist profiling was made in the second half of the 1970s by two scientists at the US Air Force Counterintelligence Division, Charles A. Russell and Bowman H. Miller. Russell and Miller’s “Profile of A Terrorist” (1977) was based on a collection of biographical and sociological data of 350 identified terrorists. Analysis of eight criteria – age, sex, marital status, rural or urban origin, social and economic background, education or occupation, method or place of recruitment and political-economic philosophy – led to the conclusion that terrorists “have been largely single men aged 22 to 24, with exceptions as noted, who have some university education, if not a college degree.”

The Women terrorists, except for the West German groups and an occasional leading figure in the IRA [Irish Republican Army], JRA [Japanese Red Army] and PFLP [Popular Front for the Liberation of Palestine], are preoccupied with support rather than operational roles. More often than not, these urban terrorists come from affluent, urban, middle-class families, many of whom enjoy considerable social prestige. ... Whether having turned to terrorism as a university student

or later, most were provided an anarchistic or Marxist world view as well as recruited into terrorist operations while in the university (Russell and Miller 1977, 33).

In other words, the typical terrorist turned out to be a rather average young man. Socio-statistical approaches failed to provide a conclusive and determinate terrorist profile and did not convincingly explain why relatively unsuspecting individuals turned to terrorism.<sup>8</sup>

The impossibility to establish a clear connection between terrorism and personal hardship or a precarious social status gave rise to the hypothesis that any attempt at determining the rationality behind terrorism was futile because a terrorist rationality simply did not exist. Rather, it was surmised, terrorism was fundamentally irrational. Particularly in Germany, the Red Army Faction's (RAF) violent opposition to what its activists identified as the fascist substratum of a liberal-democratic political system resulted in "the suspicion that its advocates are sick," that is in an association of terrorism with psychopathological conditions (Rasch 1979, 79).<sup>9</sup>

In a major survey of psychopathological approaches to terrorism, Andrew Silke charts the development of psychological research on terrorism and argues that the belief that "terrorists are somehow psychologically different from the rest of the population has become an underlying assumption of much, if not most, psychological research on terrorists in the past 30 years" (Silke 1998, 53). Alongside more subtle references to the abnormality of terrorists by "respected theorists" of terrorism such as Walter Laqueur, Silke contends that a whole range of systems of classification was developed on the

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<sup>8</sup> Nevertheless, socio-statistical elements still play an important part in counter-terrorist strategies. See for example the following government guidelines for identifying terrorists: The National Terror Alert Response Center. <http://www.nationalterroralert.com/suspicious-activity> (accessed October 29, 2009) and Hyderabad City Police. "Terror Signals." <http://www.hyderabadpolice.gov.in/FightingTerror/TerrorSignals.htm> (accessed October 29, 2009).

<sup>9</sup> For a recent inquiry into the socio-psychological processes motivating the members of the Italian Red Brigades see Orsini, Alessandro. *Anatomy of the Red Brigades: The Religious Mind-Set of Modern Terrorists*. Translated by Sarah J. Nides. New York: Cornell University Press, 2011.



basis of an alleged connection between terrorism and abnormality (Ibid., 52). According to Silke, the earliest psychopathological typology of terrorist personalities was presented in 1977 by Conrad Hassel and further developed by Johnson and Feldmann in 1992.<sup>10</sup> Similar classificatory systems emerged subsequently and either advocated a distinction between an inadequate personality, an antisocial personality, a paranoid personality and a manic or depressive personality; alternatively, they suggested a categorization of terrorists according to three main aspects, namely psychopathy, narcissism, and paranoia.<sup>11</sup> A more psychoanalytical approach that investigated the connection between childhood trauma, low self-esteem and terrorist behavior, Martha Crenshaw claims, was noticeable in studies of female terrorists who were described as “everything women are not supposed to be” (Crenshaw 2000, 408).<sup>12</sup> Again, deviance from the norm and failure to conform to expected behavior was invoked to explain terrorist predispositions.

Silke questions the validity and plausibility of much of the psychological research on terrorism because of its reliance on largely “anecdotal evidence” and the lack of “detailed descriptions of the data ... gathered or of ... analysis procedures” (Silke 1998, 61). More differentiated studies in the field show that there is little to no

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<sup>10</sup> See Hassel, Conrad. “Terror: The Crime of the Privileged – An Examination and Prognosis.” *Terrorism: An International Journal* 1 (1977): 1-16 and Johnson, Phillip W. and Feldmann, Theodore B. “Personality Types and Terrorism: Self-psychology Perspectives.” *Forensic Reports* 5 (1992): 293-303.

<sup>11</sup> Hassel, *Terror*, Johnson and Feldmann, *Personality types and terrorism*, Lasch, Christopher. *The Culture of Narcissism*. New York: W.W. Norton, 1979, Millon, Theodore. *Disorders of Personality: DSM-III: Axis II*. Chichester: John Wiley and Sons, 1981, Pearce, K.I. “Police Negotiations.” *Canadian Psychiatric Association Journal* 22 (1977): 171-174, Pearlstein, Richard M. *The Mind of the Political Terrorist*. Wilmington: Scholarly Resources Inc., 1991, Post, Jerrold M. “Terrorist Psycho-logic: Terrorist Behavior as a Product of Psychological Forces.” In *Origins of Terrorism: Psychologies, Ideologies, Theologies, States of Mind*, edited by William Reich, 25-40. Cambridge: Cambridge University Press, 1990, Turco, Ronald M. “Psychiatric Contributions to the Understanding of International Terrorism.” *International Journal of Offender Therapy and Comparative Criminology* 31 (1987): 153-161 and Victoroff, Jeff. “The Mind of the Terrorist: A Review and Critique of Psychological Approaches.” *Journal of Conflict Resolution* 49 (2005): 3-41.

<sup>12</sup> See for example Cataldo Neuberger, Luisella de and Tiziana Valentini. *Women and Terrorism*. New York: St. Martin’s, 1996 and Steinhoff, Patricia G. “Three Women Who Loved the Left: Radical Woman Leaders in the Japanese Red Army Movement.” In *Re-Imagining Japanese Women*, edited by Anna E. Imamura, 301-324. Berkeley: University of California Press, 1996.

evidence suggesting a link between terrorism and mental illness.<sup>13</sup> In the same vein, Rasch's examination of eleven RAF members, still a standard reference in psychological research on terrorism, comes to the conclusion that "no conclusive evidence has been found for the assumption that a significant number of them are disturbed or abnormal" (Rasch 1979, 80). The strength of such critical psychological studies of the terrorist mind is that they are based on contextualized accounts and specific case studies that avoid wholesale diagnoses about something like an ideal-type terrorist. As a consequence, the contention of these studies that there is no link between terrorism and madness seems a great deal more reliable than generalized and obscure judgments about the terrorist as such.

Nevertheless, recent years have seen a shift of focus in psychological research in order to gain more reliable insights into the terrorist mind. While statements about the individual psyche of the terrorist are increasingly regarded as implausible, there is now a certain optimism that some general arguments about terrorism can be inferred from an observation of group dynamics and organizational patterns. By identifying so-called pathways of terrorism, current psychological research seeks to identify particular life events that explain why individuals turn to terrorism. This approach, it is argued, gives some indication of significant events and developments through the life course that might make seemingly irrational behavior understandable. Pathways research therefore concentrates on identifying the ways and means which affect, limit and constrain

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<sup>13</sup> See Ferracuti, Franco and Francesco Bruno. "Psychiatric aspects of terrorism in Italy." In *The Mad, the Bad and the Different: Essays in Honor of Simon Dinitz*, edited by Israel L. Barak-Glantz and C. Ronald Huff, 199-213. Lexington: Heath, 1981, Ibid., "Italy: A systems perspective." In *Aggression in Global Perspective*, edited by Arnold P. Goldstein and Marshall H. Segall, 287-312. New York: Pergamon, 1983, Heskin, Ken. *Northern Ireland: A Psychological Analysis*. Dublin: Gill and Macmillan, 1980, Ibid., "The Psychology of Terrorism in Northern Ireland." In *Terrorism in Ireland*, edited by Yonah Alexander and Alan O'Day, 88-105. Beckenham: Croom Helm, 1984 and Ibid., "Terrorism in Ireland: The Past and the Future." *The Irish Journal of Psychology* 15 (1994): 469-479.

rationality.<sup>14</sup> It fails, however, to subject the standards of rationality it applies to critical analysis.

The adjustment of psychological research and the new focus on questions of rationality and the ways in which rational action becomes implausible or altogether impossible for particular individuals result from a growing acceptance that psychopathological explanations are inadequate as a general framework for understanding terrorism. However, even though “Blatant abnormality is rejected by most commentators,” Silke argues, “a pervasive perception exists that terrorists are abnormal *in more subtle ways*” (Silke 1998, 67).

The reluctance to let go of largely refuted assumptions about the psychological abnormality of terrorists is anchored in the political usefulness of associating terrorism and deviance. For instance, Rasch argues that “endeavours to explain the phenomenon of terrorism with the help of psychological or psychopathological models or, as has been done during trials, to denounce the offenders simply as paranoids, neurotics, or psychopaths, are intentionally part of the psychological warfare by which the offenders, their goals and their ideas, are disqualified. If this can be achieved, a discussion of the terrorists’ political arguments and related issues may be avoided” (Rasch 1979, 79). The consequences are enormous. As early as 1979, Rasch observed that the statistical, sociological and psychological instruments deployed in terrorism research were used to create a “vast apparatus for the ‘fight against terrorism’” which allowed for the

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<sup>14</sup> See for example Crenshaw, Martha. “The Psychology of Terrorism: An Agenda for the 21st Century.” *Political Psychology* 21, no. 2 (2000): 405-420, Jacques, Karen and Taylor, Paul J. “Male and Female Suicide Bombers: Different Sexes, Different Reasons?” *Studies in Conflict & Terrorism* 31, no. 4 (2008): 304-326, Jacques, Karen. “Pathways to Female Terrorism.” Paper presented at the Critical Studies on Terrorism Working Group. BISA Annual Conference, 2008, Rabbie, Jacob M. “A Behavioral Interaction Model: toward a Social-psychological Framework for Studying Terrorism.” *Terrorism and Political Violence* 3, no. 4 (1991): 134-163, Ross, Jeffrey I. “The Psychological Causes of Oppositional Political Terrorism: Toward an Integration of Findings.” *International Journal of Group Tensions* 24 (1994): 157-185 and Taylor, Max and Horgan, John. “A Conceptual Framework for Addressing Psychological Process in the Development of the Terrorist.” *Terrorism and Political Violence* 18 (2006): 585-601.

screening of more than half a million people, “not just for highly treasonable or terrorist activities, but for any activities that might cast doubts on their political ‘reliability’” (Ibid., 85).<sup>15</sup>

It is undeniable that ostensibly neutral scientific data about terrorism serve the same ideological interests as the knowledge produced by Terrorism Studies. The accumulation of socio-statistical, psychological and psychiatric information about terrorists under the pretext of counter-terrorism and security aids the political purposes of governments. It therefore seems safe to say that what is required for a more productive understanding of terrorism is not its purportedly neutral description but, as Butler has recently suggested, a consideration of “how a phenomenon like ‘terrorism’ becomes defined in ways that are vague and overly inclusive” (Butler 2009, 156).

A similar response to the problems arising from the ideological undertones of traditional Terrorism Studies and psychopathological approaches was proposed in 1996 by two anthropologists who conducted an ethnographic study of the Basque experience with terrorism. Joseba Zulaika and William A. Douglass proposed an understanding of terrorism as a discourse that constructs the terrorist as a political subject, thereby facilitating otherwise unjustifiable techniques of power. Insisting on the discursive construction of a terrorist threat, on the one hand, and on the very real effects of discursive formations, on the other, the authors show how an image of terrorism becomes a structural reality and a historical force (Zulaika and Douglass 1996). Yet it took another decade for their work to set off a serious attempt at a “revitalising ‘critical turn’ within the broader terrorism studies field” (Jackson 2009, 67). The newly emerging field of Critical Terrorism Studies (CTS) pitches itself against the bulk of “the

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<sup>15</sup> A similar pattern can be identified in the United States in the era of McCarthyism. An investigation of these mechanisms can be found in Eve Collyer Merritt’s undergraduate dissertation written for the Department of Politics and Contemporary European Studies at the University of Sussex. See Collyer Merritt, Eve. *The Expansion of State Power in McCarthy America*. Undergraduate dissertation submitted in the Department of Politics and Contemporary European Studies, University of Sussex, 2011.

truly voluminous output” of mainstream terrorism studies after the attacks of September 11, 2001 (Jackson et al. 2009b, 1). In their edited volume on “Critical Terrorism Studies: A New Research Agenda” (2009), the “founders” of CTS, Richard Jackson, Marie Breen Smyth and Jeroen Gunning, argue that a critical perspective on terrorism is pertinent given the limitations of traditional accounts. This is because the latter are characterized by a “lack of debate over substantive issues and accepted knowledge,” the failure to generate new data, an over-emphasis on Al-Q’aida at the expense of a consideration of the historical and conceptual dimensions of terrorism, the lack of multi-disciplinarity, reliance on biased data and information, and research practices that compromise the independence and credibility of terrorism scholars (Ibid., 5). Emphasizing the need for a new methodological approach as well as a new objectivity in terrorism research, CTS has since found its niche within an academic landscape that is increasingly concerned with the justification of a spatially and temporally unlimited war on terrorism and the problematic relationship between international law, national sovereignty, and imperial power.<sup>16</sup>

Even though CTS scholars correctly point out the major shortcomings of conventional Terrorism Studies, they remain wedded to an understanding of terrorism and violence that posits terrorism as a “form of behaviour that can, within specific discursive and structural contexts, be understood as ‘terrorist’” (Ibid., 6). Elaborating on this point, Jeffrey A. Sluka explains:

There are many dozens of examples of the abuse of the epithet ‘terrorism’ by applying it to legitimate armed resistance movements, but just a few prominent contemporary examples include all of the major hot spots of political violence in the world today – including the Colombian government’s claim that the FARC are ‘terrorists’, the Israeli government’s claim that the PLO

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<sup>16</sup> For an important reference with regard to the justification of war see Walzer, Michael. *Arguing About War*. New Haven and London: Yale University Press, 2004. For an excellent critical intervention see Kochi, *The Other’s War*.

and the Hamas are ‘terrorists’, the Chinese government’s claim that Uigher and Tibetan activists are ‘terrorists’, the Indonesian government’s claim that the Free Papua Movement (OPM) and Free Aceh Movement (GAM) are ‘terrorists’, the Sri Lanka government’s claim that the Tamil Tigers (LTTE) are ‘terrorists’, the Spanish and French governments’ claim that the Basque ETA are ‘terrorists’, the Burmese junta’s claim that the ethnic rebels in the highlands are ‘terrorists’, the Indian government’s claim that the indigenous rebels in Kashmir and other regions are ‘terrorists’, and the US and UK governments’ claim that the insurgents in Iraq and Afghanistan are ‘terrorists’ (Sluka 2009, 150).

In other words, even though CTS scholars are critical of the attribution of the label “terrorism” to certain kinds of violence, they agree with traditional accounts of terrorism that something like terrorism exists and that it is possible to define it and to identify acts of terrorism accordingly. The problem diagnosed by CTS, then, is not that governments themselves seem to engage in what they define as terrorism, but that governments apply the term to forms of violence that are, in fact, legitimate forms of resistance, insurgency or civil conflict. CTS scholars claim to know that governments do this for ideological reasons. They also argue that governments are not justified in doing so. Consequently, CTS scholars seek to reclaim and reserve the label terrorism for forms of violence that are “properly” terrorist.

It is, however, not at all clear by what standards this distinction is made or on what basis CTS scholars can claim a privileged position in distinguishing between legitimate and illegitimate violence. In addition, CTS scholars have to introduce another criterion by which to differentiate terrorism proper from legitimate violence, a criterion that is neither clear cut nor historically or contextually stable. Justifications of violence in terms of a natural or moral right to violent resistance are not too far away from the legitimization of state violence proffered by conventional terrorism research. It seems, moreover, that the campaign for a more precise and more balanced understanding of

terrorism that takes into account the view of those who are currently marginalized is politically ineffective. Such an approach brackets out the political stakes of defining terrorism as a certain kind of behavior. In fact, such a view enshrines terrorism as an instrument for classifying particular types of behavior and then giving that classification the force of law. In other words, by announcing its critical stance towards governments' opportunism and politicization of terrorism, CTS covers over its own complicity in the production of a powerful weapon that allows for the delegitimation and criminalization of resistance to hegemonic political interests.

There is no doubt that, as critical theorists and political activists, we need to rethink the frameworks through which we understand war, violence and terrorism. However, the usefulness of yet another definition of terrorism that is then applied to oppose and criticize dominant understandings seems to be far from obvious. One thing we certainly do not need in debates about terrorism is one more addition to the endless list of definitions that claim to be the right ones. Widening, narrowing or amending the definition of terrorism is addressing symptoms, not curing the disease. Instead, we should understand terrorism in the context of wider relations of power. This argument will be outlined shortly and developed in detail in subsequent chapters. For the moment, it suffices to note that if terrorism is understood as the result of a more general economy of power, these relationships of power also need to be taken into account.

In fact, a fourth approach to the question what terrorism is emerged in response to the failure of CTS to analyze the power relations in which terrorism is embedded. Terrorism is here understood as the effect of and response to global relations of domination and oppression. Pointing out that state violence, too, meets the criteria of terrorism, some commentators have tried to present terrorism as an understandable form of resistance against the West. At first sight, this view seems to avoid the naturalizing

and ahistorical tendencies of traditional and Critical Terrorism Studies. On a pragmatic level, however, explanations such as Žižek's reflections on terrorism as divine violence, or Baudrillard's suggestion that the suicide bombers of 9/11 only did what "we" had wished for, are at best waived aside as the ravings of madmen; in the worst case, one risks censorship, personal accusation and the destruction of one's credibility not only as a scholar, but as a speaking subject (Baudrillard 2002, Žižek 2008). Moreover, such accounts of terrorism remain theoretically unsatisfactory and politically unproductive. It seems that the illusion that there is a kind of violence which is readily identifiable as terrorism has also contaminated approaches that claim to be critical of essentializing and ideological accounts of terrorism. Even though these polemical portrayals of terrorism do not make the mistake of defining it as a naturally given and relatively stable form of violence, they nevertheless see terrorism in its continuity as the constitutive outside or the unavoidable product of liberalism and capitalism. This explanation is no less reductive than mainstream and Critical Terrorism Studies because it fails to take seriously the complex and uneven development of both terrorism and liberalism. This approach is equally ideological and bound up with a different yet no less problematic regime of truth in which terrorism is constituted.

This brief survey of the main responses to the question what terrorism is reveals a major problem faced by any attempt to define terrorism by identifying its truth or essence in a set of naturally given constitutive elements. This problem can be described as the relationship between conceptions of terrorism and regimes of truth. Foucault calls a regime of truth (*régime de vérité*) the conditions that make discourses function as true within a given society. Regimes of truth consist of mechanisms that enable the distinction between true and false statements and provide the means by which truth is to be obtained. In modern societies, Foucault explains, regimes of truth are characterized



by five elements: first, truth is tethered to a scientific discourse and those institutions that produce it; second, truth is constantly instigated by political and economic processes; third, truth circulates in institutions that are at the same time diffuse and restricted; fourth, truth is distributed by political and economic institutions; and fifth, truth is the object of ideological disputes (Foucault 1977, 158-159). In the case of terrorism, too, regimes of truth regulate when the statement that an act of violence is terrorism counts as true. This truth is congealed in a juridical structure that produces, reproduces and regulates terrorism as a kind of behavior and as a particular form of violence. This violence is diffuse and, at the same time, strictly policed. In a cycle that obscures the discursive production of terrorism and instead naturalizes it, terrorism legitimates, indeed requires, an expansion of power. In other words, terrorism becomes the pretext for various disciplinary measures that are deployed in the name of security and that work in favor of wider economic and political goals.

## **1.2 From definition to genealogy**

A more meaningful attempt to explore what terrorism is, has to avoid the pitfalls discussed in the previous section and must seek to uncover the economies of power and the regimes of truth underlying dominant presumptions about terrorism. It has to eschew politically charged, ahistorical and naturalizing assumptions about terrorism. For this purpose, the present investigation draws from disciplines such as critical political philosophy, legal theory and history, bringing together different bodies of knowledge for a philosophical history, or genealogy, of terrorism. This interdisciplinarity will hopefully allow for the “emergence of theory at the site where cultural horizons meet, where the demand for translation is acute and its promise of success, uncertain” (Butler 2007, x). This demand for translation, the need to come up

with new and more productive ways of thinking about terrorism is undeniable. For most of its history, the response to terrorism has been some sort of military or police action rather than a critical examination of the relationship between terrorism and power. It has led to more violence and a dynamic by which terrorist attacks and retaliatory strike result in permanent war.

To generate an account of terrorism that is theoretically thorough, avoids the anachronistic attribution of concepts across time and space, yet is still historically grounded, the point of departure of the present project is not “Terrorism” understood as an unequivocal and consistent phenomenon. As will become obvious in subsequent chapters, the assumption that there is a universal basis or an essence of terrorism is rendered problematic by its instability and its historical as well as contextual flexibility. While I agree that there are certain similarities that can be found in perceptions of the terrorist at various points in time, I dispute the conclusion that terrorism is some kind of readily identifiable, unchanging natural given. Such thinking ignores and actually obscures the contestations over the term, the resistances against dominant interpretations, the power struggles underlying these frictions, and the various effects terrorism discourse produces in different social, historical and political contexts. In other words, an understanding of terrorism as a historical phenomenon has to start with its function within power relations rather than from an attempt to establish its definition. To this end, the methodological framework organizing the analysis of terrorism in this thesis is guided by the kind of critical historiography envisaged by Friedrich Nietzsche and Michel Foucault.

Nietzsche has noted the difficulty of defining historical phenomena on different occasions. In “The Genealogy of Morals” (1887), Nietzsche emphasizes that the practices and procedures that become mastered and subjugated to a particular meaning

are older than the sense that is given to them. At a certain point in time, practices that have existed long before “crystallize in a sort of unity which is difficult to unravel, difficult to analyze and ... completely beyond definition. ... Only that which is without history can be defined” (Nietzsche 1996, 57-61). For Nietzsche, the impossibility of defining historical phenomena is due to their permanent development and mutability. The unification of long existing and previously unrelated practices in something like a definition or a concept indicates that someone had a stake in their consolidation and institutionalization.<sup>17</sup> Imposing a definition on historical processes constitutes a snapshot, so to speak, of an ever changing and evolving network of forces. It is an operation of power and the sign and seal of a victory, albeit a temporary one, in a continuous struggle for power. Nietzsche thus shifts the focus from a stable and naturally given to a variable and discursively produced reality of historical figures.<sup>18</sup>

Foucault develops a similar argument towards the end of his second lecture series on modern governmentality, “The Birth of Biopolitics” (1978/79), where he charts the development of civil society as a correlate of an emerging economy of power.<sup>19</sup> Civil society, he maintains, is not “an historical-natural given which functions in some way as both the foundation of and source of opposition to the state or political institutions” (Foucault 2010a, 297). It is “not a primary and immediate reality” but rather has the status of what Foucault calls “transactional realities” (*réalités de transaction*) in the history of governmental techniques (Ibid.). This means, Foucault

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<sup>17</sup> Raymond Geuss has stressed the normative function of what he calls conceptual innovation in political theory. Geuss argues that “introducing the ‘concept’ requires one to get people not merely to use a certain word, but also to entertain a certain kind of theory, which has a strong ‘normative’ component” (Geuss 2008, 44).

<sup>18</sup> On Nietzsche’s historical method see Geuss, Raymond. “Nietzsche and Genealogy.” *European Journal of Philosophy* 2, no. 3 (1994): 274-292.

<sup>19</sup> By governmentality, Foucault means three things: first, the structural conditions of possibility of the modern economy of power, second, modernity’s proclivity toward biopolitical forms of power, and third, the modern state as the product of transformations undergone by the medieval state of justice (Foucault 2010a). For an excellent discussion of Foucault’s notion of governmentality see Lemke, Thomas. *Foucault, Governmentality, and Critique*. Boulder: Paradigm Publishers, 2011.

explains, that “those transactional and transitional figures that we call civil society, madness, and so on, which, although they have not always existed are nonetheless real, are born precisely from the interplay of relations of power and everything which constantly eludes them, at the interface, so to speak, of governors and governed” (Ibid.). For Foucault, these transactional figures are effects of and “absolutely correlative to the form of governmental technology we call liberalism” (Ibid.).

Foucault is even more explicit in his skepticism toward the status of reality of such transactional figures in his 1982/83 lecture series, “The Government of Self and Others.” Here, he distinguishes his general project from a “history of knowledge undertaken in terms of an index of truth” as well as from a “history of ideologies undertaken by reference to a criterion of reality” (Foucault 2010b, 310). Instead, Foucault situates his own work between or, rather, at the intersection of these two traditional approaches as a history of thought. “And by ‘thought,’” Foucault clarifies, “I meant an analysis of what could be called focal points of experience in which forms of a possible knowledge (*savoir*), normative frameworks of behavior for individuals, and potential modes of existence for possible subjects are linked together” (Ibid., 3). Rather than merely asking whether or not a discourse actually speaks the truth, or why it might fail to do so, a history of thought constitutes a “history of the ontologies of veridiction” and “poses at least three questions.”

First: What is the mode of being peculiar to this or that discourse, as distinct from others, when it introduces a certain specific game of truth into reality? Second question: What is the mode of being that this discourse of veridiction confers on the reality it talks about, through the game of truth it practices? Third question: What is the mode of being that this discourse of veridiction imposes on the subject who employs it, such that this subject can play this specific game of truth properly? (Ibid., 309-310).

What such an approach entails, Foucault continues, is that every discourse of truth has to be regarded as a practice whose correlate is an understanding of truth in terms of a “game of veridiction” (Ibid., 310). Consequently, Foucault maintains, every ontology must be “analyzed as a fiction. Which means again: the history of thought must always be the history of singular inventions” (Ibid.). In other words, both Foucault and Nietzsche urge us to abandon the question “what *is* X?” in order to replace it with the question “what does X *do*, how does it *function*, and what does it *mean* in a particular context?” whenever we are dealing with historical phenomena.

The impossibility of defining terrorism unequivocally due to its historicity and its mutability over time thus suggests an account of terrorism on the basis of its historical manifestations understood as singular inventions. As a consequence, I want to steer clear of an understanding of terrorism that ascribes to it a universal, ahistorical character and that tries to identify its essence. I instead seek to offer an analysis of terrorism as a fiction, i.e. as a phenomenon whose status of reality is determined by the effects of its discursive ontology rather than by its existence as a natural or historical given. The focus thus has to be shifted from an investigation of terrorism on the basis of its definition, to an analysis of terrorism by way of its effects. If the question is no longer what terrorism is but what it does, the obvious answer seems to be that it does different things at different times and in different contexts. In other words, terrorism has multiple effects that range from the dismantling of legal norms, to the legitimization of state violence and the expansion and dissemination of sovereign power in the name of freedom and security. More recently, the effects of terrorism have appeared in measures such as indefinite detention, torture, the suspension of basic constitutional rights and

liberties, or the militarization of airports.<sup>20</sup> In short, terrorism plays out on the level of a more general economy of power.

This type of investigation into the constitution of historical phenomena is what Foucault calls genealogy or effective history.<sup>21</sup> The point of genealogy, he argues in “Nietzsche, Genealogy, History” (1971), is not to “demonstrate that the past actively exists in the present, that it continues secretly to animate the present, having imposed a predetermined form on all its vicissitudes” (Foucault 1991b, 81). Genealogy does not regard the emergence of its object as “the final term of a historical development,” but instead grasps it as a “place of confrontation,” or rather “a ‘non-place’, a pure distance, which indicates that the adversaries do not belong to a common space” (Ibid., 74-85). The drama taking place in this non-place is “the endlessly repeated play of dominations” (Ibid., 85).

The aim of a genealogy of terrorism is, therefore, not to find its chronological origin and to trace the continuity of what has once been established as terrorism through time. Even though we will see in the following chapter that the historical origin of the concept terrorism can easily be identified, this beginning is not the origin of terrorism in any genealogical sense. Instead, the genealogical origin of terrorism must be understood as a continuously repeated struggle that is operative in every attempt to define what we mean when we talk about terrorism. Borrowing from Agamben, I argue that the origin of terrorism can usefully be understood as a field of historical tensions that is demarcated by the opposition of illegitimate violence on one side and legitimate

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<sup>20</sup> For illuminating first-hand information and insiders’ accounts of these processes see, for example, Jamail, Dahr. *Beyond the Green Zone. Dispatches from an Unembedded Journalist in Occupied Iraq*. Chicago: Haymarket Books, 2008, Mandel, Michael. *How America Gets Away With Murder. Illegal Wars, Collateral Damage and Crimes Against Humanity*. London: Pluto Press, 2004 and Sands, Philippe. *Lawless World. The Whistle-Blowing Account of How Bush and Blair Are Taking the Law into Their Own Hands*. London: Penguin Books, 2006.

<sup>21</sup> Philipp Sarasin provides an excellent analysis of Foucault’s genealogical method and its proximity to Charles Darwin’s principles of evolution in *Darwin und Foucault. Genealogie und Geschichte im Zeitalter der Biologie*. Frankfurt am Main: Suhrkamp, 2009.

violence on the other (Agamben 2009). Since today, according to Max Weber, legitimate violence is monopolized by the state, what is at stake in a genealogy of terrorism is the continuous rearticulation of terrorism in opposition to the state (Weber 1991).

Accordingly, this project charts and critically engages certain watershed moments in the historical development of those forms of violence that are represented as terrorism in order to cast light on the economy of power that organizes, manages, and controls the ways in which terrorism is articulated and deployed. On this account, the development of terrorism and its concomitant practices maps out a field of power relations that also produces a political rationality which seeks to limit government interference in favor of economic processes and promotes a type of public liberty that is modeled on the freedom of the market. In the balance are, in other words, terrorism and liberalism as effects of a new economy of power which emerged in Europe around the late sixteenth and early seventeenth century. This is not to say that terrorism is always and inevitably the diametrical opposite of liberalism. Rather, even though terrorism and liberalism have historically been related political phenomena for the last two hundred years, we will see in subsequent chapters that they have not always been in the same relation. There is no smooth development of liberalism and terrorism; on the contrary, terrorism plays an important role in the uneven advance of liberalism.

Nevertheless, terrorism is part of this economy of power which displaced the medieval model of sovereign power and to which, Foucault argues, the state owes its survival. On his view, the state appears as the “effect, the profile, the mobile shape of a perpetual statification (*étatisation*) or statifications, in the sense of incessant transactions which modify, or move, or drastically change, or insidiously shift sources of finances, modes of investment, decision-making centers, forms and types of control,

relationships between local powers, the central authority, and so on” (Foucault 2010a, 77). Since the state is itself the product of changing relations of power and articulated through shifting political rationalities, terrorism and the state ultimately appear as symmetrical phenomena of the same economy of power that are at the same time coincidental and politically useful. An adequate understanding of terrorism as a historical figure with contextually variable functions thus requires not only an examination of the processes by which terrorism and the state are defined in opposition to each other but also demands an inquiry into the articulation of both state and terrorism in relation to political concepts such as the nation or, more recently, humanity and the universality of human rights. As a result, what needs to be considered are the political rationalities which give rise to and, indeed, require the representation of terrorism as illegitimate violence and of state violence as legitimate.

### 1.3 Terrorism and the state

So far, we have established that a genealogy of terrorism appears as a salutary alternative to problematic attempts to define terrorism. We have also found that such a project has to be situated in the context of an analysis of a wider economy of power. A number of authors have offered important insights into the power relations undergirding modern politics of the kind envisaged by Nietzsche and Foucault. Max Weber, Walter Benjamin, Carl Schmitt, Hannah Arendt and the Frankfurt School are perhaps the most relevant examples with regard to the concern of this thesis.<sup>22</sup> They are also important

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<sup>22</sup> On the relevance of Benjamin for understanding terrorism see my “Notes on violence: Walter Benjamin’s relevance for the study of terrorism.” *Journal of Global Ethics* 6, no. 2 (2010): 167-178. With regard to the currency of Arendt, Weber and Schmitt, the reader is referred to Honig, Bonnie. *Emergency Politics: Paradox, Law, Democracy*. Princeton and Oxford: Princeton University Press, 2009, Kalyvas, Andreas. *Democracy and the Politics of the Extraordinary. Max Weber, Carl Schmitt, and Hannah Arendt*. Cambridge: Cambridge University Press, 2008, Kochi, Tarik. “The Partisan: Carl Schmitt and Terrorism.” *Law and Critique* 17, no. 3 (2006): 267-295, Odysseos, Louiza and Fabio Petito, (eds.) *The International Political Thought of Carl Schmitt: Terror, Liberal War and the Crisis of Global Order*.



intellectual sources of Giorgio Agamben, whose work has been widely received in recent years, particularly with regard to the legal and political developments in many Western states in reaction to terrorism.<sup>23</sup>

Agamben identifies the state of exception as the paradigm of Western politics since its inception in the Greek polis. Even though he admits that “Security as leading principle of state politics dates back to the birth of the modern state,” he also claims to have demonstrated that the political concern with the natural life of individuals – which arguably is at issue in anti-terrorist measures – has been the object of sovereign power throughout the history of Western politics (Agamben 2002, 1).<sup>24</sup> Arguing that *homo sacer*, a figure of archaic Roman law who can be killed with impunity but not

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Abingdon and New York: Routledge, 2007 and Scheuerman, William E. “Carl Schmitt and the Road to Abu Ghraib.” *Constellations* 13, no. 1 (2006): 108-124.

<sup>23</sup> See for example Aradau, Claudia. “Law Transformed: Guantanamo and the ‘Other’ Exception.” *Third World Quarterly* 28, no. 3 (2007): 489-501, Blake, Sarah. “The War on Terrorism as State of Exception: A Challenge for Transnational Gender Theory.” *Journal of International Women’s Studies* 11, no. 3 (2009): 56-65, Dauphinee, Elizabeth and Cristina Masters, (eds.) *The Logics of Biopower and the War on Terror*. New York: Palgrave Macmillan, 2007, Diken, Bülent and Laustsen, Carsten Bagge. “Zones of Indistinction - Security, Terror, and Bare Life.” *Space and Culture* 5 (2002): 290-307, Ibid., “7/11, 9/11, and Post-Politics.” *Alternatives* 29 (2004): 89-103, Ibid., *The Culture of Exception: Sociology Facing the Camp*. New York: Routledge, 2005, Edkins, Jenny, Veronique Pin-Fat and Michael J. Shapiro, (eds.) *Sovereign Lives: Power in Global Politics*. London: Routledge, 2004, Gregory, Derek. “The Black Flag: Guantanamo Bay and the Space of Exception.” *Geografisker Annaler* 88, no. 4 (2006): 405-427, Ibid., “Vanishing Points: Law, Violence, and Exception in the Global War Prison.” In *Violent Geographies: Fear, Terror, and Political Violence*, edited by Derek Gregory and Allan Pred, London and New York: Routledge, 2007, Huysmans, Jef. “International Politics of Exception: Competing Visions of International Political Order between Law and Politics.” *Alternatives* 31, no. 2 (2006): 135-165, Ibid., “The Jargon of Exception - On Schmitt, Agamben and the Absence of Political Society.” *International Political Sociology* 2 (2008): 165-183, Minca, Claudio. “The Return of the Camp.” *Progress in Human Geography* 29, no. 4 (2005): 405-412, Ibid., “Giorgio Agamben and the New Biopolitical Nomos.” *Geografisker Annaler* 88, no. 4 (2006): 387-403, Neal, Andrew. *Exceptionalism and The Politics of Counter-Terrorism: Liberty, Security and the War on Terror*. Abingdon and New York: Routledge, 2009, Newman, Saul. “Terror, Sovereignty and Law: On the Politics of Violence.” *German Law Journal* 5, no. 5 (2004): 569-584, Tagma, Halit Mustafa. “Homo Sacer vs. Homo Soccer Mom: Reading Agamben and Foucault in the War on Terror.” *Alternatives: Global, Local, Political* 34, no. 4 (2009): 407-435 and Van Munster, Rens. “The War on Terrorism: When the Exception Becomes the Rule.” *International Journal for the Semiotics of Law* 17, no. 2 (2004): 141-153.

<sup>24</sup> Agamben’s differentiation between natural life and way of life is based on his reading of Aristotle’s distinction between *zoē* and *bios*. Agamben’s problematic interpretation of Aristotle has been discussed by Botwinick, Aryeh. “Post-Shoah Political Theology.” *Telos* Fall (2001): 55-72, Dubrueil, Laurent. “Leaving Politics: Bios, Zoē, Life.” *Diacritics* 36, no. 2 (2006): 83-99, Finlayson, James Gordon. “‘Bare Life’ and Politics in Agamben’s Reading of Aristotle.” *The Review of Politics* 72, no. 1 (2010): 97-126 and Patton, Paul. “Agamben and Foucault on Biopower and Biopolitics.” In *Giorgio Agamben. Sovereignty and Life*, edited by Matthew Calarco and Steven DeCaroli, 203-218. Stanford: Stanford University Press, 2007.

sacrificed, constitutes the paradigmatic rendering of bare life as at the same time included in and excluded from the political sphere, Agamben infers that “*homo sacer* names something like the originary ‘political’ relation, which is to say, bare life insofar as it operates in an inclusive exclusion as the referent of the sovereign decision” (Agamben 1998, 84). Agamben thus characterizes “the modern State” as feeding on a concealed relation between power and life that ties modern to archaic power and that only comes to light in exceptional instances. Moreover, he argues, it is not just totalitarian regimes that depend on the politicization of bare life. Determining the liberal premise that one has to become a subject before one can become the bearer of rights as “modern democracy’s secret biopolitical calling,” Agamben brings out the connection between law and life that is at work even in liberal democracy (Ibid., 124). “Law needs a body in order to be in force,” and this body becomes “the bearer both of subjection to sovereign power and of individual liberties” (Ibid., 124-125).

Following Agamben’s analysis, it might be argued that the dismantling of legal norms and the outlawing of terrorist suspects in recent years merely constitutes the culmination of a long-standing tradition of Western politics. In fact, Agamben presents a similar argument with regard to the Nazi concentration camp which he sees as the paradigm of the entire tradition of Western politics. On this account, terrorism – like the camp – would seem to reveal the inability of liberal democratic politics to distinguish between the body as a holder of rights and the body as the surface of sovereign power. In an emergency (*im Ernstfall*), this indistinction results in the abrogation of legal entitlements and legal protection.

Seven years before the enactment of the USA Patriot Act and the setting up of detention camps in Guantanamo Bay and elsewhere, Agamben warned that, since all politics is exceptional and, hence, the exception is not so much an exception as the rule,

“we must expect not only new camps but also always and more lunatic regulative definitions of the inscription of life in the city” (Ibid., 176). Given this almost prophetic portrayal of the political landscape in the wake of 9/11 and the War on Terror, Agamben’s widespread reception and his massive influence across academic disciplines are hardly surprising. Even though Agamben provides important insights into the structural continuity of mechanisms by which law is suspended and state violence targets the life of individuals, his analysis of modern power is nevertheless problematic for an account of terrorism because the conclusion he draws is an untenable generalization and fails to explain the underlying political interests giving rise to the suspension of legal norms.

Agamben tends to treat present-day political practices as the logical result of an inescapable historical development of “the (liberal democratic) State.” This explanation fails to account for the complex mechanisms that have historically been, and still are used in a variety of ways and that make up very different kinds of states. Agamben neglects the importance of historical as well as constitutional differences between states, instead making sweeping claims about “the modern State” – as if there was a constant and readily recognizable distinctly modern arrangement of institutions that could be identified as such. Ultimately, Agamben’s account is reductionist and its consequences are as problematic as they are counterproductive. In both practical and theoretical terms, simply drawing a line from *homo sacer* to Nazi concentration camps to detention centers à la Abu Ghraib or Guantanamo Bay reduces to sameness what are, in fact, important differences.<sup>25</sup>

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<sup>25</sup> For similar criticisms of Agamben see for example Connolly, William E. “The Complexities of Sovereignty.” In *Giorgio Agamben: Sovereignty & Life*, edited by Matthew Calarco and Steven DeCaroli, 23-42. Stanford: Stanford University Press, 2007, Fitzpatrick, Peter. “Bare Sovereignty: Homo Sacer and the Insistence of the Law.” *Theory & Event* 5, no. 2 (2001), Gratton, Peter. “A ‘Retro-version’ of Power: Agamben via Foucault on Sovereignty.” *Critical Review of International Social and Political Philosophy* 9, no. 3 (2006): 445-459, Kalyvas, Andreas. “The Sovereign Weaver. Beyond the Camp.” In *Politics*,

In addition, Agamben explains the politicization of life in a state of exception as the effect of the general function of sovereignty. He therefore assumes that the suspension of law with regard to political subjects is the result of a certain continuity in how power is exercised. Agamben thereby fails to investigate the underlying reasons, the political interests and the changes in power relations that demand the use of certain measures. In other words, just because terrorists are treated in ways that appear to be identical to other examples of *homines sacri*, neither the reasons behind their precarious legal status nor their role within a wider political context are the same. Agamben's analysis stops short of going behind the manifestation of power in order to explain the ways in which similar techniques of power are deployed in different contexts, for different reasons, and with different intentions.

A critical investigation of the relation between terrorism and the state as both effects of a wider field of power relations permits a more nuanced critique of the state than Agamben's account. Exploring the significance of larger political rationalities for particular conceptions of both terrorism and the state effectively addresses the shortcomings of wholesale condemnations of "the State," especially in its liberal democratic form, which supposedly has its decay from latent to more overt authoritarian tendencies built in at the very core. Exploring terrorism in its historically

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*Metaphysics, and Death. Essays on Giorgio Agamben's Homo Sacer*, edited by Andrew Norris, 107-134. Durham and London: Duke University Press, 2005, Ojakangas, Mika. "Impossible Dialogue on Bio-Power: Agamben and Foucault." *Foucault Studies* 2 (2005): 5-28, Patton, *Agamben and Foucault on Biopower* and Rasch, William. "From Sovereign Ban to Banning Sovereignty." In *Giorgio Agamben: Sovereignty & Life*, edited by Matthew Calarco and Steven DeCaroli, 92-108. Stanford: Stanford University Press, 2007. For a different account see DeCaroli, Steven. "Boundary Stones: Giorgio Agamben and the Field of Sovereignty." In *Giorgio Agamben: Sovereignty & Life*, edited by Matthew Calarco and Steven DeCaroli, 43-69. Stanford: Stanford University Press, 2007. The relation between Agamben and Foucault is also extensively examined in Bussolini, Jeffrey. "Critical Encounter Between Giorgio Agamben and Michel Foucault." *Foucault Studies* 10 (2010): 108-143, Genel, Katia. "The Question of Biopower: Foucault and Agamben." *Rethinking Marxism: A Journal of Economics, Culture & Society* 18, no. 1 (2006): 43-62, Sarasin, Philipp. "Agamben - oder doch Foucault?" *Deutsche Zeitschrift für Philosophie* 51 (2003a): 348-353 and Short, Jonathan. "'Life and Law: Agamben and Foucault on Governmentality and Sovereignty'." *Journal for the Arts, Sciences, and Technology* 3, no. 1 (2005): 16-25.

variable meanings and functions helps us to correct Agamben's account by bringing into view the state not as an unchanging institutional arrangement but as the effect of an evolving economy of power. To speak with Foucault, terrorism appears as a pivotal element in processes of governmentalization.

## **1.4 Terrorism and governmentality**

A more productive understanding of terrorism as part of a larger economy of power demands the abandonment of grand narratives of the type Agamben writes. Instead, it is necessary to pay attention to the processes through which formal structures, institutions and practices are co-opted, diverted and inverted for actual operations of power. In "Security, Territory, Population" (1977/78), Foucault criticizes (at the time predominantly Marxist) accounts of the state which, he argues, consist in "reducing the state to a number of functions" and which fail to understand that "the state, doubtless no more today than in the past, does not have this unity, individuality, and rigorous functionality, nor, I would go so far as to say, this importance. After all, maybe the state is only a composite reality and a mythicized abstraction whose importance is much less than we think" (Foucault 2009b, 109). Accordingly, Foucault proposes to substitute institutional and state-centered accounts of power with "a history of the actual techniques themselves."

There is another history, which would be the history of technologies, that is to say the much more general, but of course much more fuzzy history of the correlations and systems of the dominant feature which determine that, in a given society and for a given sector – for things do not necessarily develop in step in different sectors, at a given moment, in a given society, in a given country – a technology of security, for example, will be set up, taking up again and sometimes even multiplying juridical and disciplinary elements and redeploying them within its specific tactic (Ibid., 8-9).

On this view, the state appears as “constituted by the set of practices by which the state actually became a way of governing, a way of doing things, and a way too of relating to government” (Ibid., 277). The state is the “regulatory idea of governmental reason,” a “principle of intelligibility of reality for this political thought that was seeking the rationality of an art of government,” a “way of thinking the specific nature, connections, and relations of certain already given elements and institutions” (Ibid., 286). It is in this context that the function of terrorism and counter-terrorism practices has to be analyzed. Since moreover the state is itself the product of variable practices of government and thus subject to transformation, most significantly perhaps through processes of globalization, a genealogical study of terrorism and the state has to take political developments and changes in power structures into consideration. Even though Foucault was not explicitly concerned with a newly emerging post-national economy of power, his work nevertheless permits for an analysis of recent challenges posed to power relations on the level of the nation-state.

Such an account of contemporary counter-terrorism practices under conditions of governmentality has been developed by Judith Butler in her essay “Indefinite Detention” (2004). By way of mobilizing a Foucauldian framework of theorizing power, Butler is able to account for the coexistence of different forms of power in a single political regime. Her work therefore seems to be more promising than Agamben’s as a theoretical starting point for the kind of genealogical study of terrorism developed in this thesis. Even though heavily influenced by Agamben, Butler offers a more careful interpretation of power that resonates with Foucault’s work on governmentality. Her essay offers an insightful meditation on power in post-9/11

America, thereby proposing important corrections of Agamben's misrepresentation of Foucault as well as of the theoretical implications that follow from it.<sup>26</sup>

Butler shifts the focus from sovereignty and juridical-institutional models of power to an analysis of power more broadly conceived.<sup>27</sup> Butler takes seriously Foucault's contention that, in political theory, we need to cut off the king's head and abandon a unitary theory of power as concentrated in a self-grounding and unified sovereign and the prohibitive function of the law. She therefore seeks to rethink the relationship between sovereignty and biopolitics and the divergences and transformations of both forms of power under conditions of permanent emergency. Nevertheless, she shares Agamben's view that Foucault's portrayal of power needs to be revised in order to account for the strange hybrid of sovereignty and governmentality that has emerged in response to an apparently heightened threat of terrorism in the United States. What cannot be explained in the way of Foucault's account, she claims, is the anachronistic resurgence of sovereignty within governmentality in a state of emergency.

Over and against Agamben, Butler insists that Foucault makes an analytic, not a temporal distinction between sovereignty and governmentality, and that it is thus possible to think a coexistence of both forms of power. "Procedures of governmentality, which are irreducible to law," Butler explains, "are invoked to extend and fortify forms of sovereignty that are equally irreducible to law."

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<sup>26</sup> Butler's essay appeared five months before the first publication of Foucault's lecture series "Security, Territory, Population" in French. Her interpretation is all the more remarkable since, presumably without knowing the content of the lectures, she anticipates much of what Foucault argues in "Security, Territory, Population." See Foucault, Michel. *Security, Territory, Population: Lectures at the Collège de France, 1977-1978*. Basingstoke: Palgrave Macmillan, 2009b.

<sup>27</sup> This allows Butler to analyze forms of power outside of political institutions. See for example her reading of the inscription of nationalist, racist and anti-Muslim sentiments into everyday life in the chapter "Torture and the Ethics of Photography: Thinking with Susan Sontag" in Butler, Judith. *Frames of War. When Is Life Grievable?* London: Verso, 2009.

Neither is necessarily grounded in law, and neither deploys legal tactics exclusively in the field of their respective operations. The suspension of the rule of law allows for the convergence of governmentality and sovereignty; sovereignty is exercised in the act of suspension, but also in the self-allocation of legal prerogative; governmentality denotes an operation of administration power that is extra-legal, even as it can and does return to law as a field of tactical operations. The state is neither identified with the acts of sovereignty nor with the field of governmentality, and yet both act in the name of the state. ... [P]recisely because our historical situation is marked by governmentality, and this implies, to a certain degree, a loss of sovereignty, that loss is compensated through the resurgence of sovereignty within the field of governmentality. ... The resurrected sovereignty is thus not the sovereignty of unified power under the conditions of legitimacy, the form of power that guarantees the representative status of political institutions. It is, rather, a lawless and prerogatory power, a “rogue” power *par excellence* (Butler 2004a, 55-56).

The guidelines introduced at Guantanamo Bay in March 2002 that allocated to state officials the power to decide who was and who was not to be tried according to national, military and international legal frameworks, illustrate Butler’s claim that, under conditions of governmentality, sovereignty is transformed and used as a tactic, thereby producing a lawless power that relies on both sovereignty and governmentality and that acts in the name of the state. Not only did the Department of Defense put the question of whether or not a trial was to be held at all at the discretion of government officials; it also maintained that acquittal would not necessarily end detention and revoked any right of appeal for those detainees tried in military tribunals. In other words, the Department of Defense suspended the separation of powers as well as basic human and civil rights, thereby extending its sovereign power to decide whether or not the law applied to terrorist suspects temporally (that is indefinitely) and geographically (that is beyond US territory).

Moreover, the decision to hold trial or to detain indefinitely was transferred to government representatives who are neither elected democratically nor members of the



judiciary. As “managerial officials with no clear claim to legitimacy,” they undoubtedly belong to a governmental system (Ibid., 54). Their exercise of managerial power, however, occasions an anachronistic revival of sovereignty. For Butler, these “petty sovereigns” are “part of the apparatus of governmentality; their decision, the power they wield to ‘deem’ someone dangerous and constitute them effectively as such, is a sovereign power, a ghostly and forceful resurgence of sovereignty in the midst of governmentality” (Ibid., 56-59). As a result, Butler understands this contemporary version of sovereignty as a “spectral sovereignty” (Ibid., 61), which “becomes an instrument of power by which law is either used tactically or suspended, populations are monitored, detained, regulated, inspected, interrogated, rendered uniform in their actions, fully ritualized and exposed to control and regulation in their daily lives” (Ibid., 97). This new form of sovereignty is not self-grounding and, therefore, not true sovereignty. The new sovereigns’ authority to decide over the application of law and, hence, over the life and death of certain individuals depends on a delegation of power that is distributed and circulates within a governmental field. On this view, “Governmentality is the condition of this new exercise of sovereignty in the sense that it first establishes law as a ‘tactic,’ something of instrumental value, and not ‘binding’ by virtue of its status as law” (Ibid., 62).<sup>28</sup>

In contrast to Agamben’s sovereignty, which is a relation of power and law that takes the form of the law’s suspension, Butler’s new sovereignty is not the cause but the effect of the suspension of law. Under conditions of governmentality, she argues, state power creates sovereignty through the suspension of a law that is no longer binding but

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<sup>28</sup> In the same vein, Foucault explains that unlike sovereignty, the art of government is concerned with “employing tactics rather than laws, or, ... as far as possible employing laws as tactics” (Foucault 2009b, 99). For an instructive account of the tactical use of legal frameworks and institutions in a different historical and political context see also Otto Kirchheimer’s analysis of the crisis of the Weimar Republic in “Legality and Legitimacy.” In *The Rule of Law under Siege*, edited by William E. Scheuerman and translated by Anke Grosskopf and William E. Scheuerman, 44-63. Berkeley, Los Angeles and London: University of California Press, 1996.

rather seen as a more or less useful tactic. This does not mean that the state stops creating law. Yet, the law produced in circumstances of lawlessness is what Agamben understands as “executive decree,” that is, an extension of executive power into the legislative sphere rather than law produced by a legislative body (Agamben 2005, 13).<sup>29</sup> As such, it appears, on the one hand, as illegitimate by the standards of traditional accounts of law. On the other, it perpetuates the exercise of new sovereignty. For Butler, both governmentality and sovereignty are, in the last instance, extra-legal; the former because of its use of law as tactics, the latter because of its being ungrounded in law. What governmentality ultimately reveals is that power is “irreducible to law” (Butler 2004a, 94).

Butler’s reflections demand attention to the function of terrorism discourse in processes of mobilizing and repositioning sovereign practices, disciplinary mechanisms and biopolitical techniques in a coherent political regime. She adds an important element to Foucault’s analysis of modern power by shedding light on the ways in which practices which are traditionally identified as elements of sovereignty are revived, co-opted and integrated into the fabric of governmentality under conditions of permanent emergency and in the context of increasingly post-national politics. However, like most critical analyses of terrorism as an element in changing networks of power, Butler is concerned with terrorism in post-9/11 American politics.<sup>30</sup> Such narrow focus not only

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<sup>29</sup> On the distinction between laws and decrees see Schmitt, Carl. *Legalität und Legitimität*. Berlin: Duncker & Humblot, 2005a, published in English as *Legality and Legitimacy*. Translated by Jeffrey Seitzer. Durham: Duke University Press, 2004b.

<sup>30</sup> See also Amoores, Louise and Marieke De Goede. *Risk and the War on Terror*. London and New York: Routledge, 2008, Colás, Alejandro and Richard Saull, (eds.) *The War on Terror and the American ‘Empire’ After the Cold War*. New York: Routledge, 2006, Danner, Mark. *Torture and Truth: America, Abu Ghraib, and the War on Terror*. New York Review Books, New York, 2004, Dauphinee and Masters, (eds.) *The Logics of Biopower and the War on Terror*, Debrix, François. *Tabloid Terror: War, Culture, and Geopolitics*. New York: Routledge, 2007, Dillon, Michael and Julian Reid. *The Liberal Way of War: Killing to Make Life Live*. London and New York: Routledge, 2009, Hardt, Michael and Antonio Negri. *Multitude: War and Democracy in the Age of Empire*. New York: Penguin, 2004, Mitchell, William J. Thomas. *Cloning Terror: The War of Images, 9/11 to the Present*. Chicago and London: The University of Chicago Press, 2011, Puar, Jasbir K. *Terrorist Assemblages. Homonationalism in Queer*

downplays the significance of terrorism discourse in various historical contexts, but also misses interesting historical insights that are of relevance for contemporary analyses of terrorism. Moreover, a wider range of examples from different historical periods would further substantiate the theoretical points developed by Butler and others.

## 1.5 Understanding terrorism in context

In this chapter, we have explored the analytical and epistemological problems of terrorism research arising from the particular status of reality of a phenomenon like terrorism. We have found that there are no historically or contextually stable answers to the question what terrorism is. Instead, it has become clear that a more adequate understanding of terrorism requires that the question be changed. In the case of historical figures like terrorism, asking what a phenomenon *is* amounts to asking what it *means*, what it *does* or helps to do, and how it *functions* in a given context. In other words, if the “being” of terrorism is understood not as the ontological status of a natural or historical given but as the function of an ontological fiction that is nevertheless real, then terrorism “is” something different in different historical, social and political circumstances. We have also seen that more productive approaches, which situate terrorism within a wider economy of power in order to analyze its function, remain largely focused on terrorism in post-9/11, specifically American, politics.

We can thus identify the predicament of contemporary terrorism research as follows: scholarship that takes into consideration a variety of historical manifestations

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*Times*. Durham and London: Duke University Press, 2007, Redfield, Mark. *The Rhetoric of Terror. Reflections on 9/11 and the War on Terror*. New York: Fordham University Press, 2009 and Reid, Julian. *The Biopolitics of the War on Terror. Life Struggles, Liberal Modernity, and the Defence of Logistical Societies*. Manchester and New York: Manchester University Press, 2006. Despite their specific concern with US presidential power and the rhetoric of security, respectively, salutary exceptions which consider power’s historical dimensions are Genovese, Michael. *Presidential Prerogative: Imperial Power in an Age of Terrorism*. Stanford: Stanford University Press, 2011 and Neocleous, Mark. *Critique of Security*. Edinburgh: Edinburgh University Press, 2008.

of terrorism does so on the basis of problematic definitions that are used to anachronistically identify behaviors in the past that correspond to contemporary definitions of terrorism. By contrast, differentiated accounts which pay attention to the function of terrorism in changing economies of power fail to extend the analysis beyond the twenty-first century and to investigate a larger set of historical examples of terrorism. In order to respond to these deficits, this thesis mobilizes a largely Foucauldian explanatory framework so as to make sense of terrorism as an element in an economy of power under consideration of its varying historical manifestations.

Even though the theoretical position developed in subsequent chapters draws heavily from Foucault, I want to avoid presenting archival evidence so as to simply confirm and historically substantiate his account of power and violence. Instead, the genealogical mapping of decisive moments in the history of terrorism allows us to identify and respond to potential limits and blind spots of Foucauldian theory. In the first instance, this thesis questions the distinction between legitimate and illegitimate violence before distinguishing and categorizing violent actions in these terms. Before we can ask if forms of violence that are commonly regarded as illegitimate are really illegitimate or if state violence might not be just as illegitimate as terrorism, we have to understand the reasons why legitimacy and illegitimacy are attributed to particular acts of violence, and by what standards.<sup>31</sup>

We will see that the processes and rationalities through which terrorism is represented as illegitimate also problematize the ostensible legitimacy of state violence. Archival research will show how terrorism here functions as a way of legitimating increasingly excessive state violence when its lack of legitimacy becomes painfully

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<sup>31</sup> In this regard, Kochi has noted that judgments on the rightness or wrongness of violence exercise themselves a certain violence. See the chapter “Judging war and terror” in Kochi, Tarik. *The Other's War. Recognition and the Violence of Ethics*. Abingdon and New York: Birkbeck Law Press, 2009.

obvious. In this context, we will also examine how terrorism helps to cover over the problems resulting from the ambiguous grounds of law, which have been exacerbated in the process of increased internationalization and the creation of a new international legal order after the Second World War. For this purpose, we will consider the role of terrorism in processes of legal and political transformation in the global sphere. It will be seen that these transformations are best understood as resulting from an attempt to exercise sovereign power globally by way of integrating technologies of power traditionally associated with state sovereignty (such as a state of necessity or the justification of violence to maintain international order and peace) into post- and transnational political relations.

In order to provide a more detailed investigation of the setbacks, reversals and complete failures in the development of liberal governmentality, we will turn to the work of Max Weber so as to complement and refine the Foucauldian approach developed in this thesis. To account for the global political and legal developments in the twentieth and twenty-first century, we will critically engage the work of Carl Schmitt, most importantly his analyses in “*Der Begriff des Politischen*” (1932) and “*Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum*” (1950).<sup>32</sup> We will see how, in an era of post-national politics, conceptions of terrorism are shaped by humanitarian considerations and a commitment to the universality of human rights. At the same time, this rearticulation of terrorism allows for the reconciliation of different forms of power exercised on a global scale.

The following chapters thus examine three important examples in the history of terrorism in order to explore the changing meanings and functions of terrorism as a

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<sup>32</sup> The English editions referred to in this thesis are Schmitt, Carl. *The Concept of the Political*. Translated by George Schwab. Chicago: The University of Chicago Press, 1996b and Ibid., *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*. Translated by Gary L. Ulmen. New York: Telos Press, 2003.

pivotal element in an evolving economy of power. We will see that the political rationalities that undergird relations of power simultaneously shape conceptions of terrorism, which in turn allow for the legitimization of political and legal regimes as well as for the selective exclusion of individuals, groups and ideologies from the political realm.

Chapter 2 traces the historical beginnings of terrorism in the context of the rise of the bourgeoisie as the subject of national universality in the French Revolution. For this purpose, the chapter examines a specific fragment of the revolution, namely the conflict between Jacobins, Thermidorians and other political opponents of a liberal bourgeois order. Rather than attempting to understand the Thermidorian reaction and the ensuing period of liberal stabilization as a way of keeping terrorism in check, I seek to show how the difficulties of establishing a bourgeois liberal order faced by the Thermidorians in fact required and allowed for something like terrorism to be brought into existence.

Chapter 3, by contrast, examines the rhetoric of terrorism in late imperial Russia to show how the concept of terrorism that had been formed in eighteenth-century France became detached from its original context and used against the very processes of liberalization it had helped to promote a century earlier. In Russia, an autocratic regime mobilized terrorism discourse to counteract the political effects of economic liberalization. We will see how this use of terrorism discourse backfired on the tsar by preparing the grounds for an expansion of the bureaucracy that further weakened the monarch's position.

Chapter 4 explores how terrorism became marked out as the subject of legal debates in the twentieth century. We will investigate how a particular legal discourse anchors terrorism in a certain economy of power that can be described as a globalized

governmental field in the making. It will be seen that the lack of a legal definition of terrorism prepares the ground for a rearticulation of terrorism that helps to justify state-approved violence on a global scale. The sometimes excessive use of force is authorized by major powers in the name of national self-defense and humanitarianism over and against these states' own professed commitment to the elimination of war and violence.

What follows is, therefore, a genealogy of terrorism as a history of differences, transformations, discontinuities, and at times random, at times strategic, yet always consequential inventions. There will be no simple and straightforward answer that once and for all settles the question what terrorism really is. Instead of dismissing this investigation as a frustrating exercise in historical relativism, however, it is worth considering that it might be precisely its fluidity and instability that makes terrorism such a successful political concept. There are reasons for the varying meanings and roles of terrorism across time and between societies, and these reasons shed light on larger social, political, cultural or economic developments. In the last two hundred years, terrorism has at times fulfilled a crucial task in the establishment, expansion or stabilization of liberalism. In other contexts, it has been co-opted and strategically deployed against the political consequences of economically necessary liberalization. Terrorism has provided the constitutive outside in opposition to which liberal principles could be justified, and it has been an instrument of despotic rulers against the spread of liberal ideas. These different articulations and applications of the term make it impossible to tell a history of terrorism either as the history of a particular type of violence or as the diametrical opposite of liberal modernity. If we succeed in comprehending terrorism in its variable historical functions, perhaps we have found the starting point for a more meaningful and politically productive evaluation of terrorism as well as other forms of political violence.

## The terrorist as the enemy of the nation

### 1.6 The emergence of terrorism in the French Revolution<sup>33</sup>

#### 1.6.1 “*C’est la justice des cannibales...*”

On August 3, 1794, six days after the execution of Robespierre, Jean Lambert Tallien addressed the National Convention in his new role as the leading Thermidorian and Robespierre’s successor on the Committee of Public Safety, the executive branch of the Jacobin government.<sup>34</sup> For Tallien, Robespierre’s death was proof that the Jacobin Reign of Terror had been defeated by the champions of liberty and democracy. Against the arbitrary violence of the Jacobins, Tallien declared, the new government would restore public liberty. To safeguard the people’s happiness, the Jacobin notion of justice, a “justice of cannibals” (*la justice des cannibales*) which would “never be that of the French people” (*ce ne sera jamais celle du peuple français*), had to be replaced with the justice of the law (Tallien 1847, 615). The justice of the Jacobins, Tallien maintained, did not judge but assassinate. “There is only one kind of justice,” he

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<sup>33</sup> A quick note on translation: Apart from Robespierre’s speeches, archival documents are only available in French. English citations in the text are my translations; the French original is given in parentheses in the text or, in case of longer citations, in footnotes. The careful reader will notice a slightly confusing pagination in references to Babeuf’s work. The collection of Babeuf’s pamphlets is divided into two volumes. Volume 1, “*Journal de la Liberté de la Presse*,” contains numbers 1 to 32 of Babeuf’s journal, which appeared in An II and An III of the revolution (September 3, 1794 to February 1, 1795). Number 22 is the last issue under the old title, “*Journal de la Liberté de la Presse*.” Numbers 23 to 32, even though included in the first volume, are entitled “*Le Tribun du Peuple, ou Le Défenseur des Droits de l’Homme; en continuation du Journal de la Liberté de la Presse*.” Moreover, pagination of each issue including number 26 starts over with page one. It is only with number 27 that continuous pagination begins (on page 209). This is reflected in the bibliography of this thesis in the lack of page numbers for Nr. 4 of the *Journal* and Nr. 25 of the *Tribun*. Volume 2 of the collection, “*Le Tribun du Peuple, ou Le Défenseur des Droits de l’Homme*,” contains numbers 34 to 43, which appeared in An III and An IV (November 6, 1795 to April 24, 1796). Issue number 33 was never published.

<sup>34</sup> Tallien had started his political career as a Jacobin. When Robespierre turned against his fellow Jacobins, however, Tallien changed his political allegiances and instigated what became known as the Thermidorian Reaction against Robespierre. For a critical evaluation of Tallien’s historical relevance see Gendron, François. *The Gilded Youth of Thermidor*. Montreal: McGill-Queens University Press, 1993.



contended: “It is justice that does not know man, but that measures actions” (Ibid.).<sup>35</sup> In other words, justice had to be codified in the form of law, and violence was its means to punish “no one but the bad citizens, the intriguers, and the rogues” (Ibid., 612).<sup>36</sup> The interruption of the Jacobins’ bloody reign achieved through Robespierre’s execution had to be seized for the instantiation of a new legal order that would end the permanent spiral of ever increasing violence and bring back freedom and justice. “Once terrorism stops for a moment to terrify,” Tallien proclaimed, “it can only tremble itself” (Ibid., 614).<sup>37</sup>

### 1.6.2 Jacobin republicanism

Tallien’s justification of Robespierre’s execution and the institution of a new government was framed in stark opposition to the political rationality of the Jacobins which, Tallien claimed, represented a distorted and illegitimate version of liberty, justice, law and violence. A new government was therefore needed that was committed to safeguarding the freedom of the people by instituting a legal system that would prohibit the illegitimate use of force. A particular understanding of these concepts had indeed been central to Jacobin ideology and had fueled the implementation of the *régime de terreur*. The Jacobin understanding, however, had itself been developed in contrast to the lack of freedom and justice under absolutist monarchical rule.

As Foucault shows in “Security, Territory, Population,” the context in which concepts of freedom, justice and the function of law were articulated in the eighteenth century was shaped by considerations that were most distinctly articulated in the economic theories of the physiocrats. According to Foucault, the physiocrats had

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<sup>35</sup> ... il n’y a qu’une justice, citoyens: c’est celle qui ne connaît point les hommes, mais qui pèse les actions.

<sup>36</sup> ... qu’il ne sera terrible que pour les mauvais citoyens, les intrigants et les fripons.

<sup>37</sup> Quand le terrorisme a cessé un instant de faire trembler, il ne peut que trembler lui-même.

imposed on the French government an idea of freedom modeled on the free play of forces in the marketplace. This, so they claimed, was the most effective way of maximizing the wealth of the state. The physiocratic idea of freedom, Foucault maintains, had developed in the context of a crisis that had resulted from grain shortages. The physiocrats had sought to address this problem by way of decontrolling grain prices. Scarcity, they argued, was “a chimera” that could be avoided if only governments respected the spontaneous processes of production and trade (Foucault 2009b, 40). The benefit of all, the physiocrats believed, could only be achieved through the pursuit of the private interest of each. The accomplishment of this kind of liberty required that government intervention be limited to the introduction of security mechanisms. By way of a security apparatus the government should create conditions conducive to the free play of individual interests without jeopardizing social order.

Although edicts issued in 1763 and 1764 had established almost complete freedom of the price of grain, they did not result in the elimination of scarcity (Ibid., 35). Even after the fall of the monarchy and the execution of the king, scarcity plagued the Parisians and led to periodic riots. In order to stop these disturbances a stable government was needed that established true freedom by putting an end to the growing wealth of a few grain merchants at the expense of large parts of the population. When Robespierre took to power in 1793, the contours of his concept of freedom came into sharp view in the solution he proposed to the problem of scarcity.<sup>38</sup>

Scarcity, Robespierre was convinced, was an artificial problem in a rich and fertile country like France. In the absence of natural disasters, he surmised, scarcity could not possibly result from natural circumstances. Rather, Robespierre argued, “it

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<sup>38</sup> The hypothesis of what follows is that Robespierre articulates his conception of freedom in distinction from the physiocratic as well as the monarchical idea of freedom. For the opposite, in my opinion less plausible, argument that physiocracy provided the basis on which Robespierre could develop his vision of “natural republicanism” see Edelstein, Dan. *The Terror of Natural Right*. Chicago and London: The University of Chicago Press, 2009.

can only be imputed to defects of administration or of the laws themselves; bad laws and bad administration have their origins in false principles and bad morals. It is a fact generally recognized that the soil of France produces a great deal more than is needed to feed her inhabitants and that the present scarcity is an artificial one” (Robespierre 2007b, 49). In other words, bad government regulation and high prices rather than the allegedly natural “reality of fluctuations between abundance/scarcity” assumed by the physiocrats seemed to be the cause of grain shortages (Foucault 2009b, 37). Instead of responding to scarcity by working within its natural conditions and allowing for a certain, unavoidable number of deaths, Robespierre sought to prevent scarcity before it happened.

According to Foucault, the physiocratic model required that the death of some people be tolerated as necessary for the disappearance of scarcity as a scourge (Ibid., 42). Robespierre, however, was not prepared to accept this view. “Common sense indicates,” he contended, “that foodstuffs that are in no way essential to life can be left to untrammelled speculation by the merchant; any momentary scarcity that might be felt is always a bearable inconvenience; and it is acceptable in general that the unlimited freedom of such a market should turn to the greater profit of the state and some individuals; but the lives of men cannot be subjected to the same uncertainty. ... No man has the right to amass piles of wheat, when his neighbour is dying of hunger” (Robespierre 2007b, 51). As a consequence, Robespierre considered it as the government’s duty to issue good laws that appropriately and effectively regulated the circulation of grain. It was clear for him that freedom of grain could not be achieved by decontrolling its price. On the contrary, only government intervention could ensure its free circulation. “Let the circulation of goods be protected throughout the whole Republic,” Robespierre therefore demanded, “but let the necessary measures be taken to

ensure that circulation takes place. It is precisely the lack of circulation that I am complaining about. For the scourge of the people, the source of scarcity, is the obstacles placed in the way of circulation, under the pretext of rendering it unlimited” (Ibid., 52). In short, for Robespierre the freedom advocated by the physiocrats could in no way be regarded as real freedom. If it was a case of freedom at all, it was a very particular and limited kind of freedom that implied substantial unfreedom for the majority of the population. For instead of having created conditions in which grain could circulate and people could be fed, the lack of government intervention in the trade and distribution of grain demanded by the physiocrats had resulted in inequality, injustice and the unfreedom of the masses. Moreover, the physiocratic notion of freedom was achieved through “secrecy, undefined freedom, and the certainty of impunity” (Ibid., 53).

In order to really be free, Robespierre believed, the threat of starvation had to be preempted. This, however, could only be realized by restricting the private freedom of individuals to trade as they pleased. As a result, Robespierre attributed an active role to government in order to achieve what for him was real freedom. Against secrecy, the government had to “take the necessary steps to record the quantity of grain that each area has produced, and that each landowner has harvested” in order to avoid that “anyone can hide a quantity of public subsistence” or “fraudulently cause it to vanish and transport it either to foreign countries or to inland warehouses” (Ibid.). For this purpose, the government needed a certain kind of knowledge, a “knowledge of things rather than a knowledge of the law” (Foucault 2009b, 273). Against undefined freedom, a kind of freedom which was defined negatively as the absence of interference, and against the impunity of actions which benefitted the private interests of some at the expense of the masses, the government had to prevent monopolies. For Robespierre it was clear that the free pursuit of private interest as a way of ensuring order had failed.

Rather, it had led to unfreedom and chaos and a condition where “everything is against society” and “everything favours the grain merchants” (Robespierre 2007b, 54). In contrast, Robespierre was convinced that “The source of order is justice; ... the surest guarantor of public peace is the well-being of the citizens, and ... the long convulsions that tear states apart are only the combat of prejudice against principle, egoism against the general interest, the arrogance and passions of powerful men against the rights, and the needs, of the weak” (Ibid., 54-56).

Robespierre’s conceptualization of freedom can therefore be described as the outcome of good government that required a certain technical knowledge as to when and how intervention was necessary for the common good. To anticipate a point discussed in more detail in the second part of this chapter, it could be argued that Robespierre’s claims represent a variation of *raison d’État* in which the purpose of government and the necessity of active and prompt intervention was not the wealth of the state but the prosperity and freedom of the people.

The safeguarding of freedom in the true sense of the word, Robespierre therefore contended, depended on the foundation of a legitimate form of political authority. For this purpose, the old order had to be eliminated thoroughly and unconditionally. It is in this light that Robespierre’s repudiation of the trial of Louis XVI has to be read. For Robespierre, putting the king on trial was not just absurd but simply impossible. “There is no trial to be held here,” he proclaimed.

Louis is not a defendant. You are not judges. You are not, you cannot be anything but statesmen and representatives of the nation. You have no sentence to pronounce for or against a man, but a measure of public salvation to implement, an act of national providence to perform. Louis was king, and the Republic is founded: the famous question you are considering is settled by those words alone. ... Louis cannot be judged; either he is already condemned or the Republic is not acquitted (Robespierre 2007e, 57-59).

On Robespierre's view, it was obvious that the king could not be tried according to the laws of the republic. Louis belonged to a different order; he was in fact the embodiment of the previous order, the personification of absolute monarchy. The revolution had founded a new law while the king represented an old legal order. The laws of the republic did not apply to him.

In this sense, Robespierre could be taken to anticipate an important maxim of legal theory and practice according to which there is no crime without law (*nullum crimen sine lege*). The purpose of this principle is the prevention of *ex post facto* law that amounts to victor's justice and enables the unfair punishment of the vanquished in accordance with the law of the victor.<sup>39</sup> Robespierre's motives, however, were not inspired by these considerations. His actions were driven by what one might call a more primordial necessity to execute Louis XVI as a matter of national salvation. The foundation of a new order was not to be achieved by way of an appeal to law but through the use of violence. "If the mainspring of popular government in peacetime is virtue," Robespierre claimed, "the mainspring of popular government in revolution is virtue and terror both: virtue, without which terror is disastrous; terror, without which virtue is powerless."

Terror is nothing but prompt, severe, inflexible justice; it is therefore an emanation of virtue; it is not so much a specific principle as a consequence of the general principle of democracy applied to the homeland's most pressing needs (Robespierre 2007c, 115).

In a situation of necessity, the state's foundation, which is virtue, had to manifest itself in terror. The revolutionary violence of Robespierre's *coup d'État* was the foundational act of the republic and was supposed to institutionalize virtue in the form of a legitimate law that ostensibly would have led to true freedom for the people.

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<sup>39</sup> On the dismantling of this principle in contemporary international law see Zolo, Danilo. *Victor's Justice. From Nuremberg to Baghdad*. London and New York: Verso, 2009b.

Revolutionary government, according to Robespierre, “is supported by the holiest of all laws: the salvation of the people; by the most indisputable of all entitlements: necessity” (Robespierre 2007d, 100). The goal of revolutionary government, i.e. the foundation of the republic, is continued by constitutional government, whose goal is “to preserve the Republic” (Ibid., 99).

The upshot of the foundation of the republic in revolutionary violence was a radical separation of legality and legitimacy. For Robespierre, legitimacy was not commensurate with the law. In the first instance, he maintained, “the law can only forbid what is damaging to society: it can only order what is useful to it” (Robespierre 2007a, 70). In other words, law here appears not as a system of rules whose observance guarantees the legitimacy of political authority. In the true meaning of the word, law is an ensemble of rational precepts concerned with and conducive to the common good. A law that commands what is harmful for society is not a law, and its execution is not legitimate. To borrow from Foucault, in the context of Robespierre’s elaboration of a revolutionary political program the idea of politics as government connected with legality is replaced with what might be identified as republican reason connected with necessity.<sup>40</sup>

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<sup>40</sup> In his analysis of *raison d’État* in his lectures on “Security, Territory, Population,” Foucault maintains that politics is “not something that has to fall within a form of legality or a system of laws. Politics is concerned with something else, although at times, when it needs them, it uses law as an instrument. Politics is concerned with necessity. ... So, we do not have government connected with legality, but *raison d’État* connected with necessity” (Foucault 2009b, 263). In this regard, it might be argued that Foucault’s understanding of politics is remarkably close to Schmitt. The general trajectory of Schmitt’s work can be summarized as an appraisal of the essentially extra-legal nature of the political and a critique of the liberal-democratic constitutional experience of the Weimar Republic as a fundamentally apolitical system. When Schmitt argues that “The exception is more interesting than the rule” because “the rule proves nothing; the exception proves everything,” he does so in order to show that the legal order depends on a decision which is itself irreducible to the law (2005b, 15). The exception, Schmitt claims, “confirms not only the rule but also its existence, which derives only from the exception. In the exception the power of real life breaks through the crust of a mechanism that has become torpid by repetition” (Ibid.). Transposed to the mechanisms of *raison d’État*, the *coup d’État* would seem to be the violent manifestation of the political in which it transcends the law, founds it and guarantees its applicability by breaking through the crust of the law in an emergency. I will return to this point in the second part of this chapter (see *infra* note 78). For the moment, the reader is referred to Foucault, *Security, Territory, Population*, Schmitt, Carl. *Der Begriff des Politischen*. Berlin: Duncker & Humblot, 2002, Ibid.,

In addition, the fundamental gulf that, for Robespierre, separates legality and legitimacy results in the impossibility to exhaustively define justice in terms of the law. Rather, justice is the – sometimes murderous – judgment of the general will. “Peoples do not judge in the same way as courts of law,” Robespierre maintained; “they do not hand down sentences, they throw thunderbolts; they do not condemn kings, they drop them back into the void; and this justice is worth just as much as that of the courts” (Robespierre 2007e, 59).

In the last instance, the incommensurability of legality and legitimacy requires that freedom be wrested from the province of the law. For Robespierre, freedom is not – or at least not only – the result of a law that shields the individual from interference. Instead, “Liberty is the power that man has to exercise all his faculties at will. Justice is its rule, the rights of others are its borders, nature is its principle and law its safeguard” (Robespierre 2007a, 69). These issues will be taken up in the second part of this chapter. Without wanting to anticipate those arguments here, it might be mentioned that Robespierre seemed to be aware of a constitutive component of any legal order: if political authority originates in an act of revolutionary violence, its constitution has to preserve the possibility for a violent manifestation of justice in case of emergency. Entrusted with the preservation of the republic, constitutional government requires the power to repeat the foundational act of violence in times of necessity. In such circumstances, the law must yield to a violence which restores the state. For reasons to be analyzed in due course, the awareness that the legal order was founded in violence

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*Politische Theologie. Vier Kapitel zur Lehre von der Souveränität.* Berlin: Duncker & Humblot, 2004a and Ibid., *Römischer Katholizismus und politische Form.* Stuttgart: Klett-Cotta, 2008. Schmitt's works have been translated into English as *The Concept of the Political*, *Political Theology: Four Chapters on the Concept of Sovereignty*. Translated by George Schwab. Chicago: University of Chicago Press, 2005b and *Roman Catholicism and Political Form.* Translated by Gary L. Ulmen. Westport: Greenwood Press, 1996a. For a concise analysis of Schmitt's critique of liberalism see Scheuerman, William E. “Carl Schmitt's Critique of Liberal Constitutionalism.” *The Review of Politics* 58, no. 2 (1996): 299-322.



was displaced by the postulation of the law as the institutionalization of universal values.

For the present analysis of the emergence of terrorism in the French Revolution, it should be noted that it was the Jacobin constellation of positive freedom, revolutionary justice, lawless yet legitimate violence and a legitimate because virtuous form of law that the Thermidorians identified with terrorism and which they dislodged and realigned in what they claimed to be the bedrock of legitimate government. To examine this process, we will now analyze the collapse of the distinction between legality and legitimacy in the wake of Robespierre's execution and the subsequent institutionalization of a legal form of legitimacy in the form of negative freedom, punitive justice and legal and thus legitimate violence.<sup>41</sup>

### 1.6.3 The Thermidorian rhetoric of terrorism

The most obvious objections to Robespierre's conceptions of freedom, legality and legitimacy would seem to be, on the one hand, that a prioritization of freedom and justice over the law predisposes to a seemingly arbitrary and in any case illegal use of force whenever the common good is under threat. On the other hand, in absence of a Rousseauian legislator, the determination of the common good amounts to an ideological decision made by whoever is in a position of sufficient power.<sup>42</sup> As a

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<sup>41</sup> The terminology here echoes Walter Benjamin's "Critique of Violence" (1921) as well as Darrow Schechter's analysis of Benjamin's text. See Benjamin, Walter. "Zur Kritik der Gewalt." In *Zur Kritik der Gewalt und andere Aufsätze*, Frankfurt am Main: Suhrkamp, 1965 (translated as "Critique of Violence." In *One-Way Street and Other Writings*, 132-154. London and New York: Verso, 1997) and Schechter, Darrow. *The Critique of Instrumental Reason from Weber to Habermas*. New York and London: Continuum, 2010.

<sup>42</sup> For Rousseau, the necessity of a legislator derives from practical problems resulting from the determination of the general will. While Rousseau trusts the people to always want the common good, he is less convinced that they can recognize it without the guide of a truly exceptional individual, a "great soul" who has access to the "sublime reason, which transcends the grasp of ordinary men" (Rousseau 1987, 41). It is with this passage in mind that Heinrich Heine describes Robespierre as "the hand of Jean Jacques Rousseau, the bloody hand, which, from the womb of his time, pulled out a body for the soul

consequence, from the point of view of liberal democracy and a belief in the benefits of the constitutional state and the rule of law (*Rechtsstaat*), Robespierre's notion of freedom would seem to be no less than a despotic and dogmatic understanding of liberty reduced to the submission to the general will and policed by the use of terror and violence.<sup>43</sup>

Indeed, Tallien maintained in a very similar vein that the necessary result of Robespierre's view of freedom was the exercise of arbitrary and unlimited violence. The goal of the *terreur*, he contended, was the creation of an atmosphere of insecurity and suspicion among the people with the intention of making everyone submit to whatever was decided to be the general will by the Jacobin government. It was only through the spreading of fear that the Jacobins could ensure compliance with their political views. "There are, for a government, two ways of making itself feared," Tallien argued.

[O]ne is to make do with surveillance of bad *actions*, to threaten them and to punish them with proportionate pains; the other consists in threatening *people*, threatening them always and for everything, threatening them with all cruelties one can imagine. ... One is an optional fear, the

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which Rousseau made. That restless anxiety which haunted the life of Jean Jacques, did it perhaps arise because he sensed in spirit what sort of midwife his thoughts needed to come bodily into the world?" (Heine 2007, 77). For a contrary assessment of the relation between Robespierre and Rousseau see Levine, Andrew. "Robespierre: Critic of Rousseau." *Canadian Journal of Philosophy* 8, no. 3 (1978): 543-557. For Rousseau's account of the general will see *infra* note 44. For a provocative interpretation of Robespierre as a champion of public sovereignty see Rudé, George. *Robespierre. Portrait of a Revolutionary Democrat*. New York: The Viking Press, 1975.

<sup>43</sup> See Rousseau's famous passage in chapter 7 of the first book of "The Social Contract" (1762), in which he distinguishes the particular will of each from the will of all and the general will: "In fact, each individual can, as a man, have a private will contrary to or different from the general will that he has as a citizen. His private interest can speak to him in an entirely different manner than the common interest. His absolute and naturally independent existence can cause him to envisage what he owes the common cause as a gratuitous contribution, the loss of which will be less harmful to others than its payment is burdensome to him. And in viewing the moral person which constitutes the state as a being of reason because it is not a man, he would enjoy the rights of a citizen without wanting to fulfill the duties of a subject, an injustice whose growth would bring about the ruin of the body politic. Thus in order for the social compact to avoid being an empty formula, it tacitly entails the commitment – which alone can give force to the others – that whoever refuses to obey the general will will be forced to do so by the entire body. This means merely that he will be forced to be free" (Rousseau 1987, 26). It is because of this passage in particular that some commentators have suggested that Rousseau be regarded as a proto-totalitarian thinker. See for example Arendt, Hannah. *On Revolution*. London: Penguin Books, 1990 and Talmon, Jacob L. *The Rise of Totalitarian Democracy*. Boston: Beacon Press, 1952.

other is incessant agony; one is an apprehension of terror that follows crime, the other is terror itself, which installs itself in the soul despite a feeling of innocence; one is a fear based on the law, the other is a stupid fear of people (Tallien 1847, 613).<sup>44</sup>

Faced with the choice between punitive justice and arbitrary violence, Tallien intimates, the Jacobins had clearly chosen the second option. In an early precedent of a critique of what might anachronistically be called a politics of fear,<sup>45</sup> Tallien condemned the instrumentalization of fear which “makes insensitive to freedom and makes it look like a good trade-off to exchange death for servitude” (Ibid., 615).<sup>46</sup> The permanent exercise of terror, he continued, “throws man onto himself, and onto the lowest part of himself, that is onto his physical existence; it breaks all bonds, it cuts all sympathy; it de-fraternizes, desocializes, demoralizes” (Ibid.).<sup>47</sup>

As a consequence, the Thermidorians emphasized the need for the new government to guarantee freedom by protecting individuals from violence and

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<sup>44</sup> *Il y a, pour un gouvernement, deux manières de se faire craindre; l'une qui se borne à surveiller les mauvaises actions, à les menacer et à les punir de peines proportionnées; l'autre consiste à menacer les personnes, à les menacer toujours et pour tout, à les menacer de tout ce que l'imagination peut concevoir de plus cruel. Les impressions que produisent ces deux méthodes sont différentes; l'une est une crainte éventuelle, l'autre est un tourment sans relâche; l'une est un pressentiment de la terreur qui suivrait le crime, l'autre est la terreur même qui s'établit dans l'âme malgré le sentiment de l'innocence; l'une est une crainte raisonnée des lois, l'autre est une crainte stupide des personnes.*

<sup>45</sup> For a discussion of the phenomena and practices subsumed under the rubric “the politics of fear,” the reader is referred to Ahmed, Sara. “The Politics of Fear in The Making of Worlds.” *International Journal of Qualitative Studies in Education* 16, no. 3 (2003): 377-398, Barber, Benjamin R. *Fear's Empire: War, Terrorism, and Democracy*. New York and London: W.W. Norton & Company, 2003, Evrigenis, Ioannis D. *Fear of Enemies and Collective Action*. New York: Cambridge University Press, 2008, Furedi, Frank. *Politics of Fear. Beyond Left and Right*. London and New York: Continuum, 2005, Gregory, Derek and Allan Pred, (eds.) *Violent Geographies: Fear, Terror, and Political Violence*. New York: Routledge, 2007, Hamm, Mark S. “The USA Patriot Act and the Politics of Fear.” In *Cultural Criminology Unleashed*, edited by Jeff Ferrell, Keith Hayward, Wayne Morrison and Mike Presdee, 287-300. London: Glass House Press, 2004, Massumi, Brian. “Fear (The Spectrum Said).” *positions: east asia cultures critique* 13, no. 1 (2005): 31-48, Ibid., (ed.) *The Politics of Everyday Fear*. Minneapolis and London: University of Minnesota Press, 1993, Prewitt, Kenneth, Alterman, Eric, Arato, Andrew, Pyszczynski, Tom, Robin, Corey and Stern, Jessica. “The Politics of Fear after 9/11.” *Social Research* 71, no. 4 (2004): 1129-1146, Skrimshire, Stefan. *Politics of Fear, Practices of Hope*. London and New York: Continuum, 2008, Sparks, Chris. “Liberalism, Terrorism, and the Politics of Fear.” *Politics* 23, no. 3 (2003): 200-206 and Waters, Hazel. “Editorial: The Politics of Fear: Civil Society and the Security State.” *Race & Class* 46, no. 1 (2004): 1-2.

<sup>46</sup> *À force de rendre l'existence incertaine, elle rend insensible à la liberté, et fait regarder comme un bon marché de se racheter de la mort par la servitude.*

<sup>47</sup> *La terreur, quand elle est devenue l'état habituel de l'âme, concentre l'homme dans lui-même et dans la moindre partie de lui-même, je veux dire son existence physique; elle rompt tous les liens, éteint toutes les affections; elle défraternise, désocialise, démoralise.*

interference in their private matters while at the same time facing the difficult task of reconciling individual liberty with the welfare of each and all. Once again, a government was searching for a way of exercising legitimate political authority. “It is agreed that we want liberty,” Tallien claimed, “that we want justice, but we are not in agreement on what is revolutionary without being tyrannical, and what is terrible without being unjust: therefore, everything depends on the determination of what is to be understood by *revolutionary government*” (Ibid., 612).<sup>48</sup>

The political rationality laid out by Tallien’s speech as a guideline for the Thermidorian government constituted a decisive break with the ideas of Robespierre. In order to ensure the freedom of individuals, the Thermidorians relied on a conception of freedom and justice akin to the kind of freedom demanded by the economic theories of the physiocrats. In analogy to the physiocratic premise that the market had its own reality and needed to be left alone in order to function, the Thermidorians advocated an understanding of freedom as a sphere of individual interests that had to be protected from interference by way of drawing its boundaries in terms of rights. In this way, freedom eschewed its dependence on an ideological and dogmatic view of the common good. Instead, liberty came into view as the result of certain natural or universal rights of individuals that were best ensured by an equally universal and purely formal legal order.

Because it steered clear of any positive content, negative freedom and its corresponding legal form seemed to avoid the totalitarian consequences of Robespierre’s concept of liberty. The latter was regarded by the Thermidorians as the outcome of a forced unity of individual interest and Jacobin political dogma. In

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<sup>48</sup> *On convient en même temps qu’on veut la liberté, qu’on veut la justice, mais on n’est pas d’accord sur la question de savoir ce qui est révolutionnaire sans être tyrannique, et terrible sans être injuste; tout consiste donc à déterminer nettement ce qu’on entend par gouvernement révolutionnaire.*

contrast, individual rights advocated by Tallien and his followers formed the basis of a legal framework for legitimate political authority, determined the boundaries of government intervention and limited the rightful use of force to cases where the law was violated. In short, the Jacobin configuration of positive freedom, revolutionary justice, just violence beyond the law and a legitimate form of law as the manifestation of reason had been forced apart by the Thermidorian emphasis on individual rights. The outcome was a notion of legitimacy as the outcome of actions in accordance with the law and a rearticulation of freedom as negative, justice as punitive, and violence as permitted for the preservation of the law. The immediate practical result in the context of the French Revolution was an eruption of law-preserving violence against those social and political forces that were opposed to the Thermidorian idea of political rule.

#### 1.6.4 Babeuf's subversive discourse of terrorism

Because of the disastrous consequences the Jacobin *terreur* had entailed for its adversaries, the initial stage of the Thermidorian rule immediately after 9 Thermidor was greeted with popular support. Even early socialists such as François-Noël Babeuf,<sup>49</sup> political journalist and fiery supporter of the Revolution, chimed in with Tallien's denunciation of terrorism as "the government of blood, the government of Robespierre, the tyranny of Robespierre, the despotism of the committees, and all the subsequent atrocities, the guillotining, the shootings, the drownings, oppression, despair, all forms of squalor, deprivation and misery" (Babeuf 1966b, 4).<sup>50</sup> For the pamphleteer Babeuf,

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<sup>49</sup> For an account of Babeuf in the context of the rise of socialism after the Jacobin reign see Michelet, Jules. *Histoire du XIXe Siècle*. Vol. 1: Directoire. Origine des Bonaparte, Paris: C. Marpon et E. Flammarion, 1880.

<sup>50</sup> *Pour moi je comprends que c'est le terrorisme, le gouvernement de sang, le gouvernement de Robespierre, la tyrannie de Robespierre, le despotisme des comités, et tout ce qui en fut les atroces résultats, les guillotinades, les fusillades, les nozades, la compression, le désespoir, tous les genres de pénurie, de privations et de misère.*

the terrorists were, above all, opponents of the freedom of opinion. While Babeuf praised the true revolutionaries of 1789 to 1792 for having fought for the unrestricted freedom of the press, he accused the Jacobins of turning against these principles and establishing a restrictive system in the name of some kind of higher freedom (Babeuf 1966a).<sup>51</sup> Echoing Tallien's insistence on freedom as a sphere demarcated by the rights of the individual, Babeuf hoped that Robespierre's execution and the establishment of a new government would lead to the restoration of those rights and liberties which the constitution of 1791 had granted and which had been curtailed by the Jacobins under the pretext of (a different kind of) freedom.

In the Thermidorian effort to reestablish and consolidate a system of laws and rights, the concept of terrorism played a critical role and became a powerful weapon in the fight against political opponents. By November 1794, the Thermidorians had shut down the Jacobin Clubs and reclaimed the radical sections of Paris. "With the sectional militants out of the way," Albert Soboul maintains, "no popular force remained which could offer resistance to the moderate bourgeoisie and stand out against the reaction, which now trained its fire away from institutions to individuals: the White Terror was in sight."

Anti-terrorism and the extirpation of militant sans-culottes from the sections – which together comprised an embryonic version of the White Terror – progressed throughout the winter of 1794-1795, from Frimaire to Ventôse Year III. No longer a question of purges in the true sense of the term, like that which had followed directly after 9 Thermidor – for the terrorist cadres had already

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<sup>51</sup> See for example Babeuf's complaint that "The periodicals *L'Orateur du Peuple* and *Ami des Citoyens* [which were edited by the Thermidorians Tallien and Fréron and advocated unrestricted freedom of the press], constantly appreciated by the patriots of the good old times, that is, of the first, second, third and fourth years of freedom, will not be liked today by the terrorist patriots of Year Two of the Republic (the French love variety, this expression will come into fashion)" (Babeuf 1966a, 3). [*L'Orateur du Peuple, l'Ami des Citoyens, ouvrages périodiques constamment goûtés par les patriotes du bon vieux temps, c'est-à-dire, des ans premier, deux, trois et quatre de la liberté, mais qu'on ne répond pas qui plairont aujourd'hui aux patriotes terroristes (les Français aiment toujours la variété, cette expression va venir à la mode) qu'on ne répond pas, dis-je, qui plairont aux patriotes terroristes de l'an deux de la République.*]

been eradicated – the element of personal vengeance now predominated. After having first turned against the main terrorists, the repression widened its scope to include the whole of the former sectional personnel. As it did so, it acquired a social complexion, attacking in the former militants a whole system of republican values (Soboul 1989, 425-426).

In other words, while Tallien had initially defined terrorism in terms of a political system sustained by the exercise of terror and the spreading of fear, the concept was soon extended to include republican principles and was used as an accusation of individuals who appeared to be enemies of the Thermidorian version of freedom. The Thermidorians strategically conjured up the specter of terrorism so as to denounce political opposition as an attempt to return to the bloody excesses of the Jacobin terror. As a consequence, allegations of terrorism were extended to aristocrats and royalists, who opposed the Thermidorian restoration of rights and liberties in favor of a reinstatement of the monarchy (Tallien 1847).<sup>52</sup> Within a few months, the rhetoric of terrorism stretched from an accusation leveled at the radical left to a charge hurled against all kinds of opposition across the political spectrum.<sup>53</sup>

When the Thermidorians began to turn their political purges into mass liquidations of individuals under the pretext of terrorism and Robespierism, they were soon accused of using terrorism as a “*trompe-l’œil*,” a sham that allowed the Thermidorians to secure their power (Brunot 1937, 654).<sup>54</sup> Early on, Babeuf drew

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<sup>52</sup> See Tallien’s demand that “in this context where Capet’s and Robespierre’s plots against freedom have been discovered and punished, we also have to thwart the plans of aristocratic malice” (Tallien 1847, 612). [*... il faut, dans cette enceinte où les complots liberticides de Capet et de Robespierre ont été découverts et punis, déjouer aussi les projets de l’aristocratie malveillante.*]

<sup>53</sup> Garrau, a Montagnard and member of the Council of 500, claims to have seen “men accused of terrorism and vandalism” (*des actes d’accusation dressés contre des hommes pour cause de terrorisme et de vandalisme*) (cited in Brunot 1937, 654). Barras, the executive leader of the Directory between 1795 and 1799, reports that “they have hunted down the best patriots with the help of a word as insignificant as terrorist” (*ils en ont chassé les meilleurs patriotes, à l’aide du mot insignifiant de terroriste*) (cited in Ibid., 654).

<sup>54</sup> Legot noted that “I believed that it was the duty of the true friends of the homeland to take care that the hot and energetic patriots who had made and consolidated the Revolution were not sacrificed under the pretext of terrorism, of Robespierism, etc.” (cited in Aulard 1951, 138). [*J’ai cru qu’il était du devoir*

attention to the problematic rhetoric of terrorism that was mobilized by the Thermidorians. On the one hand, Babeuf protested, the Thermidorians sought to present themselves as the champions of public liberty; on the other, however, they unleashed excessive violence against everyone who was opposed to the new political system and demanded a different form of political authority. While Babeuf had initially supported Tallien's coup against Robespierre, he became increasingly skeptical of Thermidorian politics. On 5 October 1794, three months after Robespierre's execution, a change in rhetoric manifested itself in Babeuf's writings and Babeuf used his pamphlets to openly attack Tallien and his followers. Babeuf's intention to use his journal to express political dissent was also reflected in the change of its title from "*Journal de la liberté de la presse*" to "*Le tribun du peuple*" in October 1794.

Babeuf's initial strategy was marked by optimism and hope that the Thermidorians would recognize the contradictions between their rhetoric of freedom and their actual political practice. When the White Terror began in the early months of 1795, Babeuf launched a full-blown attack on Tallien and his companions.<sup>55</sup> The Thermidorians were trying to present themselves as champions of liberty, Babeuf claimed, but their words were at odds with their deeds (Babeuf 1966c).<sup>56</sup> It had to be determined, Babeuf demanded, whether the Thermidorian Reaction had done anything for the people except aggravate their oppression (Ibid.).<sup>57</sup>

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*des vrais amis de la patrie de prendre garde que, sous prétexte de terrorisme, de robespierrisme, etc., on ne sacrifiât ces patriotes chauds et énergiques qui ont fait et consolideront la Révolution.]*

<sup>55</sup> On the White Terror see Soboul, Albert. *The French Revolution 1787-1799. From the Storming of the Bastille to Napoleon*. Translated by Alan Forrest and Colin Jones. Boston, Sydney and Wellington: Unwyn Hyman, 1989, 424-430.

<sup>56</sup> Babeuf argued that "The thinkers, however, were surprised to see only words, only thunder, if you will, which, however, did not fell by reinstating eternal principles, which, however, did not seek to unmask the usurpers" (Babeuf 1966c, 220). [*Les penseurs, au contraire, s'étonnaient de ne voir que des mots, du tonnerre, si l'on veut, mais qui ne foudroyait pas pour relever les principes éternels, mais qui ne visoit pas à confondre les usurpateurs.*]

<sup>57</sup> Babeuf accused Fréron and Tallien, claiming that "you have not acquired the right that we say about you: they are the hope of the people; work afresh if you want to be worthy that we say it one day. But meanwhile we must not be fooled by your alleged popularity, it is necessary that the record of your



It is evident from Babeuf's writings that he recognized the Thermidorians' use of a discourse of terrorism as a means to justify political repression. The invocation of terrorism allowed for a representation of coercive measures as necessary for the preservation of freedom even though these measures appeared to be at odds with Tallien's insistence on individual liberty. In other words, under conditions of a terrorist threat, freedom could only be protected by its temporary limitation. The rhetoric of terrorism created a political imaginary that lent credibility to the Thermidorians' claims and allowed for the introduction of measures that were no less violent and, for Babeuf, no more legitimate than Robespierre's regime. It is in this sense that Babeuf rejected the Thermidorians' argument "that the violation of all your rights, that the most audacious oppression that they cover under the name of necessarily strict measures, under the name of measures for the general security, are the only certain warrant of your liberty" (Ibid., 211).<sup>58</sup>

Eventually, the growing extent of violence deployed by the Thermidorians provoked Babeuf to turn allegations of terrorism back at the government. Denouncing Tallien as the "terrorist from Bordeaux" (*le terroriste de Bordeaux*), and as "a terrorist, a destroyer, an incendiary, who did not yield in any way to any revolutionary" (*un terroriste, un destructeur, un incendiaire, qui ne le céda en rien à aucun révolutionnaire*), Babeuf demanded that Tallien and his right hand Fréron had to be

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political history since Robespierre prove if you have served the people in anything, or if you have done nothing but help to enchain them" (Babeuf 1966c, 219). [*Fréron et Tallien, vous n'avez point acquis le droit que l'on dise de vous: ils sont l'espoir du peuple; travaillez à nouveaux frais si vous voulez mériter qu'on le dise un jour. Mais en attendant il faut qu'on ne soit pas dupe de votre prétendue popularité, il faut que le précis de votre histoire politique depuis Robespierre, prouve si vous avez en quelque chose servi le peuple ou si vous n'avez fait qu'aider à l'enchaîner.*]

<sup>58</sup> ... que la violation de tous vos droits, que l'oppression la plus audacieuse qu'ils déguisent sous le nom des mesures utilement sévères, sous le nom de mesures de sûreté générale, sont les sûrs et uniques garants de votre liberté.

“guillotined. But how? Like a terrorist, too ... guzzling on blood, destructive, incendiary” (Babeuf 1966d, 306, Babeuf 1966e, 332).<sup>59</sup>

Taking the new government’s definition of terrorism as the enemy of freedom at face value, Babeuf argued that the Thermidorian violence unleashed on the people meant that the Thermidorians were terrorists by their own standards. Babeuf left the content of the concept unchanged and simply extended it so as to include the Thermidorians themselves. In a sense, Babeuf could therefore not implausibly be described as a historical antecedent of those scholars who today seek to show that allegedly legitimate state violence in fact matches the dominant (state-imposed) understanding of terrorism and thus is itself an instance of terrorism.<sup>60</sup>

Babeuf’s subversive use of the term terrorism as a name for the Thermidorian government, however, did not gain a foothold and Babeuf changed his approach. Given that the Thermidorian rhetoric failed to differentiate between terrorism as the real enemy of freedom and political opposition to the Thermidorian distortion of freedom, Babeuf argued that terrorism had, in fact, become just another word for patriotism. The terrorist, Babeuf argued, was “synonymous with patriot and friend of the principles” (*synonyme de patriote & d’ami des principes*) (Babeuf 1966d, 304), and “patriots and terrorists are all one” (*patriotes et terroristes, c’est tout un*) (Babeuf 1966i, 217). In a staggering inversion of the Thermidorian understanding of terrorism, Babeuf declared that “the convention has opened its eyes to the ferocious conduct of the furorists, and that it has repeatedly declared itself protector of the patriots who are oppressed under the name terrorists, which is given to all republicans, even to the soldiers of liberty.”

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<sup>59</sup> ...guillotiné. Comment donc ? Eh ! comme terroriste aussi ... buveur de sang, démolisseur, incendiaire.

<sup>60</sup> For present accounts that seek to portray state violence as terrorism see for example Jackson, Richard, Eamon Murphy and Scott Poynting, (eds.) *Contemporary State Terrorism: Theory and Practice*. Abingdon and New York: Routledge, 2009 and Zolo, Danilo. *Terrorismo umanitario. Dalla guerra del Golfo alla strage di Gaza*. Reggio Emilia: Diabasis, 2009a. See also the critique of terrorism scholarship in chapter 1.

It has been proven that the furorists did not know anything but terrorists, anyone but those who have scared the *émigrés*, the kings, the royalists, the papists, the plungers, the wholesale buyers; eventually, all enemies of the people. ... The convention feels and will feel that in order to govern justly, one must terrify the villains, the royalists, the papists and those who starve out the public, and that one cannot govern DEMOCRATICALLY without this terrorism which alone is permitted and legitimate; otherwise, there is nothing but injustice and famine; there is nothing but the most terrible tyranny and servitude for the good citizens, just like it has been exercised for too long (Babeuf 1966f, 49-50).<sup>61</sup>

Reevaluating the Thermidorian condemnation as terrorism of what for Babeuf was in reality patriotism, Babeuf accepted the Thermidorian accusations and endowed them with a positive valence. If terrorism meant the demand for freedom, real democratic government, legitimate violence and justice for the people, then terrorism indeed appeared to be the appropriate and legitimate means against those who stood in the way of freedom and justice. The prevention of injustice and the protection of the people from those who threatened their well-being with the selfish pursuit of private interests required that terrorism be used for a genuine democracy to function.

Yet again, Babeuf's subversive efforts failed to result in an effective oppositional political strategy that could bring to a halt the Thermidorians' legal but nonetheless illegitimate use of force. Despite this failure, it has become clear that Babeuf's crucial contribution to a critical evaluation of allegedly illegitimate terrorism and ostensibly legitimate state violence is that his pamphlet literature registers the

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<sup>61</sup> *Amis, vous savez que la convention a ouvert les yeux sur la conduite féroce des furoristes, et qu'elle s'est déclarée, à plusieurs reprises, la protectrice des patriotes opprimés sous le nom de terroristes, donné à tous les républicains, même aux soldats de la liberté. Il est démontré que les furoristes ne connoissoient pour terroristes, que ceux qui avoient terrifié les émigrés, les rois, les royalistes, les papistes, les agioteurs, les accapareurs; enfin, tous les ennemis du peuple. ... La convention sent et sentira que pour gouverner judicieusement, il faut terrifier les méchants, les royalistes, les papistes et les affameurs publics, et que l'on ne peut gouverner DÉMOCRATIQUEMENT, sans ce terrorisme seul permis et légitime: autrement, il n'y a qu'injustice et famine; il n'y a que tyrannie et esclavage les plus terribles pour les bons citoyens, tels qu'on les exerce depuis trop long-tems.*

instrumentalization of the rhetoric of terrorism and its abuse as a justification for the preservation and extension of state power.

### 1.6.5 Thermidorian counter-terrorism

In the context of vilifying political adversaries, terrorism was eventually drained of its original meaning and used as a denunciation of political opponents from the radical left to the reactionary and royalist right. The function of terrorism as a floating signifier made it a “*mot magique*,” a magic word and an expedient instrument for the silencing and elimination of critics of the regime (Aulard 1951, 567). The White Terror of the Thermidorian government manifested itself in massacres of terrorist suspects, individual murders, and the organization of murder gangs: “the Companies of Jesus, of Jehu and of the Sun, all of which hunted down terrorists, Jacobins and eventually the ‘Patriots of ’89’, especially those who had purchased national lands. ... Massacres proliferated” (Soboul 1989, 428).

On 21 July 1795, the main Parisian newspaper, “*Le Moniteur Universel*,” reported that “the assassins of the counter-revolutionary regime have stabbed those whom they call terrorists in the prisons, in the streets, even in their homes, and the men without passion assure that more than one good citizen has died in these massacres” (Panckoucke 1847, 258).<sup>62</sup> Babeuf himself experienced the disastrous consequences of being identified as a terrorist. Due to the influence of the “*Tribun du Peuple*,” he was imprisoned on several occasions, most notably in 1794 when the Thermidorian government ordered the police to arrest Babeuf for promoting revolutionary opposition.

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<sup>62</sup> *Les assassins du régime contre-révolutionnaire ont égorgé dans les prisons, dans les rues, dans les maisons mêmes ce qu’ils appellent des terroristes, et des hommes sans passion assurent qu’il a péri dans ces massacres plus d’un bon citoyen.*

Babeuf was held in exile in a prison at Arras in extremely poor conditions (Rose 1978).<sup>63</sup> “What you are doing to me,” Babeuf protested, “is declaring me an outlaw.”

In your spirit and your actions, you have already judged and condemned me in advance. If I am unfortunate and come into your hands, I believe that, by dint of your authority, you will mock my good reasons and hand me over to those judges that you were determined to choose (Babeuf 1966h, 160).<sup>64</sup>

Being identified as a terrorist effectively turned Babeuf into an outlaw without any claim to legal protection. In this “*hors la loi*” otherwise illegal measures were suddenly regarded as legitimate.<sup>65</sup> Babeuf was well aware that his sentence was formed before he was even allowed to appear before a court. And his case was no exception. Whoever was associated with terrorism, Babeuf noted, was exiled from Paris, arrested and thrown into dungeons. “Not only did you condemn them to bread and water,” he denounced the harsh treatment of alleged terrorists, “to rotten straw, to the most despicable darkness, to the horror of having to exist for a number of months in this subterranean place where the floor was covered a foot deep in putrid and infected water,

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<sup>63</sup> After being moved to a prison for Sansculottes and ex-terrorists in Paris and later being released, Babeuf was again arrested in February 1795. After his release, Babeuf and his followers, the *Société des Égaux*, openly turned to revolutionary terrorism. In May, Babeuf was arrested and sentenced to death for leading an anarchist conspiracy. He was guillotined on 27 May 1797. For a detailed biography of Babeuf see Rose, Robert B. *Gracchus Babeuf. The First Revolutionary Communist*. Stanford: Stanford University Press, 1978.

<sup>64</sup> *C’est un hors la loi que vous avez lancé sur ma personne. Dans votre esprit et d’après la lettre de vos actes, je suis jugé et condamné d’avance. Si j’avois le malheur d’être sous votre main, je crois bien qu’en vertu de votre pleine autorité, vous pourriez vous moquer de toutes mes bonnes raisons et me livrer à des juges tels qu’il vous plairait de choisir.*

<sup>65</sup> Dan Edelstein stresses the significance of the “*hors la loi*” in his account of what he claims to be the Jacobin project of restoring the Republic of Nature, that is a fusion of republicanism with natural rights theory (see *supra* note 38). Edelstein argues that the pivot of this enterprise was a “radical kind of enemy” that allowed the Jacobins to explain their need for unbridled violence (Edelstein 2009, 26). The figure of this enemy of the human race (*hostis humani generis*), he maintains, has a long history and appears in the form of the savage in early modern natural right theory, as the brigand, as the devil in medieval theology, and as the pirate in Renaissance law. Eventually the tyrant becomes the ultimate enemy, and it is in these terms that Robespierre framed his attack on Louis XVI. While Edelstein’s narrative correctly points out the important political function of the enemy and its legal status as an outlaw, his analysis remains confined to the period of the Jacobin Reign of Terror. As this chapter as well as the following ones demonstrate, the history of the “*hors la loi*” and the *hostis humani generis* continues after 9 Thermidor. If anything, their function is intensified and exacerbated due to the political repercussions of historical, social and economic developments that will be discussed shortly.

... but where they stayed several days without food; and, instead of consolation, they received nothing but abuse and death threats from the soldiers of Jesus” (Babeuf 1966h, 159).<sup>66</sup>

In the name of freedom and under the pretext of terrorism, the Thermidorians were exercising large-scale violence against the enemies of freedom. Their attempt to topple the Jacobin Reign of Terror and to restore individual liberty had given rise to a government that appeared identical to the kind of rule it claimed to have overthrown. But whereas Robespierre could justify violence through his affirmation of the extra-legal foundation of the republic and its laws in a more authentic kind of freedom and legitimacy, the Thermidorians faced a major difficulty in legitimating their White Terror.

“The Thermidorian notables’ fear of royalism and of democracy,” Soboul explains the impasse at which the government found itself, “had led them to increase the number of safeguards against the omnipotence of the State” (Soboul 1989, 477). The outcome, according to Soboul, was a choice between an impotent government and a resort to violence. To invoke Benjamin’s analysis in his 1921 essay “Critique of Violence,” the reemergence of violence within the Thermidorian legal order appears as the result of a denial and concealment of the law’s extra-legal grounds. The act of foundational violence that established the Thermidorian order on the dead body of Robespierre returned as a law-preserving White Terror that was as rampant as Robespierre’s *terreur*.

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<sup>66</sup> ... non-seulement vous les condamnâtes au pain, à l’eau, à la paille pourris, à l’obscurité la plus affreuse, à l’horreur d’exister pendant plusieurs mois dans ce lieu souterrain dont le plancher étoit couvert d’un pied d’eaux croupissantes et infectes, ... mais où ils restèrent plusieurs journées de suite sans manger; et, au lieu de consolations, ne recevoient que les outrages et des menaces de mort que venoient leur apporter des soldats de Jésus.

By way of a rhetorical move that was as ingenious as it was injurious, the Thermidorians had succeeded in asserting an understanding of terrorism that collapsed definition with condemnation.<sup>67</sup> Whoever was identified as a terrorist was at the same time pronounced guilty. Contrary to the alleged rule of law which the Thermidorians had claimed to restore, the guilt of a supposed terrorist was established by definition rather than by legal trial and judgment. For unlike ordinary criminals who were tried in accordance with a general law that was applied to their particular case and proscribed a legitimate judgment and punishment for their crime, there was no universal law and, hence, no predetermined sentence for terrorism. In short, terrorism could not in any way be regarded as a crime in any conventional legal sense. The solution to the deficiency of the law with regard to terrorism was not, however, the criminalization of terrorism. Instead of outright making any action associated with terrorism illegal, the government decided to suspend the law with regard to those individuals identified as terrorists.<sup>68</sup> The legal void into which the terrorist was dropped amounted to a situation of lawlessness in which neither the terrorist nor the government was subject to the legal order. But while the terrorist lost any legal status and protection of the law, the state was unbound by the restraints imposed on it by the law. Terrorism and state violence appeared as diametrically opposed, yet equally anomic phenomena. In the lawlessness of the “*hors la loi*,” an absolutely vulnerable subject without rights faced as its exact inverse an absolutely boundless violence.

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<sup>67</sup> This is not dissimilar from the conflation of description and judgment in contemporary definitions of terrorism. See chapter 1 for a more in-depth critique of this tendency.

<sup>68</sup> We will see in subsequent chapters that this suspension of the law becomes the standard operating procedure in response to terrorism.

## 1.7 Terrorism and the legitimation of state violence

### 1.7.1 Bourgeois universality and state totality

So far, this chapter has explored historical archives to chart the contestations over the meaning and use of the term terrorism. We have seen that the successful imposition of a discourse of terrorism played a crucial role in the Thermidorians' efforts to silence their political opponents. In the remainder of this chapter, I engage the work of Foucault in order to identify the political rationality and the particular configurations of power which gave rise to the Thermidorians' portrayal of terrorists as the enemies of freedom. In this context, Foucault's genealogy of liberal governmentality serves as an important theoretical framework in which to analyze the relationship between the instrumentalism of the rhetoric of terrorism and the emergence of a modern economy of power. The significance of Foucault's critical intervention lies in his attempt to explain how the exercise of an absolute power over life and death can be reconciled with an evolving political concern with the health, protection, defense and security of the nation. It is as an episode in this development, I argue, that the emergence of a certain understanding of terrorism in the French Revolution has to be comprehended.

To be sure, the point here is not to show that liberalism was inaugurated as a complete and comprehensive political rationality in the French Revolution as the starting point of bourgeois civilization.<sup>69</sup> While the revolution can certainly be seen as a

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<sup>69</sup> Even the most Marxist of commentators acknowledge that the rise of the bourgeoisie is not an unbroken development. See for example Lefebvre, Georges. *Les Paysans du Nord pendant la Révolution française*. Paris: Armand Colin, 1972, Ibid., *The Great Fear of 1789: Rural Panic in Revolutionary France*. Translated by Joan White. New York: Schocken Books, 1973, Ibid., *Quatre-vingt neuf*. Paris: Maison du livre français, 1939, Soboul, *The French Revolution 1787-1799* and Ibid., *Les sans-culottes Parisiens en l'an II. Mouvement populaire et gouvernement révolutionnaire. 2 juin 1793 - 9 Thermidor An II*. Paris: Librairie Clavreuil, 1958.



bourgeois revolution that included episodes of liberal stabilization, these processes were interrupted (by Napoleon's coup on 18 Brumaire 1799 and his establishment of a military dictatorship), resumed (in the revolutions of 1848), reversed (by Louis-Napoleon's coup in 1851 and his self-proclamation as the emperor of France) and revived (in the Paris Commune of 1871). One might even suggest that contestations over the meaning of liberalism and its appropriate realization are ongoing to date. The political debates over the right balance between freedom and security are only one of its manifestations.<sup>70</sup> Nevertheless, Foucault registers important social, historical and political transformations that, I contend, created the conditions of possibility for a particular definition of terrorism to emerge in opposition to legitimate but by no means less gruesome forms of violence.

Although Foucault's oeuvre might as a whole be described as an attempt to think power beyond the juridico-institutional model of sovereignty dominant in conventional politico-philosophical discourse, it is not until the publication of "Discipline and Punish" in 1975 and the lecture series "Society Must Be Defended" given at the Collège de France in the same year that an explicit concern with a

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<sup>70</sup> With respect to the complex relation between freedom and security under conditions of contemporary international terrorism, the interested reader is referred to the following (political and scholarly) sources: Agamben, Giorgio. "Security and Terror." *Theory and Event* 5, no. 4 (2002): 1-2, Amoore, Louise and De Goede, Marieke. "Governance, Risk and Dataveillance in the War on Terror." *Crime, Law and Social Change* 43, no. 2 (2005): 149-173, Ibid., *Risk and the War on Terror*, Aradau, Claudia and Rens Van Munster. "Taming the Future: the *Dispositif* of Risk in the War on Terror." In *Risk and the War on Terror*, edited by Louise Amoore and Marieke De Goede, 23-40. London and New York: Routledge, 2008, Dillon, Michael and Andrew Neal, (eds.) *Foucault on Politics, Security, and War*. Basingstoke: Palgrave Macmillan, 2008, Etzioni, Amitai. *How Patriotic Is the Patriot Act?: Freedom versus Security in the Age of Terrorism*. New York: Routledge, 2004, Howard and Sawyer. *Terrorism and Counterterrorism*, National Security Council. "The National Security Strategy of the United States of America 2002." <http://georgewbush-whitehouse.archives.gov/nsc/nss/2002/> (accessed April 2, 2011), 2002, Neal, *Exceptionalism And The Politics of Counter-Terrorism*, Purpura, Philip P. *Terrorism and Homeland Security: An Introduction with Applications*. Burlington and Oxford: Butterworth-Heinemann, 2006, Schneier, Bruce. *Beyond Fear: Thinking Sensibly About Security in an Uncertain World*. New York: Copernicus Books, 2003, Tsoukala, Anastassia. "Democracy in the Light of Security: British and French Political Discourses on Domestic Counter-Terrorism Policies." *Political Studies* 54, no. 3 (2006): 607-627, Waters, *Editorial: The Politics of Fear* and Wilkinson, *Overview of the Terrorist Threat*.

microphysics of power crystallizes in his work.<sup>71</sup> This engagement with power and its manifold operations culminates in Foucault's reflections on the development of liberalism and governmentality in his lecture series "Security, Territory, Population" (1977/78) and "The Birth of Biopolitics" (1978/79) after which Foucault turns from an investigation of transformations in what he calls an economy of power to a consideration of practices of the self in ancient Greek and Roman philosophy.<sup>72</sup>

The general theme of Foucault's work in the second half of the 1970s can be summarized as an appraisal of the emergence of forms of power that cannot exhaustively be explained with the traditional theory of sovereignty. To briefly recapitulate Foucault's argument, he intimates that the philosophico-juridical theory of sovereignty rests on a model of power with a single center that is institutionalized in the state. Its main purpose is to establish an explanation that is at the same time a justification of a unitary sovereign power over subjects within the bounds of legitimacy. The problem with this account, Foucault contends, is that it assumes as preexisting all those elements that are in fact founded by the theory itself. In other words, Foucault hints that the traditional juridico-philosophical theory of sovereignty represents a self-referential and circular justification of sovereign power that fails to explain how power

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<sup>71</sup> A number of scholars have accordingly suggested a threefold methodological division of Foucault's work into archaeology, genealogy and problematization or ethics. They agree that the shift from archaeology to genealogy is to be located in the early 1970s. See Flynn, Thomas R. "The Philosopher-Historian as Cartographer: Mapping History with Michel Foucault." *Research in Phenomenology* 29, no. 1 (1999): 31-50, Ibid., *Sartre, Foucault, and Historical Reason. A Poststructuralist Mapping of History*. Vol. 2, Chicago: The University of Chicago Press, 2005, Golder, Ben and Peter Fitzpatrick, (eds.) *Foucault and Law*. Farnham and Burlington: Ashgate, 2010 and Han, Béatrice. *Foucault's Critical Project: Between the Transcendental and the Historical*. Translated by Edward Pile. Stanford: Stanford University Press, 2002.

<sup>72</sup> See Foucault, Michel. *The Care of the Self. The History of Sexuality*. Vol. 3. Translated by Robert Hurley. New York: Vintage Books, 1988, Ibid., *The Use of Pleasure. The History of Sexuality*. Vol. 2. Translated by Robert Hurley. New York: Vintage Books, 1990b, Ibid., *The Hermeneutics of the Subject. Lectures at the Collège de France 1981-1982*. Edited by Arnold I. Davidson. Translated by Graham Burchell. New York: Palgrave Macmillan, 2005, Ibid., *Le courage de la vérité. Le gouvernement de soi et des autres II. Cours au Collège de France. 1984*. Edited by Frédéric Gros. Paris: Gallimard, 2009a and Ibid., *The Government of Self and Others. Lectures at the Collège de France 1982-1983*. Edited by Arnold I. Davidson. Translated by Graham Burchell. Basingstoke: Palgrave Macmillan, 2010b.

really works. It is for this reason that, in political theory, “We need to cut off the king’s head” (Foucault 1994, 122).

As a consequence, Foucault seeks to present an alternative framework for analyzing power relations in his 1975 lecture series “Society Must Be Defended.” In contrast to the duality of peace within the state and war outside its borders postulated by classical theories of sovereignty such as Hobbes’ “Leviathan” (1651), Foucault asks if war might not be a more appropriate “grid of intelligibility” of politics as a field of essentially warlike relations (Foucault 2004a, 171). In fact, Foucault argues that the seventeenth century witnessed the emergence of a certain political historicism that regarded history as a series of battles. Against the traditional discourse of the historian which justified and reinforced the sovereign’s power by demonstrating its right and praising its glory, this new politico-historical discourse of war sought to reveal that the state, its laws and its power were born out of real struggles and at the expense of the vanquished. Foucault charts this counter-history in attempts of the nobles to reveal the king’s power as the result of abuses, violence and injustice and to denounce it as the illegitimate outcome of conquest and invasion.

The aim of this historical discourse of politics as the continuation of a war between nations was, of course, not only the demonstration of the illegitimacy of the king but also an assertion of the nobility’s legitimate rights and the restoration of a rightful state of affairs. Its upshot was a rift that opened up between the sovereign’s claim to represent each and every one of his subjects and the nobility’s demand for the recognition of particular rights that had been wrongfully confiscated by an illegitimate king. Because history was no longer a history of power’s right but instead a weapon against the state, political historicism gave rise to a new subject of history. “This new subject of history,” Foucault maintains, “which is both the subject that speaks in the

historical narrative and what the historical narrative is talking about, this new subject that appears when we get away from the State's juridical or administrative discourse about the State ... is what the vocabulary of the day called a 'nation'" (Ibid., 134). At that time, Foucault explains, nation simply meant "a society made up of a certain number of individuals, and which has its own manners, customs, and even its own law" (Ibid.).

The decisive transformation of the idea of the nation occurred in the late eighteenth century in France where the grounds for a politically consequential rearticulation of the interpretation of history as a series of battles between warring nations had been prepared since the late sixteenth and early seventeenth century. Things came to a head when in the course of the eighteenth century the discourse of politics as war and the strategic use of excluded histories became generalized as a tactical instrument that allowed various social groups to lay claim to their historically legitimate rights. The bourgeoisie, however, faced the greatest difficulty in constituting itself as a subject of history.<sup>73</sup> Consequently, Foucault argues that the antihistoricism of the bourgeoisie that manifested itself in an endorsement of enlightened despotism in the first half of the eighteenth century and in a demand for a constitution founded in natural rights, has to be understood as a reaction to and rejection of the claims made by other social forces on the basis of political historicism.

When the Estates General were summoned for the first time in 175 years in 1789, the bourgeoisie made its decisive move. It countered the nobility's claims that were justified as historical rights of a nation by inverting this historical discourse and asserting that it was the Third Estate who in reality constituted the only complete nation

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<sup>73</sup> For Foucault, the reason is that the bourgeoisie or the Third Estate had simply not figured in a history of invasion and conquest. "So long as history concentrated on the Merovingians, the Carolingians, the Frankish invaders, or even Charlemagne," Foucault asks, "how could it find anything relating to the Third Estate or the bourgeoisie?" (Foucault 2004a, 208-209).

in the state. For Foucault, Sieyès' famous essay "*Qu'est-ce que le tiers état?*" (1789) figures as the epitome of the bourgeois reworking of the idea of the nation. According to this text, the Third Estate performs all the functions that are necessary to maintain a nation, such as agriculture, handicrafts and military duties, and yet it has not been given the status of a nation. Because, for Sieyès, the Third Estate is a complete nation and in fact the only complete nation in France, the State has to coincide with it as its juridical manifestation.

For Foucault, the tactical use of history by the bourgeoisie in a continuous war between nations resulted in a transformation of the idea of the nation that dealt the death blow to an understanding of politics as the continuation of war (Ibid., 216). For if only the bourgeoisie represents a nation in the sense that it alone can guarantee the continuous existence of the State, then the bourgeoisie has to be given a juridical status that recognizes and corresponds to its national totality. In short, the bourgeoisie demanded nothing less than the translation of its national totality into the universality of the state (Ibid., 222-224). On this account, the French Revolution achieved, at least provisionally, a universalization of the bourgeoisie and its values as the basis of the legal edifice of the state. This new political form that reconciled state and nation marked the end of a war between victorious and conquered nations that had previously been raging beneath the state and its institutions. Or so it seemed.

Under the pretext of terrorism, the Thermidorians excluded their political opponents from a supposedly universal legal order. Those who rejected the bourgeois idea of negative freedom and political legitimacy derived from its institutionalization in the form of a supposedly universal, neutral and objective form of law were prosecuted and proscribed as terrorists. Stripped of their legal status as political subjects, terrorists were exposed to the unbridled violence of the White Terror. While a truly universal

order would have even had to apply to those who denied its universality or legitimacy, the enemies of bourgeois values could not expect to be included in a system whose universal character they refused to acknowledge. In other words, the rhetoric of terrorism was a ruse that helped the Thermidorians to conceal the fact that their values as well as their laws fell short of being universally valid and applicable. We can see that terrorism fulfilled a crucial role in the reconciliation of the totalizing power of a state that claimed to represent universal values applicable to everyone and the individualizing powers that singled out groups of individuals and excluded them from national totality. The rhetoric of terrorism was a strategic response to the demand to justify the extra-legal use of force and to uphold the semblance of legitimacy of the state and state violence.

Even though the Thermidorians' attempts to suppress political opposition might be understandable, one nevertheless wonders why it seemed impossible or undesirable to respond to terrorism by way of more moderate but therefore not necessarily less effective legal measures. In short, why were acts of terrorism not simply criminalized and punished like murder, assault or treason? Considering in particular the Thermidorians' aspirations to restrict interference with individual liberty and to limit violence to legal violence, i.e. to violence necessary for the execution of the law, the suspension of the law and the unleashing of state violence against political opponents seem surprising at least. To shed light on the reasons why terrorism warranted such a violent response, we will now examine Foucault's interpretation of the French Revolution as a historical conjuncture in which political historicism intersected with a different political rationality, namely *raison d'État*. We will see that the key to understanding terrorism in the context of the French Revolution lies in the need to

reconcile strategically useful elements of both political historicism and *raison d'État*, and to integrate them into the fabric of the nation-state.

### 1.7.2 The right to kill in defense of the nation

When political historicism was honed as the weapon of a dispossessed nobility and an ascendant bourgeoisie against the totalizing power of the state, the state was crafting its own reason that spoke of its strength and power and how to increase them. When these two discourses, the counter-history of nations at war and *raison d'État*, clashed on the eve of the French Revolution, the bourgeois state reworked the idea of the nation that allowed it to retain and redeploy a crucial mechanism of *raison d'État*, the *coup d'État*.<sup>74</sup> Before we can investigate the articulation of a concept of terrorism and its role in the integration of different forms of power, we have to examine the role of the *coup d'État* and the processes by which it became adapted for the purposes of a bourgeois nation-state.

For Foucault, the *coup d'État* constitutes a remnant of an old form of sovereign power whose displacement had begun in sixteenth-century Europe. It is this transformation that Foucault seeks to reconstruct genealogically in his lecture series “Security, Territory, Population.” Foucault argues that until the sixteenth century, the position of the sovereign had been understood along a “theological-cosmological continuum” that authorized him to govern and also provided the model according to which he had to govern (Foucault 2009b, 234). A king was considered a good king insofar as he imitated God’s government on earth, personified the kingdom’s vital force, and ensured the common good in the same way that a shepherd cared for his

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<sup>74</sup> For a genealogy of *coup d'État* see Jens Bartelson’s excellent article “Making Exceptions: Some Remarks on the Concept of Coup d’état and Its History.” *Political Theory* 25, no. 3 (1997): 323-346.

flock, or a father for his family. In other words, traditional sovereignty was formulated along a “continuum from God to men in the – in inverted commas – ‘political’ order” (Ibid.).

The breakup of this continuum in the late sixteenth century resulted in the loss of God as the paragon of sovereign authority and a sovereign who could no longer derive the principles of his power in analogy with divine rule.<sup>75</sup> Between a transcendent God and immutable and universal laws of nature, between an omnipotent God-figure and a completely regular natural order, the sovereign had to find his own “art of government” (Ibid., 236). It became the sovereign’s task to determine universal laws that applied in general, that is to a multitude of subjects, but at the same time he had to arrange individuals and things in their relations so as to increase his wealth. To put this point slightly differently, the sovereign had to find a way of governing his subjects in a manner that was different from God’s sovereign rule over nature. He had to find a new “*ratio gubernatoria*” (Ibid., 232).

Without going into the intricacies of Foucault’s analysis, the sovereign found this governmental reason in an essentially religious form of power, namely in the Christian pastorate.<sup>76</sup> Its disintegration roughly around the same time made available a repository of techniques of governing people that the sovereign took up, integrated into and made to work in his new political rationality. The result of the intersection of

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<sup>75</sup> Foucault argues that this break was occasioned by the foundation of the classical episteme between 1580 and 1650 that replaced the Renaissance system of resemblance and signification with a system of representation and classification. See also Foucault, Michel. *The Order of Things*. London and New York: Routledge, 2001.

<sup>76</sup> Foucault explains that as an essentially “religious type of power,” the beginning of pastoral power is to be found in Christianity, which institutionalized it as an art of conducting men (Foucault 2009b, 125). Unlike the Hebrew shepherd, the Christian pastor is embedded in what Foucault calls an “economy of faults and merits” in which the pastor has to look out for the salvation of each and all sheep in “a sort of generalized field of obedience that is typical of the space in which pastoral relationships are deployed” (Ibid., 173). The pastorate established a network of relationships beyond salvation, law, and truth, a network in which a specific subject is formed through subjection and obedience as well as through subjectivation understood as confession of an individual’s inner truth. It is in this sense that Foucault refers to the pastorate as the “prelude” of governmentality (Ibid., 184).



classical sovereignty and pastoral power was a first form of governmentality that responded to the challenges of the classical episteme with a specific art of governing people tied to the structures of sovereignty and facilitated by the detachment of the question of conduct from the Church. Government of men within the horizon of sovereignty; “This,” Foucault declares, “is *raison d’État*” (Ibid., 206). In the sixteenth and seventeenth century, Foucault explains, *raison d’État* means “that which is necessary and sufficient for the republic to preserve its integrity” as well as the knowledge of the means for obtaining it (Ibid., 257). Consequently, *raison d’État* is concerned with nothing but the state itself. It comprises “the very essence of the state, and it is equally the knowledge (*connaissance*) that enables us to follow, as it were, the weave of this *raison d’État*, and comply with it” (Ibid.).

When the nobility began to use history and historical knowledge in an attempt to reveal the state as the outcome of conquest and invasion, *raison d’État* was fundamentally and exclusively concerned with the state. For *raison d’État* the state had “no prior, external purpose, or even a purpose subsequent to the state itself” (Ibid., 258). The state was the beginning and the goal of politics. As a result, government was concerned with the preservation of the state. Government, Foucault claims, becomes the “continuous act of creation of the republic” (Ibid., 259). The purest expression of *raison d’État* thus occurred in situations of political crisis when government had to come to the defense of a state whose very existence was threatened. In the sixteenth century, this was called *coup d’État*. In times of emergency, *raison d’État* must suspend the law and “must command, not by ‘sticking to the laws,’ but, if necessary, it must command ‘the laws themselves, which must adapt to the present state of the republic’” (Ibid., 261).

In a time when political thought and practice had not yet achieved their full emancipation from the model of an omnipotent God who intervened when he

considered it necessary, the transition from a form of sovereignty corresponding to God's rule to a system of universal laws without divine intervention was initiated by the concept of *coup d'État*. It allowed for the integration of an art of governing men into the familiar fabric of sovereignty. In a situation where the law could no longer be the expression of a sovereign will but could not yet be framed in terms of a universal principle independent of the king's power, *raison d'État* situated the law in between and turned it into a strategic element. The law remained in force as a general rule for as long as it was useful, but it was suspended when it was deemed necessary for the preservation of the state. "The usual, habitual exercise of *raison d'État* is not violent," Foucault states, "precisely because it readily avails itself of laws as its framework and form. But when necessity demands it, *raison d'État* becomes *coup d'État*, and then it is violent" (Ibid., 263). For Foucault, "All of this means that the *coup d'État* is a particular way for the sovereign to demonstrate in the most striking way possible the irruption of *raison d'État* and its prevalence over [legality]" (Ibid., 265).<sup>77</sup>

For *raison d'État*, legitimacy was not defined by legality but by what was necessary for the salvation of the state. The abandonment of legality in favor of

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<sup>77</sup> In both the French original and the English translation of "Security, Territory, Population," Foucault uses the word "legitimacy" instead of "legality." Given his analysis of the relationship between *coup d'État* and the law, it seems reasonable to surmise that the use of "legitimacy" is either a slip on Foucault's part or a transcription error. In any case, the use of "legality" would make more sense in this context. See Foucault, Michel. *Sécurité, territoire, population: cours au Collège de France, 1977-1978*. Edited by Michel Senellart. Paris: Gallimard, 2004d and Ibid., *Security, Territory, Population*. Moreover, as was indicated earlier (see *supra* note 40), Foucault's analysis of *coup d'État* seems to echo Schmitt's concept of the state of exception. One could argue that the necessity to bridge the gap between sovereign transcendence and legal formalism introduced by the rupture of the cosmological-theological continuum posed a problem for political thought and praxis that stuck. On this view, the integration of the sovereign as a residue of divine power would seem to support Schmitt's claim that "all significant concepts of the modern theory of the state are secularized theological concepts" (Schmitt 2005, 36). There are, however, critical divergences between Foucault and Schmitt in their interpretation of the French Revolution. First, Foucault effectively shows that liberalism emerges in the late eighteenth century as a fundamentally and eminently *political* rationality. Second, and perhaps more importantly, Foucault highlights the genealogical affinities of a religious and political types of power. This is to say that in contrast to Schmitt, for Foucault, religious concepts do not constitute the single origin of modern political power but instead are one element in the conjuncture of a series of different developments. Third, Schmitt's critique of liberalism is based on a distorted reading of revolutionary ideas, in particular of the concept of the nation. See also Scheuerman, William E. "Revolutions and Constitutions: Hannah Arendt's Challenge to Carl Schmitt." *Canadian Journal of Law and Jurisprudence* X, no. 1 (1997b): 141-161.

necessity allowed for the justification of an absolute power that exceeded the boundaries of the law. While this particular relationship between legality and legitimacy was explicitly endorsed by Robespierre, the end of the Jacobin reign and the bourgeois revolution led by the Thermidorians inverted the hierarchy of legitimacy over legality.<sup>78</sup> The bourgeois leadership immediately began to work toward the establishment of a liberal bourgeois government.<sup>79</sup> On their view, legitimacy derived from the law which was conceived as the manifestation of bourgeois values. The law staked out the sphere of individual freedom with which no one was authorized to interfere. As a purely formal and therefore ostensibly non-ideological legal order, the boundaries of government intervention were objectively determined and universally valid. By the Thermidorians' very own legal standards, the abrogation of rights of political opponents thus amounted to a fundamental violation of individual freedom. Because legality and legitimacy were, for the Thermidorians, coterminous, the lack of legality compromised the violence unleashed against the Jacobins and created a deficit of legitimacy. It was in an attempt to restore legitimacy that the Thermidorians elaborated a conception of terrorism that allowed them to justify extra-legal state violence by representing political opposition as a threat to the state. Because the state was, however, coterminous with

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<sup>78</sup> It might even be argued that the irreducibility of legality and legitimacy and the uncompromising prioritization of legitimacy culminated in Robespierre's Reign of Terror. It was indicated earlier that by justifying terror for the sake of the people's freedom, Robespierre gave a twist to the reasoning of *raison d'État* that permitted him to exploit the rationality of the king against the institution of absolute monarchy itself. On Robespierre's account, the state was not a supply of wealth to be used by the king but the institutional manifestation of virtue and the safeguard of people's freedom. The "holiest of all laws," that is the "salvation of the people," demanded nothing less than the codification and, hence, the continuation of revolutionary government in the constitution of the republic (Robespierre 2007d, 99). In exemplary clarity, Robespierre proclaimed that real justice, the justice of the people, cannot be contained in law: "Peoples do not judge in the same way as courts of law; they do not hand down sentences, they throw thunderbolts; they do not condemn kings, they drop them back into the void; and this justice is worth just as much as that of the courts" (Robespierre 2007e, 59).

<sup>79</sup> According to Soboul, the constitution of 1795 prepared the grounds for a bourgeois state. He argues that the constitution formalized the liberal republic by rearticulating the principles of 1789 in terms favorable to bourgeois interests and abandoning those articles of the 1789 Declaration of the Rights of Citizens that stood in the way of the bourgeoisie's political and economic leadership, most notably article 1 that postulated the equality of individuals (Soboul 1989).

national universality, a particular concept of terrorism emerged that allowed to represent political opposition as a threat to the nation.

### 1.7.3 The terrorist as political opponent and existential threat

As we have seen, the implementation of *coup d'État* as an expression of *raison d'État* within the framework of the bourgeois state allowed the Thermidorians to preserve the sovereign right to kill political subjects and to exercise it in a political order that claimed the safeguarding of individual liberty and the protection from interference as its supreme task. To legitimate their actions, the Thermidorians reactivated a line of reasoning that had originated in *raison d'État* and that had been preserved in Robespierre's political program in order to turn it back against the Jacobins in modified form. While *raison d'État* had defined legitimacy as whatever means necessary for the salvation of the state and Robespierre had adjusted this understanding in terms of the public good and the freedom of the people, the Thermidorians justified state violence in the name of the universality of their values expressed in the law. Since for *coup d'État* the use of extra-legal violence is required and legitimate under conditions of an imminent threat to the existence of the state, the appropriation and reworking of *raison d'État* permitted the Thermidorians to justify the suspension of the law and the exercise of violence against those who rejected ostensibly universal bourgeois values. As Babeuf had trenchantly pointed out, the curtailing of rights and the implementation of repressive measures were justified for the cause of freedom and security. In the face of a terrorist threat, freedom could ultimately only be preserved by way of its limitation (Babeuf 1966c).

Given the abrogation of any legal status for alleged terrorists, one might not unreasonably compare the terrorists of revolutionary France to the figure of *homo*

*sacer*. For Agamben, *homo sacer* constitutes the paradigmatic figure of an individual “*hors la loi*.” Similar to the terrorist in revolutionary France, the legal status of *homo sacer* is characterized by the fact that “life is included in the juridical order [*ordinamento*] solely in the form of its exclusion (that is, of its capacity to be killed)” (Agamben 1998, 8). Since Agamben is concerned with the mechanism by which law is suspended and gives way to unprecedented violence exercised by the state and directed against people’s very lives, the figure of *homo sacer* might indeed seem to prove useful for an investigation of the processes by which the terrorist became an outlaw in revolutionary France. Inasmuch as Agamben claims to have identified the peculiar legal standing of *homo sacer* as a constitutive element of Western politics, it would follow that the emergence of the terrorist in the late eighteenth century constitutes no more than another example in the long history of *homines sacri*.

To be sure, this approach would certainly bring into view a specific mode of exercising power, namely the excess of power with regard to the law revealed in a state of exception or, to speak with Foucault, the resurgence of sovereignty in a *coup d’État*. The curious legal status of the terrorists in revolutionary France might even substantiate Agamben’s claim regarding the structural continuity that underpins the ways in which power is and has been exercised ever since the foundation of Western politics in the Greek polis. What this account fails to register, however, is the significance of the underlying reasons, the changing interests and the multiple justifications that preserve, reactivate, transform and redeploy seemingly identical operations of power. In short, Agamben fails to provide an adequate explanation of how and according to what criteria ostensibly identical techniques of power are colonized, repositioned and

exploited for different political purposes.<sup>80</sup> Even though Agamben is able to show that the ways in which power is exercised in modern societies do not emerge in a historical vacuum, he cannot explain why some people become *homines sacri* and others do not. Agamben's analysis therefore leaves little room for the significance of historical events and political struggles that create the conditions of possibility for particular subjects to become the target of certain techniques of power.

In particular, the emergence of terrorism in late eighteenth century France stands testament to the shortsightedness of reducing the structural analogy of practices of power to their continuity or even identity. This is to say that even though the terrorists in revolutionary France appear as identical to the figure of *homo sacer* with regard to the law, the processes and developments giving rise to their particular legal status are much more complex than their analogous legal treatment would have us believe. What lies behind the structural similarity of terrorists and other *homines sacri* is not the continuity of legal practices but a messy web of a multiplicity of political rationalities that intersect with and adapt to actual historical developments and newly emerging political forces and interests. Shifting the focus from the *form* power takes to the *rationality* through which it is deployed reveals that techniques of power that are to all appearances identical take on new meanings and new functions depending on the various contexts and purposes in and for which they become useful.

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<sup>80</sup> Judith Butler makes a similar criticism of Agamben in her attempt to theorize power relations in post-9/11 America that culminate in spaces such as the detention camp in Guantanamo Bay. Butler suggests that Agamben's account is too general to explain "how this power functions differentially, to target and manage certain populations, to derealize the humanity of subjects who might potentially belong to a community bound by commonly recognized laws" (Butler 2004a, 68). In the same vein, Andrew Benjamin has repeatedly argued that Agamben's account fails to recognize that the bare life that is killed is always already determined (e.g. as the Jew, the terrorist, Islamic militants, etc.). Because bareness, for Benjamin, is therefore "always a determination as an after-effect," it is "never completely bare. Discrimination will have always left its mark" (Benjamin 2010, 123-124).

We have seen in this chapter that the outlawing of *particular* individuals involved a political decision that was determined by a historically specific context.<sup>81</sup> Therefore, an adequate understanding of the beginning of terrorism as a historico-political phenomenon in the French Revolution has to start from an analysis of terrorism as the effect of the ascendancy of the bourgeoisie as the universal subject of the nation state.<sup>82</sup> The clash of *raison d'État* and the reconciliation of bourgeois national totality and the universality of the state gave rise to a political rationality and its concomitant political form whose consolidation over the course of the following centuries had far-reaching and serious consequences. As Andrew Neal perspicuously observes, “The question is not simply one of who is or is being constructed either as ‘the enemy of the state’ or ‘the enemy of the nation/society/people,’ but a frightening union of the two. The challenge we face is that the potentially bellicose and oppressive state seeks to claim legitimacy not simply by acting according to security imperatives or on behalf of a people, but in the name of a national ideal” (Neal 2004, 394). Put differently, the coincidence of the bourgeois nation and the state provisionally achieved in the period of Thermidorian stabilization during the French Revolution involved the representation of *political* opposition as an *existential* threat to the nation. The absolute and totalizing power of the state became an instrument of defending the nation. The state’s recourse to violence, which had been held out since the sixteenth century by way of a continuous repositioning of sovereign power in a new economy of power in the making, was given a new meaning, a new function and a new purpose in the modern

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<sup>81</sup> To come back to the previous point regarding the difference between Schmitt’s and Foucault’s analysis (see *supra* note 40 and 78), it has now become clear that while Schmitt derides liberalism for its apolitical nature, Foucault shows that the ascendancy of liberalism as an institutionalized form of universal bourgeois values depends on and simultaneously ensures the possibility of a political decision about who is or is not part of this universality. In other words, the emergence of terrorism in the French Revolution plays a critical role in the constitution of a liberal order as the political.

<sup>82</sup> For a different account of terrorism in the French Revolution as a phenomenon that emerged in 1789 and lasted continuously until 1799 see Lerat, Bernard. *Le Terrorisme Révolutionnaire 1789-1799*. Paris: Éditions France-Empire, 1989.

nation state. Even though the state retained the power to kill, this old sovereign “right to take life or let live” had to find a new justification in a state that claimed to represent national universality (Foucault 2004a, 241). For Tallien, the “external character of this exercise of the sovereignty of the people” was “an act of violence and of national right in an open war against tyranny and its henchmen” (Tallien 1847, 612).<sup>83</sup>

Following Foucault’s analysis in “Society Must Be Defended,” one might argue that the identification of nation and state concludes the discourse of nations at war but inscribes it in a different form at the limits of the state. This is to say that the new state, whose function is the representation and preservation of national totality, projects its old right to kill onto its outside and justifies it in the name of the survival of the nation.<sup>84</sup> The enemies of the nation have to be killed not because they are “adversaries in the political sense of the term; they are threats, either external or internal, to the population and for the population” (Foucault 2004a, 256). Killing, Foucault hastens to add, is not only and not necessarily the physical elimination of the enemy but “also every form of indirect murder: the fact of exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection, and so on” (Ibid.).

The figure of the terrorist, the enemy *par excellence*, was born at the precise moment when the bourgeoisie assumed the state as the juridical expression of its totality as a nation. The terrorist appeared in the interstices of absolute state power and

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<sup>83</sup> *Quel est le caractère extérieur de cet exercice de la souveraineté du peuple? C’est d’être un acte de sa force et du droit national en guerre ouverte contre la tyrannie et ses suppôts.*

<sup>84</sup> It is in this sense that Foucault claims that racism – here understood in the broad sense of discrimination between nations as social groups with their own customs and manners – becomes the precondition for and the means of “introducing a break into the domain of life that is under power’s control: the break between what must live and what must die” (Foucault 2004a, 254). Racism thus rearticulates the relationship of war in a biological sense within the terms of a “‘biopolitics’ of the human race” (Ibid., 243). On Foucault’s understanding of racism see the essays in Stingelin, Martin, (ed.) *Biopolitik und Rassismus*. Frankfurt am Main: Suhrkamp, 2003, in particular Philipp Sarasin’s contribution “Zweierlei Rassismus? Die Selektion des Fremden als Problem in Michel Foucaults Verbingung von Biopolitik und Rassismus,” 55-80.



universal laws, in the space that separated ostensibly universal values and the problem of how to respond to those who rejected them. For Tallien, the terrorist was the “declared enemy of the freedom of his country” (*cet ennemi déclaré de la liberté de son pays*) (Tallien 1847, 612). “It is time,” he proclaimed on that fateful day in August of 1794, “that we relieve the enemies of the revolution of their last hope, that of destroying national representation” (Ibid.).<sup>85</sup> In the midst of political struggles for liberty and against the backdrop of a beginning identification of nation and state, political opponents became terrorists, the enemies of the nation.

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<sup>85</sup> *Il est temps que nous enlevions aux ennemis de la révolution leur dernier espoir, celui de détruire la représentation nationale.*

## The terrorist as the enemy of the state

### 1.8 A new Reign of Terror

#### 1.8.1 The rhetorical conflation of terrorism and anarchism

In the previous chapter, we have explored the emergence of terrorism as an important instrument for liberal stabilization in the course of the French Revolution. We have found that the Thermidorian Reaction against the Jacobins constituted a return to the rights and liberties established by the constitution of 1791. While the Thermidorian rhetoric of terrorism was at first used to denounce the Jacobin Reign of Terror, it soon became a useful weapon against political opponents of all stripes who objected to the new liberal bourgeois state. This chapter investigates the rearticulation of terrorism as a political concept in late imperial Russia. We will see that in contrast to revolutionary France, Russia witnessed the mobilization of a rhetoric of terrorism by an autocratic regime that sought to prevent the development of a liberal political system. Before turning to the developments in Russia, however, we first have to chart the transformations in terrorism discourse after the French Revolution. This will allow us to understand better how a particular conception of terrorism could develop in late nineteenth century Russia that identified terrorism with anarchism and nihilism.

We saw in the previous chapter that in the midst of the White Terror, the Thermidorians faced increasing opposition from the remaining Jacobins and from the royalists who wanted a return to the *Ancien Régime*. In response to the radical ideas of the political left, exemplified by Babeuf, Fourier or Saint-Simon, conservative political forces, above all the royalists, began to revitalize anarchism as a political term that had

already been used in the past to denounce advocates of chaos and disorder.<sup>86</sup> Anarchism, Babeuf observed, had been “used under Lafayette, used under Louis XVI, used under the Gironde” and it was “propagated now with disgraceful appeal” (Babeuf 1966g, 115).<sup>87</sup> In the same vein, a report of the Central Bureau of Paris issued on April 29, 1799, cautioned that under the given circumstances, the real danger posed by anarchy could not be appreciated because of the inflation of the term caused by the royalists.<sup>88</sup> “The parties which the force and above all the agreement of the

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<sup>86</sup> For a detailed analysis of anarchism in the French Revolution see Guérin, Daniel. *Class Struggle in the First French Republic: bourgeois and bras nus, 1793-1795*. Translated by Ian Patterson. London: Pluto Press, 1977. A perhaps surprising account of anarchism influenced by the ideas of Saint-Simon and Fourier can be found in the work of Proudhon. Proudhon’s reflections are interesting because they explicitly relate anarchism to liberalism. He developed an account of anarchism which, Franz Neumann explains, posited “Solidarity instead of state authority, this means further: solidarity on the basis of free contracts and not state authority on the basis of laws” (Neumann 1996, 177). Retaining Robespierre’s distinction between legality and legitimacy as well as the liberal concept of individual freedom, Proudhon’s influential text “What Is Property?” (1840) represents an attempt to outline an alternative position in response to the question “What is to be the form of government in the future?” (Proudhon 2002, 204). “I have just given you my serious and well considered profession of faith,” Proudhon answered. “Although a firm friend of order, I am, in every sense of the term, an anarchist” (Ibid., 205). For Proudhon, mutuality, reciprocity and solidarity rather than the political authority of the state were the appropriate mechanisms to create social order. State authority, he maintained, did nothing but stifle freedom. “To be GOVERNED,” Proudhon objected, “is to be kept under surveillance, inspected, spied upon, bossed, law-ridden, regulated, penned in, indoctrinated, spied upon, registered, evaluated, appraised, censured, ordered about, by creatures who have neither the right, nor the knowledge, nor the virtue to do so. To be GOVERNED is to be at each operation, at each transaction, at each movement, marked down, recorded, inventoried, priced, stamped, measured, numbered, assessed, licensed, authorized, sanctioned, endorsed, reprimanded, obstructed, reformed, rebuked, chastised. It is, under the pretense of public benefit and in the name of the general interest, to be requisitioned, drilled, fleeced, exploited, monopolized, extorted, squeezed, hoaxed, robbed; then, at the slightest resistance, the first word of complaint, to be squelched, corrected, vilified, bullied, hounded, tormented, bludgeoned, disarmed, strangled, imprisoned, shot down, judged, condemned, deported, sacrificed, sold, betrayed, and to top it off, ridiculed, made a fool of, outraged, dishonored. That’s government, that’s its justice, that’s its morality!” (Proudhon 2010, 15-16). Proudhon’s emphasis on individual freedom brought him in close proximity to classical liberal ideas. Indeed, Proudhon himself saw anarchism as “a variety of the liberal regime ... the government of each by himself, *self-government*. Since the phrase *anarchic government* involves a kind of contradiction, the thing seems impossible and the idea absurd. However, there is nothing to find fault with here but language; politically, the idea of *anarchy* is quite as rational and concrete as any other. What it means is that political functions have been reduced to industrial functions, and that social order arises from nothing but transactions and exchanges. Each may then say that he is the absolute ruler of himself, the polar opposite of monarchical absolutism” (Proudhon 1979, 11). In a similar vein, George Crowder argues that anarchism was couched between liberalism with its belief in property as the guarantor of personal freedom but the serious disadvantage of lacking moral content, and communism which retained morality but was irreconcilable with the anarchist conception of freedom as self-direction (Crowder 1991).

<sup>87</sup> *Ce mot d’anarchistes, usé sous Lafayette, usé sous Louis XVI, usé sous la Gironde, se reproduit maintenant avec une scandaleuse allectation.*

<sup>88</sup> The *Bureau Central* was an unelected municipal institution established in the big cities Paris, Bordeaux, Lyon and Marseille and entrusted with the coordination of the municipalities. The reason for this reorganization under the constitution of 1795 was that the “*bourgeois* republicans of the year III

constitutional powers have been depriving of all means of open revolt,” the report stated, “seem today to wake up, gain hope and prepare new troubles.”

The impotence to act, the profound memory that the disastrous epochs had left in the mind, the only idea of disorganization, of troubles and of murders that presents the horrifying word anarchy, reduce for the moment to silence and to inactivity the followers of this horrible party. It is certain that, if there was only the hatred of the true friends of the Constitution of the Year III [the Thermidorians and liberal bourgeoisie], it [anarchy] would be better appreciated and consequently more fearsome; but unfortunately, the horror that it instills in the sincere republicans is accompanied by that which it causes in the crowd of royalists; in the eyes of these latter, all those who cling to republican institutions, all those who embrace with interest the principles of maintaining the existing order of things, or who ardently intercede for the defense and prosperity of the Republic are anarchists. For a partisan of the old regime, patriot is equally synonymous with anarchist and terrorist and, by dint of reverberations, a certain class of incorrigible reactionaries grows and extends this illustrious and often misunderstood word anarchy (Aulard 1902, 490).<sup>89</sup>

In other words, the royalists’ synonymous use of the terms anarchism and terrorism resulted in a reductive and undifferentiated understanding that allowed them to extend the concepts to anyone who did not share their reactionary politics. As a consequence, anyone who supported the Thermidorian Republic was lumped in with the

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regarded these cities as breeding-places of the democratic spirit, nests of ‘anarchy’ and ‘Terrorism’” (Aulard 1910, 306).

<sup>89</sup> *Les partis auxquels la force et surtout l'accord des pouvoirs constitutionnels ôtent depuis longtemps tout moyen de révolte ouverte paraissent aujourd'hui se réveiller, concevoir de l'espérance de préparer de nouveaux troubles; mais les observations les plus suivies et les plus exactes autorisent à dire que celui qui, en ce moment, fait preuve d'une étonnante activité est le royalisme. Avant de démontrer la hardiesse de ce monstre, il convient de donner une idée de la véritable situation de l'anarchie. L'impuissance d'agir, le souvenir profond que laissèrent dans les esprits des époques très désastreuses, la seule idée de désorganisation, de troubles et de meurtres que présente le mot épouvantable d'anarchie, réduisent pour l'instant au silence et à l'inactivité les suppôts de cet affreux parti. Il est certain que, s'il n'avait que la haine des vrais amis de la Constitution de l'an III, il serait mieux apprécié et conséquemment moins redoutable; mais malheureusement, à l'horreur qu'il inspire aux républicains sincères se joint celle qu'affecte envers lui la foule des royalistes; aux yeux de ces derniers, tous ceux qui tiennent aux institutions républicaines, tous ceux qui embrassent avec intérêt les principes conservateurs de l'ordre actuel des choses, ou qui plaident avec chaleur pour la défense et la prospérité de la République sont des anarchistes. Pour un partisan du vieux régime, patriote est également synonyme ou d'anarchiste ou de terroriste, et, à force d'échos, une certaine classe d'incorrigibles réactionnaires grossit et prolonge ce mot sonore et souvent mal entendu d'anarchie.*

partisans of Jacobin republicanism who, for the Thermidorians, were the real adherents of disorder and terror. This inflationary discourse propagated by the royalists used the concepts of terrorism and anarchy in ways that leveled important differences between liberals and Jacobins, thereby actually obscuring the real threat of anarchy.

Even though both anarchism and terrorism gained their effectiveness as denunciations from their strong association with the *terreur* of the Jacobin regime, the conflation as well as the increasing circulation of the terms in situations of political strife was not limited to France. In Germany, Christoph Martin Wieland, poet and pioneer of the literary genre of the *Bildungsroman*, was convinced that without Napoleon's coup in September 1797, France would have been "thrown back into all the horrors of anarchy, terrorism and the most ferocious civil war" (cited in Walther 1990, 359; my translation).<sup>90</sup> A leading German Jacobin, Matthias Metternich, on the other hand, objected to the abuse of the words anarchism and terrorism to vilify and denounce political opponents. Metternich lamented that "whenever a republican plucked up the courage to show the abyss toward which this anarchic system would lead, he was branded a Jacobin, a terrorist, an anarchist – and proscribed" (Metternich 1975, 575-576; my translation).<sup>91</sup> In other words, in France as well as in Germany, the terms terrorism and anarchism had retained a significant part of their initial use for what was regarded as a dangerous republican ideology that rejected the legitimate political rule established by the bourgeoisie. At the same time, however, the meaning of the concepts had become displaced just enough to extend them to other political contexts.

In the social and political conflicts leading up to the revolutions of 1848, a certain generalization of terrorism discourse took place that eventually wrested it from

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<sup>90</sup> ... ohne ihn würde Frankreich in alle Greuel der Anarchie, des Terrorism und des wütendsten Bürgerkriegs zurückgeworfen worden sein.

<sup>91</sup> Wenn irgendein Republikaner den Mut faßte, den Abgrund zu zeigen, wo dies anarchische System hinführe, so ward er als Jakobiner, als Terrorist, als Anarchist gebrandmarkt – und geächtet.

its association with Jacobinism. According to Walther, until the mid-eighteenth century “Only here and there had the term ‘terror’ been detached from the French Revolution and applied to other events and constellations.”

This was to change in situations of political and social crisis when the political enemy and his praxis could be described with the term. ... ‘Terrorism’ now served to qualify every political opponent who advocated radical claims – independent of his history, his praxis and his other aims. ... Whenever the term appears in the political sphere, it carries negative connotations (Walther 1990, 379-380; my translation).<sup>92</sup>

For Walther, 1848 constituted the end of “the epoch in which terror occurred blatantly and practically exclusively in the cloak of statehood, or openly as an instrument of state power” (Ibid., 385).<sup>93</sup> Undergoing a “process of irrationalization” (*Prozeß der Irrationalisierung*), the motives of the terrorist became increasingly obscure and it became ever more difficult to comprehend violence in a framework of means and ends (Ibid.).<sup>94</sup> Because the force used by oppositional political movements could not be explained in terms of means and ends, terrorists and anarchists appeared to appreciate violence as valuable in itself. In the absence of realistically attainable objectives, the violence exercised by non-state social and political groups took on the quality of a pure manifestation of political opposition. The exercise of violence seemed to be uncoupled from any real prospect of overthrowing political authority and tied to a

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<sup>92</sup> Nur punktuell wurde der Begriff ‘Terror’ von der Französischen Revolution abgelöst und auf andere Ereignisse und Konstellationen übertragen. Das änderte sich in politischen und gesellschaftlichen Krisenlagen. In solchen konnte der politische Gegner und seine Praxis mit dem Begriff bezeichnet werden. ... ‘Terrorismus’ diente von nun an regelmäßig dazu, jeden politischen Gegner mit radikalen Ansprüchen – unabhängig von seiner Geschichte, seiner Praxis und seinen sonstigen Zielen – zu qualifizieren.

<sup>93</sup> 1848/49 endet die Epoche, in der Terror unverhohlen und praktisch ausschließlich im Habit von Staatlichkeit oder offen als Instrument staatlicher Gewalt auftrat.

<sup>94</sup> On this view, violence is irrational when it jettisons its mediate and instrumental function. Walther’s narrative thus seems to register the growing political influence of instrumental reason. According to Walter Benjamin, instrumentally rational thinking manifests itself in an evaluation of violence in terms of means and ends. In this view, violence is legitimate if it is the necessary means to a just end (codified in natural law) or if it was the outcome of rational legal procedures (described by positive law). See Benjamin, *Critique of Violence*.

striving for maximal public impact. Individual assassinations and attacks on high-ranking state officials and political representatives became more and more common. As a consequence, diverse movements such as nihilism, anarchism, socialism and Blanquism were suspected of seeking to establish a new Reign of Terror regardless of their divergent political aims. The association of terrorism with general irrationality and supposedly random violence allowed for the denunciation of all sorts of oppositional political and social movements. At the same time, it leveled and concealed the different political objectives among those who were condemned as terrorists (Ibid.).

### **1.8.2 The Russian revolutionary movement**

The rhetorical association of terrorism and anarchism that had developed since the French Revolution produced particularly problematic results in late imperial Russia. The derogatory use of anarchism and its identification with terrorism clashed with a philosophical understanding of anarchism that bore little to no relation to the violent actions of radical revolutionaries. The result was a conflation of anarchism and terrorism and a belief in an international anarchist conspiracy that threatened political regimes throughout Europe.

Philosophical anarchism held out the possibility of ensuring order without state authority. As a politico-philosophical approach to the nature and form of appropriate and legitimate government, anarchism became increasingly influential under conditions of struggles over the legitimacy of established political rule.<sup>95</sup> For Peter Kropotkin, a leading Russian anarchist, anarchism meant “a principle or theory of life and conduct under which society is conceived without government ... – harmony in such a society

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<sup>95</sup> For a concise conceptual history of anarchism see Neumann, Franz. “Anarchismus - Theorien und Utopien von Freiheit und Herrschaftslosigkeit.” In *Handbuch Politische Theorien und Ideologien*. Band 2, edited by Franz Neumann, 162-228. Opladen: Leske + Budrich, 1996.

being obtained, not by submission to law, or by obedience to any authority, but by free agreements concluded between the various groups, territorial and professional, freely constituted for the sake of production and consumption, as also for the satisfaction of the infinite variety of needs and aspirations of a civilized being” (cited in Jensen 2004, 118).

Given Russia’s long history of autocratic rulers, a strictly hierarchical social order and a backward economic system, this emphasis on freedom and the conviction that order was possible without authority made anarchism especially popular among Russian intellectual circles. Their demands for social and political change were echoed by a growing revolutionary movement who appropriated anarchist ideas to instigate a mass rebellion. For anarchists like Kropotkin it was clear, however, that “a structure built on centuries of history” could not be taken down “with a few kilos of explosives” (cited in Ibid., 126). The Italian anarchist Errico Malatesta even criticized the revolutionaries because, he contended, true anarchists would “rather kill chickens than kill kings” (cited in Ibid.). Malatesta claimed that “It’s no longer love for the human race that guides them, but the feeling of vendetta joined to the cult of an abstract idea, of a theoretical phantasm” (cited in Ibid.).

In the eyes of the revolutionaries, however, things looked rather different. The *Narodnaya Volya* (People’s Will), Russia’s leading revolutionary organization, claimed to be driven by a concern for the common good and criticized that Russia lacked “a real Government in the true sense of that word. A Government, in the very nature of things, should only give outward form to the aspirations of the people and effect to the people’s will” (The Executive Committee 2006, 85).



When a number of reforms were implemented in the 1860 under Tsar Alexander II, it seemed as if the regime had finally responded to the demands of its people.<sup>96</sup> The so-called Great Reforms comprised the emancipation of the serfs, reforms of local governments, more leniency in practices of punishment, a reform of the military and of public education, as well as major juridical reform (Venturi 1964, Zakharova 2006). However, the protracted and ultimately unsuccessful execution of these reforms and slow social progress led to disappointment among the peasants and the more radical parts of the intelligentsia. At first, the revolutionaries were hopeful that propaganda would suffice to realize their aims of mobilizing political opposition and promoting social reform. The radicals of the 1860s were not yet ready to turn to violence. For Sergei Kravchinski, known in revolutionary circles by his pseudonym Stepniak and exiled in London for the assassination of the head of the Tsarist police in 1878, the propagandists of the 1860s lived for the people and “wished nothing for themselves.

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<sup>96</sup> In fact, there is much debate on modernization and Westernization in Russian history. While many scholars contend that modernization began long before the eighteenth century, others describe the coming to power of Alexander I in 1801 as the beginning of modern Russia. See Pushkarev, Sergei. *The Emergence of Modern Russia 1801-1917*. Translated by Robert H. McNeal and Tova Yedlin. New York: Holt, Rinehart and Winston, 1966. In particular, Alexander's assistant Michael Speransky is generally described as the driving force behind Russian modernization. Speransky's vision was “To create our own nation ... in order to then give it a form of government,” that is the creation of an organic political order whose institutions gave formal expression to the nation (cited in Zakharova 2006, 601). Speransky's project is interesting because his strategy to give form to a nation was inspired by the model of the *Rechtsstaat* (rule of law). Speransky proposed to anchor the monarchy in law and legal procedures in order to counteract arbitrariness and corruption. Based on a triad of classes and rights, his plan intended for a hierarchical distribution of civil and political rights as well as a reform of local government. However, the reform failed (Zakharova 2006, Riasanovsky 2000). For an analysis of Speransky's project see Whisehunt, William Benton. *In Search of Legality: Mikhail M. Speransky and the Codification of Russian Law*. New York: Columbia University Press, 2001. A good overview of Speransky's life and work is given in chapter 18 of Lincoln, W. Bruce. *The Conquest of a Continent: Siberia and the Russians*. New York: Cornell University Press, 1994, 155-162. For more information on the economic history of Russia, the reader is referred to Gerschenkron, Alexander. “An Economic History of Russia.” *The Journal of Economic History* 12, no. 2 (1952): 146-159 and *Ibid.*, *Economic Backwardness in Historical Perspective*. New York, Washington and London: Frederick A. Praeger, 1965. In the latter volume, Gerschenkron's essays “Economic Backwardness in Historical Perspective,” 5-30, “Russia: Patterns and Problems of Economic Development, 1861-1958,” 119-151 and “Economic Development in Russian Intellectual History of the Nineteenth Century. Annex: Realism and Utopia in Russian Economic Thought, A Review,” 152-197 are of particular interest in this regard. Instructive sources on Russian history more generally are Riasanovsky, Nicholas V. *A History of Russia*. New York and Oxford: Oxford University Press, 2000 and Soloviev, Sergei Mikhailovich. *History of Russia*. Translated by Hugh F. Graham. Gulf Breeze: Academic International Press, 1976.

They were the purest personification of self-denial” (Stepniak 1883, 30). Their protest against the political order did not translate into a violent revolution. Instead, the propagandist was “religious rather than revolutionary.”

His faith was Socialism. His god the people. Notwithstanding all the evidence to the contrary, he firmly believed that, from one day to the other, the revolution was about to break out; as in the Middle Ages people believed at certain periods in the approach of the day of judgment. ... He was as ready for sacrifice as ever. But he had neither the impetuosity nor the ardour of the struggle. ... He was full of love, and had no hatred for anyone, not even his executioners. Such was the propagandist of 1872-75 (Ibid., 30-32).

When the regime did not respond to the demands of the propagandists, opposition became more radical and led to peasant riots and student tumults. An assassination attempt on Alexander II in 1866 was met with increased police force and the abandonment of plans for further reform. Moreover, the regime began to rescind some of the rights won for the people. Most importantly, “in its struggle against radicalism and revolution it began to withdraw whole categories of legal cases from the normal procedure of 1864 and to subject them to various forms of the court-martial” (Riasanovsky 2000, 377). By 1868, a full-fledged system of surveillance had been established and the era of the White Terror began (Venturi 1964).

As a consequence, the revolutionary movement responded with increased violence to heightened repression. Elements of utilitarianism, individualism, materialism and realism formed the basis of nihilism, the new ideology of the revolutionaries (Riasanovsky 2000, Venturi 1964). With its contempt for tradition and conventional morality, nihilism represented the “absolute negation of *authority* of all kinds, and ... the most exaggerated tendency towards liberty” (Tikhomirov 2006, 118). Its supreme value was individualism. For Stepniak, nihilism was “the negation, in the name of individual liberty, of all the obligations imposed upon the individual by

society, by family life, and by religion” (Stepniak 1883, 4). In the hands of Sergei Nechaev, nihilism became the leading principle of the revolutionary movement. His “Catechism of the Revolutionist” (1869) constituted the guideline for revolutionaries. For the success of the revolution, Nechaev contended, the revolutionary “knows of only one science, the science of destruction.”

The revolutionary passion, which in him becomes a habitual state of mind, must at every moment be combined with cold calculation. ... The extent of his friendship, devotion, and other obligations towards his comrade is determined only by their degree of usefulness in the practical work of total revolutionary destruction. ... Aiming at merciless destruction the revolutionary can and sometimes even must live within society while pretending to be quite other than what he is (Nechaev 2004, 71-73).<sup>97</sup>

By balancing Nechaev’s nihilistic program with populist ideas derived from philosophical anarchism, radical intellectuals like Bakunin and Herzen hoped to finally incite a peasant uprising. In the summer of 1874, the radicals moved to the countryside and went among the people to live with the peasants and to educate them in order to initiate mass opposition against the regime. “We will go further not only than the poor revolutionaries of 1848,” Herzen therefore declared, “but also than the great terrorists of the 1790s” (cited in Venturi 1964, 293). However, the peasants did not revolt. The government feared a conspiracy and reacted with more repression. A law passed in June

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<sup>97</sup> The idea that the revolutionary must blend in with his environment and live as inconspicuously as possible until he strikes is by no means new. Its historical precedents can be traced back to the Zealots of ancient Judea who mingled with the crowd on holy days to unexpectedly attack and kill innocent bystanders, as well as to the assassins of the Middle Ages who lived with a master and won his sympathy only to then kill him. It also points toward the so-called sleeper cells of the twenty-first century. The fact that similar techniques can be identified throughout history does not mean, however, that a straight continuity can be drawn between these movements. For an investigation of the historical precedents mentioned see Bartlett, Wayne B. *The Assassins. The Story of Medieval Islam’s Secret Sect*. London: Sutton, 2002, Burman, Edward. *The Assassins: Holy Killers of Islam*. Lancaster: Crucible Books, 1987, Flavius Josephus. *The Jewish War, Books I-III*. Edited by H.S.J. Thackeray. 10 vols. Vol. 2, Cambridge: Harvard University Press, 1968, Ibid., *The Jewish War, Books IV-VII*. Edited by H.S.J. Thackeray. 10 vols. Vol. 3, Cambridge: Harvard University Press, 1968, Lewis, Bernard. *The Assassins. A Radical Sect in Islam*. London: Weidenfeld and Nicolson, 1967, Rapoport, *Fear and Trembling* and Ibid., *Religion and Terror*.

1874 allowed for the indefinite detention of persons who were investigated for membership in secret societies (Daly 1995, 606). Hundreds of peasant sympathizers were arrested and tried. Faced with increased suppression, all populist ideals were abandoned and those committed to political opposition went underground (Daly 2006). In short, “If the peasants would not act, it remained up to the revolutionaries themselves to fight and defeat the government” (Riasanovsky 2000, 383).

For this purpose, a new force was necessary because the propagandists were “too ideal for the terrible struggle which was about to commence” (Stepniak 1883, 30). “The awful repressive measures of the Government,” the Executive Committee of *Narodnaya Volya* therefore claimed, “called upon the stage the terrorists of 1878 and 1879” (The Executive Committee 2006, 64).<sup>98</sup> When the propagandist disappeared in the summer of 1874, “Already another was arising.”

Upon the horizon there appeared a gloomy form, illuminated by a light as of hell, who, with lofty bearing, and a look breathing forth hatred and defiance, made his way through the terrified crowd to enter with a firm step upon the scene of history. It was the Terrorist (Stepniak 1883, 31).

Out of Russian populism a new kind of terrorism was born, a “Russian Jacobinism” that Herzen saw in the ideological tradition of the “great terrorists” of the French Revolution (Venturi 1964, 293-296).

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<sup>98</sup> For a detailed yet slightly novelistic history of Russian populist terrorism see Seth, Ronald. *The Russian Terrorists. The Story of the Narodniki*. London: Barrie and Rockliff, 1966.

### 1.8.3 Russian terrorism

The invocation of the Jacobins framed the self-understanding of the Russian revolutionary movement's radical section. What had become a label for enemies across the political spectrum and a derogatory and denunciative name for political adversaries under the Thermidorian government and over the course of the eighteenth century, now became the name for the heroic protagonists of a dissident and subversive discourse.<sup>99</sup> From Morozov to Stepniak, from Tarnovski to *Narodnaya Volya*, Russian revolutionaries reactivated an understanding of terrorism that had been circulating beneath official state discourse. A tradition of a positive valuation of terrorism as the name for patriots and champions of true freedom stretched from Babeuf and Saint-Simon to Blanqui and was taken up, reformulated and reapplied in late nineteenth-century Russia.

The terrorists understood themselves in a tradition with Blanqui, whom Heine had described as “incarnate terrorism, and the honestest [sic!] (*bravste*) fellow under the sun,” and with the idolized revolutionary of Nechaev's Catechism (Heine 1893, 394). Among the boldest descriptions of terrorism was Stepniak's, for whom the terrorist of the late 1870s was “noble, terrible, irresistibly fascinating, for he combines in himself the two sublimities of human grandeur: the martyr and the hero.”

He is a martyr. From the day when he swears in the depths of his heart to free the people and the country, he knows he is consecrated to Death. ... He is a wrestler, all bone and muscle, and has nothing in common with the dreamy idealist of the previous lustre. He is a mature man, and the unreal dreams of his youth have disappeared with years. He is a Socialist fatally convinced, but he

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<sup>99</sup> See Morozov, Nicolas. “The Terroristic Struggle.” In *Violence in Politics. Terror and Political Assassination in Eastern Europe and Russia*, edited by Feliks Gross, 101-112. The Hague and Paris: Mouton, 1972, Stepniak. *Underground Russia*. London: Smith, Elder & Co., 1883 and Tarnovski, Gerasim (Gerasim Romanenko). “Terrorism and Routine.” In *Voices of Terror*, edited by Walter Laqueur, 83-87. Naperville: Sourcebooks, 2004. See also Walther, Rudolf. “Terror, Terrorismus.” In *Geschichtliche Grundbegriffe: Historisches Lexikon zur politisch-sozialen Sprache in Deutschland*. Band 6, edited by Otto Brunner, Werner Conze and Reinhart Koselleck, Stuttgart: Klett-Cotta, 1990, 389-390.

understands that a Social Revolution requires long preparatory labour, which cannot be given until political liberty is acquired. ... He has no other object than to overthrow this abhorred despotism, and to give to his country, what all civilised nations possess, political liberty, to enable it to advance with a firm step towards its own redemption. ... He fights not only for the people, to render them the arbiters of their own destinies, not only for the whole nation stifling in this pestiferous atmosphere, but also for himself; for the dear ones whom he loves, whom he adores with all the enthusiasm which animates his soul; for his friends, who languish in the horrid cells of the central prisons, and who stretch forth to him their skinny hands imploring aid. He fights for himself. He has sworn to be free and he will be free, in defiance of everything. He bends his haughty head before no idol. He has devoted his sturdy arms to the cause of the people. But he no longer deifies them. And if the people, ill-counselled, say to him 'Be a slave,' he will exclaim 'No;' and he will march onward, defying their imprecations and their fury, certain that justice will be rendered to him in his tomb. Such is the terrorist (Stepniak 1883, 42-45).

While Stepniak glorified the terrorist as a selfless hero and martyr for the people, there was another, more strategic way of thinking about terrorism. On this account, terrorism appeared as an advantageous tactic of revolutionary struggle. Given the highly bureaucratic and centralized institutional structure of the Russian state, systematic terrorism in the form of individual assassinations of political representatives appeared as an effective strategy of combat (Riasanovsky 2000). The rationality underlying this approach was fleshed out by Nicholas Morozov, Stepniak's friend and co-editor of the propaganda pamphlets of the Russian revolutionary organization *Zemlya i volya* (Land and Liberty). The "anti-government terrorists" of the Russian revolutionary movement, Morozov explained, attacked "the all-powerful government with its spies, prisons and guns, with its millions of soldiers and voluntary government servants who either knew or were ignorant of what they represented" (Morozov 1972, 104-105). And while the internal causes of revolutions are always the same, that is "freedom of thought and press and real safety from oppression" as well as "change not

only of the political, but also of the economic system, without which complete political freedom for the working people is inconceivable,” revolutionary terrorism nevertheless had a crucial advantage compared to peasant uprisings and proletarian rebellions in taking on the massive state apparatus of the tsarist regime (Ibid., 108). “Terroristic struggle,” Morozov contended, “has exactly this advantage that it can act unexpectedly and find means and ways which no one anticipated.”

All that the terroristic struggle really needs is a small number of people and large material means. This presents really a new form of struggle. It replaces by a series of individual political assassination, which always hit their target, the massive revolutionary movements, where people often rise against each other because of misunderstanding and where a nation kills off its own children, while the enemy of the people watches from a secure shelter and sees to it that the people of the organization are destroyed. The movement punishes only those who are really responsible for the evil deed. Because of this the terroristic revolution is the only just form of a revolution (Ibid., 106).

For Morozov, terrorism was an instrument of the revolution and the decisive instrument for the “final disorganization, demoralization and weakening of government for its actions of violence against freedom” (Ibid., 112). For this purpose, Morozov demanded nothing less than the institutionalization of terror so that it would become “universally accepted in life” (Ibid., 111).<sup>100</sup>

Yet even though a positive understanding of terrorism had been established and widely accepted by the revolutionaries themselves, it was not long before the government appropriated the term and rearticulated it for its own purposes. To this end, the government made use of the similar political demands of terrorists and anarchists in order to create a public discourse that encompassed different ideological movements

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<sup>100</sup> Feliks Gross argues that Morozov here appeals to a revolutionary history that stretched from the Jacobins of the French Revolution to the Russian radicals. See Gross, Feliks. *Violence in Politics. Terror and Political Assassination in Eastern Europe and Russia*. The Hague and Paris: Mouton, 1972, 101.

and leveled the differences between them. In this manner, the tsarist regime succeeded in devising a powerful rhetorical weapon against all kinds of political opposition. Despite the fact that anarchists had little to do with revolutionary terrorism and even objected to the use of violence, their philosophical position against authority as such and the appropriation of their ideas by the revolutionaries made the anarchists easy prey for the government's counter-terrorist actions.

In a detailed survey of anarchist terrorism in nineteenth-century Europe, Richard Jensen suggests that "The wave of anarchist terror that swept through Europe during the eighties and nineties drew its growing strength from a curious combination of the acts of ideologically committed anarchists and of the violent deeds of a miscellany of perpetrators who shared dubious or no connections with anarchism" (Jensen 2004, 128). As a result, an understanding of terrorism had gained hold by the second half of the 1880s that identified anarchism, revolutionary socialism and terrorism and portrayed them as virtually identical. In Russia in particular, the term terrorism had effectively become part of the regime's political vocabulary to denounce its opponents.

The consequences of such an inflationary use of terms were noticed and even ridiculed by those deemed terrorists. In 1892, Lev Tikhomirov, member of the Executive Committee of *Narodnaya Volya*, reported that "The militant section of the *intelliguentia*, that which I call the revolutionary has in Europe received the strange name of *Nihilist*" (Tikhomirov 2006, 116). Because of its widespread use in Russia, Tikhomirov claims, "the word Nihilism, which in earlier times had some meaning, at least as caricature, a few years later lost all definitive significance. In Russia no serious writer, even though he were reactionary, would use it to designate the revolutionists. The word has passed for ever into the domain of pamphlets and insults" (Ibid., 119). In Europe, however, "the word Nihilism has the greatest vogue."



The strangest thing is, this caricature is believed in as something real. Assuredly the intellectual movement in Russia, as elsewhere, may in certain individual cases give rise to some ridiculous results, silly, lending themselves to caricature, sometimes perhaps even criminal. It is precisely from these special facts that the notion of nihilism has been built up, uniting them without any reason into one single idea, although they had no connection in reality. Thus in nature there are creatures who have tails, others that have the scales of lizards, others again with paws and claws like tigers, some finally with wings. When you combine all these attributes in a dragon, you have before you a creature of your imagination, and not a real being. But although the dragon plays a very useful part in stories with which to frighten children, it has no place in natural history. In a serious study of Russia, neither can nihilism as a doctrine or a special tendency have a place (Ibid., 119-121).

What Tikhomirov seems to find bewildering is not that disparate ideological movements were presented as a coherent and unified terrorist campaign. After all, the idea of terrorism provided a useful tool to create a climate of fear in which an expansion of government power was required for the safeguarding of security. What is surprising for Tikhomirov is that a credulous public, like children scared of magic dragons, believe terrorism to be something real. While Tikhomirov might be right about the lack of meaning of the term nihilism in Russia, the regime's rhetoric of terrorism did not result in the insignificance or disappearance of the concept. On the contrary, we will see in the following section that a distorted image of the diverse revolutionary movement played a crucial role in the regime's efforts to implement exceptional measures. The government claimed that "Those who carry out the 'propaganda of action,' as it is called, have not adopted the profession of bomb-throwing from the abstract love of a cause, but because they are, almost without exception, criminals in *esse* or in *posse*, and often of the lowest and most determined type" (Z. 2006, 242). This, together with the difficulty to monitor terrorists because of their lack of organization, allowed the regime to portray the revolutionary movement as a danger for the state. The conflation of

anarchism, terrorism and a range of other ideological positions allowed the Russian government to create a belief in an international anarchist conspiracy which produced very real effects. Perhaps the most harmful, at least for anyone unlucky enough to be identified as a terrorist, were a plethora of serious and far-reaching anti-terrorist measures. Over and against the diverse and fragmented ideological alliances of the revolutionary movement of nineteenth-century Russia, which ranged from nihilism to populism and socialism, the government managed to prosecute a variety of oppositional groups by subsuming them under a single concept that bore little to no relation to actual political circumstances.

#### **1.8.4 Counter-terrorism, permanent emergency and the expansion of administrative power**

At first, the tsarist regime's response to terrorism was twofold. On the one hand, the government sought to eliminate what it saw as the cause of terrorism by continuing reforms to alleviate social discontent. The regime even replaced a number of reactionary ministers with more moderate and even liberal ministers (Riasanovsky 2000). On the other hand, however, the surprising and undesired acquittal of Vera Zasulich after her attempted assassination of the governor of St. Petersburg, General Trepov, in 1878 led the regime to exempt certain cases from normal juridical procedure granted by the Great Reforms. This response set off cycles of more and ever increasing violence which in turn resulted in more emergency measures including the bypassing of courts and the trial of terrorists in courts-martial in the late 1870s (Daly 1995, 2006). After a number of failed attempts to kill Alexander II, a supreme executive commission for the preservation of the state was created and authorized to take any measures necessary for maintaining order (Daly 1995, 608).

The final straw came with the assassination of Alexander II on March 13, 1881, which galvanized an immense expansion of government power.<sup>101</sup> Under Alexander's successor Alexander III, the "Statute on measures to safeguard state security and public order," or Security Law, was issued on August 14, 1881. Enacted as a temporary regulation limited to three years, this statute gave broad discretionary powers such as summary search, arrest, imprisonment, exile, and trial by courts-martial to government officials (Daly 1995, Riasanovsky 2000, Waldron 1995).

The consequences were disastrous. The government, the executive committee of *Narodnaya Volya* claimed, "hanged the innocent and guilty and filled prisons and remote provinces with exiles. Tens of so-called 'leaders' were captured and hanged, and died with the courage and tranquility of martyrs" (The Executive Committee 2006, 82-83). In the same vein, Stepniak registered the precarious legal status of the revolutionary terrorists and described the exceptional tribunals and secret orders of a judicial system that, instead of offering fair trial and investigation as well as protection from illegitimate state violence, was turned into an instrument for the assertion and expansion of state power. "The merest suspicion led to arrest," he maintained.

An address; a letter from a friend who had gone 'among the people'; a word let fall by a lad of twelve who, from excess of fear, knew not what to reply, were sufficient to cast the suspected person into prison, where he languished for years and years, subjected to all the rigour of the Russian cellular system. ... The sentences of the exceptional tribunal, which was simply a docile instrument in the hands of the Government, were of an incredible cruelty. Ten, twelve, fifteen years of hard labour were inflicted, for two or three speeches, made in private to a handful of working men, or for a single book read or lent. Thus what is freely done in every country in Europe was punished among us like murder. But not satisfied with these judicial atrocities, the Government, by infamous secret orders, augmented still more the sufferings of the political

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<sup>101</sup> The irony of history is that the tsar was killed by *Narodnaya Volya* on the day he agreed to a decisive step toward public representation in administrative and financial reforms (Riasanovsky 2000, 384). Yet this plan was abandoned because of Alexander's assassination.

prisoners, so that in the House of Horrors – the central prison of Karkoff – several ‘revolts’ took place among them in order to obtain equality of treatment with those condemned for common crimes (Stepniak 1883, 35-37).

Those who were arrested on suspicion of being involved with terrorism, anarchism or revolutionary action were not treated as common criminals. In the absence of a formal legal procedure, the regime introduced exceptional tribunals and secret orders which in turn produced a climate of suspicion and uncertainty among the people.<sup>102</sup> Nobody could be certain that a careless remark or a suspicious acquaintance would not lead to arrest and detention. Rather than keeping the government in check, the legal order had been turned into an instrument to reassert the regime’s power. Moreover, after the initial three years of its application, the Security Laws were renewed every three years and applied “to virtually anyone whom officials suspected or simply disliked” (Riasanovsky 2000, 392).<sup>103</sup> As Riasanovsky argues, “the tsarist government relied on them during the rest of its existence, with the result that Russians lived under something like a partial state of martial law” (Ibid.). The state of exception seemed to have become the rule.

The implementation of emergency legislation was justified with reference to the necessity to maintain public order and security. According to Peter Waldron’s in-depth analysis of the significance of emergency legislation in late imperial Russia, the 1881 statute provided two forms of exceptional measures. The first, reinforced protection, applied when “public order in an area is disturbed by criminal infractions against the existing state structure or against the security of individuals and their property or by the preparation of such acts” (Waldron 1995, 2). The second form, extraordinary

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<sup>102</sup> On the lack of a legal definition of anarchism see Kinna, Ruth, (ed.) *Early Writings on Terrorism*. London and New York: Routledge, 2006, xxxvi.

<sup>103</sup> For the same position see Waldron, Peter. “States of Emergency: Autocracy and Extraordinary Legislation, 1881-1917.” *Revolutionary Russia. Journal of the Study Group on the Russian Revolution* 8, no. 1 (1995): 1-25.

protection, was reserved for situations in which “these infractions have put the local population into a disturbed state, making it necessary to take exceptional measures to urgently restore order” (Ibid.).

The standards by which the imposition of exceptional measures was allowed, Waldron further argues, were so loosely defined that a virtually universal application became possible. The concomitant increase of police arbitrariness was justified – and at the same time exacerbated – by the regime’s reactivation of a condemnatory discourse of terrorism. To stop the excessive violence exerted by the terrorists, the police was authorized “to beat up their quarters, know all their comings in and goings out, follow their movements, check, control, and, in all probability, forestall all their truculent intentions” (Z. 2006, 247).

Whereas the final responsibility to declare a state of emergency lay with the Ministry of Internal Affairs and depended on the approval of the Council of Ministers and the tsar, the driving forces were usually local governors. Once reinforced protection was authorized, provincial governors as well as police officers were granted additional powers with regard to the maintenance of public order and security.<sup>104</sup> Extraordinary protection gave additional power to local authorities, designating a local official as commander who could then further delegate his power. The commander “could transfer criminal cases from the normal court system to courts-martial or else could deal with them through administrative means.”

The commander could dismiss civil servants and elected members of *zemstva*, municipal councils or estate organizations and could also suspend or close meetings of municipal councils or

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<sup>104</sup> According to Waldron, governors could punish infringements with up to three months detention and hefty fines and were given the power to prohibit public or private meetings, to close commercial or industrial establishments and to exclude individuals from residence in their area. Police officers were allowed to detain for up to two weeks “those suspected of serious crimes or of belonging to illegal organizations and could also carry out searches of any premises and hold any property which they regarded as suspicious” (Waldron 1995, 2).

*zemstva*. He could suspend the publication of periodicals and could also close educational establishments for up to one month (Waldron 1995, 3).<sup>105</sup>

Provincial governors used and abused the additional powers granted by emergency laws to increase and expand their own power. “Central government was especially concerned that local authorities could exercise power without reference to St Petersburg,” Waldron maintains, “and that this allowed provincial governors and their subordinates to utilise provisions of the statute contrary to the wishes of the imperial government” (Ibid., 12).

The ease with which the 1881 statute could be abused and its ineffectiveness in dealing with public disorder was a matter of pressing concern for sections of Russian government and society. There was widespread unhappiness with the law because of the way in which it tipped the balance of authority in imperial Russia away from central government and toward local officials (Ibid., 13). The government had introduced emergency measures to suppress terrorism and to guarantee order and security, but local authorities abused the expansion of their power to target not just “political undesirables,” i.e. terrorists, but “anyone who breached the peace in its widest interpretation” (Ibid., 12). When the tsarist regime began to apprehend the consequential loss of its own power and called the local governments to order, Waldron argues, governors “were able to exert considerable pressure on St Petersburg not to interfere in these matters by insisting that they could not guarantee the maintenance of order in their province if exclusion orders were not confirmed” (Ibid., 12). In other words, the anti-terrorism policies enacted by the tsarist regime had led to a situation in which a growing bureaucracy exploited emergency legislation to blackmail the

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<sup>105</sup> The *zemstvo* was an institution of local government established by the Great Reforms of Alexander II in 1861. For a critical evaluation of the supposedly liberal character of the *zemstvo* see the contributions in Emmons, Terence and Wayne S. Vucinich. *The Zemstvo in Russia: An Experiment in Local Self-Government*. Cambridge: Cambridge University Press, 2011.

government and to transfer power from central to local administrative institutions. The result was that local officials were virtually autonomous and independent from the central government. The tsarist regime's efforts to subdue terrorism had created a situation in which the central government's attempts to preserve power had backfired and resulted in a shift of power from the government to a growing bureaucratic apparatus. Nevertheless, power was steadily expanded in the form of increased police repression which was justified in the name of public order and security.

In early 1906, Sergei Witte, a high-ranking bureaucrat and chairman of the Council of Ministers under Tsar Nicholas II, lamented that these processes had "led to an exceptional situation: there has been created on the initiative of local authorities, without permission from central government, a whole series of small independent governor-generalships, acting wholly independently from one another, outside proper supervision by central government and utilizing, with the force of law, the widest powers towards the local population which stands almost outside the law" (Ibid., 15).<sup>106</sup> Because increased repression seemed unable to put an end to terrorism, Witte tried to remind the government that "the most direct and appropriate method of achieving this aim [i.e. quelling events that threatened public order] is not to take repressive measures against an existing evil, but to prevent this evil from arising at all" (cited in Ibid., 13). In other words, it was not police repression but liberal reform that, Witte believed, would address the people's demands and put an end to anti-government riots.

To summarize this section, we have found that the rhetorical conflation of terrorism and anarchism that had developed since the French Revolution resulted in an understanding of terrorism in late imperial Russia which encompassed diverse and

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<sup>106</sup> For biographical information on Witte as well as on his role in late imperial Russia see Harcave, Sidney. *Count Sergei Witte and the Twilight of Imperial Russia: A Biography*. Armonk: M.E. Sharpe, 2004, Mehlinger, Howard D. and John M. Thompson. *Count Witte and the Tsarist Government in the 1905 Revolution*. Bloomington: Indiana University Press, 1972 and Von Laue, Theodore H. *Sergei Witte and the Industrialization of Russia*. New York: Columbia University Press, 1963.

disparate ideological, philosophical and political positions and movements. This discourse allowed the tsarist regime to demonize different types of political opposition by subsuming them under a single concept and to implement emergency measures in an effort to maintain power. We have also seen that while the rhetoric of terrorism facilitated an unprecedented expansion of power, it did not in fact succeed in strengthening the tsar's position. On the contrary, emergency legislation opened the way for an accumulation and abuse of power on the part of a growing bureaucratic apparatus. As the government foundered in its attempt to preserve power through a denunciatory discourse of terrorism, the measures taken for this purpose also failed to eliminate terrorism. It was in response to the failure of police repression and a return to despotic rule that liberalization came into view as an alternative and perhaps more productive way of ending terrorist violence. In the remainder of this chapter, we will therefore explore the role of terrorism in Russia in the context of the country's unsteady development toward a liberal political order which, for reasons to be explained shortly, was never realized. We will see that the rhetoric of terrorism was used by a regime that sought to resist the political consequences of necessary economic liberalization.



## 1.9 The rhetoric of terrorism and the preservation of despotism

### 1.9.1 Invoking terrorism, resisting liberalism

Witte's call for liberal reform as the appropriate response to terrorism tied in with a history of liberal thought that had surfaced in political reflections in Russia since at least the mid-nineteenth century. When in 1856 Tsar Alexander II responded to "rumours that I want to announce the emancipation of the peasants," he declared that "I will not say that I am completely against this. We live in such an age that this has to happen in time. I think that you agree with me. Therefore, it is much better that this business be carried out from above, rather than from below" (cited in Zakharova 2006, 596). While many commentators have suggested that Alexander's willingness to implement reforms was a merely pragmatic response to increasing popular unrest, Zakharova interprets his actions as a considered response to the demands of the time (Ibid.).<sup>107</sup> In other words, safeguarding the prestige and wealth of the state required major economic changes that involved larger social, political and judicial reform. The insufficient economic productivity of serfdom as well as the threat of rebellion posed by impoverished and exploited serfs resulted in a situation that made Alexander's Great Reforms unavoidable (Riasanovsky 2000). As a consequence, Alexander found himself in a situation where liberalization was necessary both in economic terms as well as with regard to the existence of the state, but at the same time threatened to undermine the absolute power of the emperor. His decision to enact liberal reforms was thus overshadowed by his attempt to retain power. While the government could not return to the old system, it could stop on its path of liberalization and try to counteract the practical political consequences of the reforms. On this account, the Russian regime's

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<sup>107</sup> For the contrary argument see Venturi, Franco. *Roots of Revolution. A History of the Populist and Socialist Movements in Nineteenth Century Russia*. London: Weidenfeld and Nicolson, 1964.

use of terrorism discourse had a pivotal function in the tsar's attempt to retain power against processes of liberalization.

Jonathan Daly's analysis of the Security Law substantiates this claim. Daly suggests that the partial state of martial law under which Russians lived since 1878 was by no means a symbol for Russia's development toward a police state. Instead, Daly argues, it indicated Russia's progression toward a modern constitutional state and the rule of law. The Security Law, Daly contends, has to be understood as the codification and, at least to a certain extent, limitation of the previous expansion of power through emergency measures. "Late imperial Russia's emergency legislation," he argues, "was not a turning point on the path towards a modern 'police state' but a sign of that country's uneasy transition from an absolutist to a constitutional order" (Daly 1995, 602). The rhetoric of terrorism deployed by the Russian regime thus allowed for the reconciliation of a curious hybrid of autocracy, elements of the rule of law as well as the influence of liberal political forces. It enabled the tsar to harmonize the necessity of reform with his political interests and to maintain an autocratic rule on top of an economic system that slowly but steadily moved toward capitalism.

To be sure, these processes were by no means peculiar to late imperial Russia. Resistances to liberal reform and setbacks on the path of liberalization occurred in other European states. As the power of European monarchs began to be limited, whether voluntarily or under duress, constitutional checks instituted for the protection of citizens occasionally hampered states' abilities to defend themselves against forces threatening their very existence. Prudence then dictated the temporary suspension of legal restraints. Ironically, such suspensions were the hallmark of a transition from absolutist to constitutional rule, from the early modern police state, or rationalized absolutism, to the rule of law (Ibid., 602-603).

One might therefore be inclined to argue that the political developments in late imperial Russia complement Foucault's account of the emergence of liberalism and modern governmentality in the West. In "The Birth of Biopolitics" (1978/79), Foucault contends that the rule of law developed in German political and legal theory at the end of the eighteenth and the beginning of the nineteenth century in opposition to despotism and the police state (*Polizeistaat*). While despotism constituted a system in which political obligation was oriented toward the will of the sovereign, Foucault argues that the police state made "no difference of kind, origin, validity, and consequently of effect, between, on the one hand, the general and permanent prescriptions of the public authorities ... and, on the other hand, the conjunctural, temporary, local, and individual decisions of the same public authorities" (Foucault 2010a, 168). Against despotism's proclivities for arbitrary and possibly illegal state action that was legitimate so long as it was in accordance with the will of the sovereign, and in opposition to the legal overregulation and overdetermination of the police state, the rule of law established a system of legality in which the legitimacy of state action corresponded to a law that limited it in advance. In other words, the separation of sovereignty and administrative action had its formal expression in the distinction between a general law and its particular application.

On this view, late imperial Russia in fact appears as a country whose progress toward liberal constitutionalism was simply less steady and more tenuous because of Russia's particular historical, social and political context. The suspension of law and the concomitant expansion of administrative power here appear as instruments in the hands of a monarch who, due to the limits imposed on him by a progression toward constitutional rule, did not know how else to defend his country against terrorism. This account certainly presents a plausible explanation of the political situation in late

nineteenth and twentieth-century Russia. However, Foucault's account does not permit for an explanation of bureaucratization as an important effect of the country's development toward a more liberal political system that, ultimately, prevented the establishment of liberalism and the rule of law in Russia. It is in this context that terrorism has to be understood as a strategic discourse which, however, produced outcomes that were certainly unintended and undesired by the government yet therefore no less significant for the ultimate failure to introduce liberalism and the rule of law in Russia. In order to complement Foucault's analysis, we now turn to Max Weber's reflections on late nineteenth and early twentieth-century Russia to explore the political considerations driving anti-terrorist emergency legislation and the bureaucratization of the country.

### **1.9.2 The collapse of imperial Russia**

In his journalistic reports on the Russian Revolution of 1905, most notably the essays "Bourgeois Democracy in Russia" (1905) and "Russia's Transition to Pseudo-Constitutionalism" (1906), Weber is concerned with a description of "the general social and political situation into which police absolutism, the political legacy of Alexander III (which was not repudiated soon enough) and, most recently, the work of Witte's Interim Ministry, has led the country, and out of which it must now – and who can say how? – find its way" (Weber 1995b, 229). For Weber, the decisive social, historical and political novelty of Russia's development was the bureaucratization of self-government effected by attempts to contain the revolutionary movement. For Weber, the ambivalent relation between the central government and a growing bureaucratic state apparatus that downshifted power to the lower levels of administration was an undesirable consequence of the deadlock in which the tsarist regime found itself. Trapped between

the need to reform in the name of economic progress and the necessity to retain power to suppress revolutionary action, the tsarist government found itself in a situation in which "the machine grinds as if nothing has happened."

And yet things have been done which cannot be undone. The insincerity by which liberties are officially granted, and at the moment when one is about to avail oneself of them, are taken away again with the other hand, *must* become the source of constantly repeated conflicts and fierce hatred, and be far more provocative than the old blatantly crushing system of repression" (Ibid., 173).

In other words, economic necessity for reform coupled with social fragmentation and the lack of a strong liberal alliance gave rise to a redistribution of power through massive bureaucratization and an expansion of administrative power under the pretext of terrorism which culminated in a system of pseudo-constitutionalism (*Scheinkonstitutionalismus*). Instead of putting an end to terrorism and limiting arbitrary state violence, the development of a massive autocratic bureaucracy perpetuated and aggravated the contradictory exercise of power and violence. "So much can be said," Weber maintained: "the almost inevitable tendency and necessity of modern dynastic regimes to work for *prestige* domestically, as well as abroad, to 'save face', led the government in Russia to fail to give what it had to give *in time*, and then when one concession after another was forced out of it, it tried and continues to try to restore its lost 'prestige' by remorseless police tyranny" (Ibid., 229).

As Weber was well aware, terrorism played an important role in these processes. The tsarist regime, he argued, "blames the activities of terrorists for the police's insane rule of tyranny" (Ibid., 230). It was also clear for Weber that while this bureaucratic apparatus constituted the mechanism by which the autocratic regime secured its existence, it was destined to bring about the collapse of the regime in the long run. Weber predicted that the prevention of Russian radicalism and its concomitant terrorist

outrages through police action was highly doubtful. The outcome of increased police arbitrariness, he argued, was that “the imposition of martial law, i.e. of a state of lawlessness, has caused these activities to *increase* and created sympathy for them. ... It is by no means certain that today’s regime or its like will succeed (for more than brief spells) in sapping the indefatigable energy of Russian radicalism ... and certainly not before the total economic ruin of the country” (Ibid., 230).

As we have seen earlier, Witte had called for liberal reform instead of increased repression in order to deal more effectively with terrorism. The only way to put an end to anti-government violence, Witte argued, was by eradicating the root causes that generated terrorist violence in the first place. The solution to social conflict and terrorism thus seemed to be a return to the liberal principles that had guided the Great Reforms. Weber, by contrast, was skeptical about Russia’s potential for liberalization, and it seemed unlikely that liberalism was a possibility for the country. The reason for this, according to Weber, was the fragmentation of Russian liberalism and its lack of a broad social basis. Centuries of autocratic rule had prohibited the formation of a historically grounded social identity and social cohesion that, Weber argued, would have been necessary to support the liberal movement. This predicament was further exacerbated by the development of capitalism and the concomitant emergence of class consciousness which made the peasants in particular reluctant to side with those social groups that were the bearers of liberalism and constitutional reform (Weber 1995a). While Weber was convinced that, in the long run, Russia would go down the road of European development, he was doubtful of the chances of success of the liberal movement. It was clear that capitalism would result in a modernization of society but this did not mean, Weber pointed out, that Russia would undergo a liberal and democratic political development. “In Russia,” Weber claimed, “the imported

ultramodern forces of big capitalism run up against a subterranean world of archaic peasant communism, and unleash, for their part, such radically socialist feelings among their work-force (which they then meet with equally uncompromising ‘antifreedom’ organizations of the most modern character) that one can scarcely imagine what kind of development is in store for Russia, even if – as is overwhelmingly probable – the ‘sanctity of property’ ultimately gains the ascendancy over the Socialist Revolutionary peasant ideology” (Ibid., 232).

Eventually, Weber’s prognosis that the bureaucratic apparatus, which had for a time preserved autocratic power, would turn into the cause of the regime’s downfall was to be fulfilled, albeit in a way that Weber had not anticipated. Weber argued, perhaps most concisely in “Politics as a Vocation” (1919), that politics is a struggle over the distribution of power, and political institutions constitute structures of domination that are then legitimated in historically variable ways. The specificity of the modern state is the legitimation of domination not by reference to traditional or charismatic authority, but in terms of its compatibility with rationally created legal rules. The administrative and technical functions of the state required by the rationalization of politics, Weber suggests, give rise to a highly specialized bureaucratic apparatus. In other words, Weber sees the modern state as “a compulsory association which organizes domination.”

It has been successful in seeking to monopolize the legitimate use of physical force as a means of domination within a territory. To this end the state has combined the material means of organization in the hands of its leaders, and it has expropriated all autonomous functionaries of estates who formerly controlled these means in their own right. The state has taken their positions and now stands in the top place (Weber 1991, 82-83).

In short, Weber saw the development of the modern bureaucratic state as the culmination of processes of rationalization and as the end of traditional and charismatic

political authority. Yet while the expansion of power in the tsarist regime's fight against terrorism had certainly created a bureaucratic apparatus that sapped the tsar's power and eventually contributed a great deal to the collapse of autocracy in Russia, the outcome was by no means a rationalized administrative state modeled on the West. Instead, halfhearted attempts at economic liberalization and simultaneous efforts to maintain despotic power under the pretext of counter-terrorism and public security led to a situation that was fraught with tensions and that provided the conditions of possibility for the rise of a militant workers' movement. The outcome was neither dictatorship nor liberal constitutional parliamentarianism but, after an unsuccessful socialist revolution, a restoration of autocracy and renewed unrest, the final destruction of tsardom and the establishment of a Bolshevik regime in the revolutions of 1917. The rise to power of Lenin and Trotsky in the October Revolution of 1917 not only put a provisional end to prospects of establishing liberalism in Russia but also initiated the final stage of a political reworking of the concept of terrorism in early twentieth-century Russia.

### **1.9.3 From terrorism to Red Terror**

We have seen that during most of the nineteenth century the term terrorism, both in its affirmative and condemnatory understanding, had largely been attributed to spontaneous individual acts of violence against prominent political figures. The October Revolution and the seizure of power of the Bolsheviks and the workers' councils in 1917 gave rise to a new use of terrorism that was marked not so much by a transformation of its meaning as in a novel evaluation of its function. While the Bolsheviks denounced individual acts of terrorism, they endorsed a systematic use of terror.



Trotsky offers an analytic reflection on the distinction between individual and strategic terrorism in “The Bankruptcy of Individual Terrorism” (1909) as well as in “Why Marxists Oppose Individual Terrorism” (1911).<sup>108</sup> Trotsky accuses individual acts of terrorism as disparaging the revolutionary role of the masses. He implies that it is problematic to outright justify terrorism as a revolutionary strategy because it is unclear what terrorism means. If terrorism is understood in the bourgeois way “as any action inspiring fear in, or doing harm to, the enemy, then of course the entire class struggle is nothing but terrorism” (Trotsky 1911). The question then becomes, Trotsky maintains, “whether the bourgeois politicians have the right to pour out their flood of moral indignation about proletarian terrorism when their entire state apparatus with its laws, police and army is nothing but an apparatus for capitalist terror!” (Ibid.).<sup>109</sup> If terrorism is, however, understood in a “narrower, less indirect meaning” as individual acts of violence, then it is inappropriate as a revolutionary tactic (Ibid.). Against the revolutionaries of the 1870s, Trotsky asserts that “In our eyes, individual terror is inadmissible precisely because it belittles the role of the masses in their own consciousness, reconciles them to their powerlessness, and turns their eyes and hopes towards a great avenger and liberator who some day will come and accomplish his mission.”

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<sup>108</sup> For a similar argument see Luxemburg, Rosa. “Zur Frage des Terrorismus in Rußland.” In *Gesammelte Werke*, Band 1.2, 1893-1905, 275-280. Berlin: Dietz, 1974. For a historical overview of the development of terrorism in early twentieth-century Russia see also Thorup, Mikkel. *An Intellectual History of Terror. War, Violence and the State*. London and New York: Routledge, 2010 and Walther, *Terror, Terrorism*.

<sup>109</sup> In a similar way, Weber had argued that the tsarist government under Nicholas II had blamed the terrorists for arbitrary police violence. At the same time, however, the monarchists had started a campaign to defend a peasant who was standing trial for the murder of a social-democrat. In a footnote to the German text not included in the English edition, Weber maintains that “One can see: The glorification of political murder is by no means a monopoly of the revolutionaries and the police gangs” (Weber 1989b, 674, my translation). As a consequence, Weber hints that an effective counter-terrorist strategy would be well advised to start with the “well-known saying” which “could in this case be applied to the government: ‘Que messieurs les assassins commencent!’” (Weber 1995b, 230).

The anarchist prophets of the ‘propaganda of the deed’ can argue all they want about the elevating and stimulating influence of terrorist acts on the masses. Theoretical considerations and political experience prove otherwise. The more ‘effective’ the terrorist acts, the greater their impact, the more they reduce the interest of the masses in self-organisation and self-education. But the smoke from the confusion clears away, the panic disappears, the successor of the murdered minister makes his appearance, life again settles into the old rut, the wheel of capitalist exploitation turns as before; only the police repression grows more savage and brazen. And as a result, in place of the kindled hopes and artificially aroused excitement comes disillusionment and apathy (Ibid.).

Individual terrorism denies the role of the masses for the revolutionary purpose, thereby effectively asserting the terrorists’ status as representatives of the people’s will. The targeting of political figures by the terrorists also smacks of revenge and does not grasp the systemic injustice that is largely independent of individual political representatives. “If we oppose terrorist acts,” Trotsky asserts, “it is only because individual revenge does not satisfy us.”

The account we have to settle with the capitalist system is too great to be presented to some functionary called a minister. To learn to see all the crimes against humanity, all the indignities to which the human body and spirit are subjected, as the twisted outgrowths and expressions of the existing social system, in order to direct all our energies into a collective struggle against this system – that is the direction in which the burning desire for revenge can find its highest moral satisfaction (Ibid.).

Trotsky’s reflections indicate a shift in the political understanding and appraisal of terrorism. As a systematic “method of revolutionary struggle” terrorism was most effective, but it was counterproductive as “individual acts of revenge” (Ibid.). The consequence was an institutionalization of violence against counter-revolutionaries and class enemies. “The question as to who is to rule the country,” Trotsky argues in “Terrorism and Communism. A Reply to Karl Kautsky” (1920), “ie, of the life or death of the bourgeoisie, will be decided on either side, not by references to the paragraphs of

the constitution, but by the employment of all forms of violence. ... The more ferocious and dangerous is the resistance of the class enemy who have been overthrown, the more inevitably does the system of repression take the form of a system of terror” (Trotsky 2007, 55).

The rejection of individual terrorism and the emphasis on the usefulness of systematic violence coincided with a gradual displacement of the term terrorism and a reactivation of the word terror. To be sure, there is no clearly identifiable and radical caesura that constitutes the end of a rhetoric of terrorism and the beginning of a discourse of terror.<sup>110</sup> However, there is a noticeable change in the rhetorical use of the terms. After all, it was terror rather than terrorism which, according to Mikkel Thorup, was put *à l’ordre du jour* as a necessary means to stabilize the dictatorship of the proletariat (Thorup 2010, 107-111). The new system of terror was expressed by a decree issued on September 5, 1918, by the Soviet Council of the People’s Commissars:

The Council of the People’s Commissars, having heard the report of the Chairman of the All-Russian Extraordinary Commission for Combating Counter-Revolution, Profiteering and Corruption on the activity of this commission, finds that in the current situation securing the back areas by terror is an absolute necessity; that to intensify the efforts of the All-Russian Extraordinary Commission for Combating Counter-Revolution, Profiteering and Corruption and to increase the planned element in this activity it is necessary to delegate to this commission as many responsible party comrades as possible; that it is necessary to secure the Soviet Republic from the class enemies by isolating them in concentration camps, that all persons participating in

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<sup>110</sup> To mention what might perhaps be the most striking example in the twentieth century, the foundation of the state of Israel was not least facilitated by Zionist terrorism against the British occupation. Without further discussing the rich history of terrorism in Israel and Palestine from the foundation of Israel in terrorism, to the denunciation of Arafat as a terrorist and his subsequent rehabilitation as a freedom fighter to today’s justification of the occupation as an anti-terrorist campaign, it is worth mentioning that Zionist terrorist organizations such as the Stern Gang (Lehi) and Irgun had no qualms about referring to themselves as terrorists. See for example Begin, Menachem. *The Revolt*. London: W.H. Allen, 1979 and Cohen, Geulah. *Women of Violence: Memoirs of a Young Terrorist, 1943-1948*. New York: Holt, Rinehart and Winston, 1966.

the White Guard organizations, conspiracies and rebellions must be executed by shooting, that the names of the executed and the reasons of the execution must be made public (cited in *Ibid.*, 108).

The program outlined by the Soviet Council indicates the Bolsheviks' elective affinities with Robespierre. As a matter of fact, Trotsky himself appealed to the French Revolution as the model for the new regime. "In not more than a month's time," he predicted, "terror will assume very violent forms, after the example of the great French Revolution; the guillotine, and not merely the gaol, will be ready for our enemies" (cited in Leggett 1981, 54). The legitimacy of this violence was not justified with reference to some kind of reason expressed in the general will, but was instead articulated in terms of the universality of the proletariat as a class. The necessity to use terror against counter-revolutionaries declared by the Soviet Council was expressed even more emphatically by Lenin. In a letter of June 1918 to Grigory Zinoviev, a high ranking Bolshevik in Petrograd, Lenin wrote that "Only today did we hear in the Central Committee that the Petrograd *workers* wanted to reply to Volodarskii's murder by mass terror, and that you (not you personally, but members of the Petrograd Central Committee) restrained them."

I emphatically protest! We are compromising ourselves: even in resolutions of the Soviet we threaten mass terror, and when it comes to action, we *obstruct* the *absolutely* correct revolutionary initiative of the masses. This is in-ad-miss-ible! The terrorists will take us for milksops. The time is ultra-martial. It is necessary to encourage the energy and mass-character of the terror against counter-revolutionaries, and especially so in Petrograd, whose example is *decisive* (cited in *Ibid.*, 67).

In contrast to Trotsky's invocation of French Jacobinism, Lenin's justification of the Red Terror against counter-revolutionaries and class enemies in the name of the workers seems closer to the Thermidorian defense of violence against the enemies of bourgeois values than to the Jacobin insistence on the necessity of force for the

preservation of the republic. As was seen in the previous chapter, the appeal of terrorism by the Thermidorians at the end of the Jacobin Reign of Terror played a crucial role in the articulation of the political model of the liberal nation state. The charge of terrorism against the enemies of bourgeois values here appeared as the effect of the universalization of national totality claimed by the bourgeoisie in the institutions of the state. Because of the ostensible universality of bourgeois values, the prosecution of their opponents required an elaborate justification. In other words, if freedom is granted by a universal law and government action is only legitimate as long as it is determined in advance by a law that applies equally to everyone, the illegal use of force against some individuals lacks legitimacy and demands legitimation. The sovereign right to kill or let live invested in the absolute power of the state thus became an instrument for the biopolitical protection of the nation against its enemies.

By replacing the concept of the nation with the idea of class, Foucault argues, “Socialism has made no critique of the theme of biopower...; it has in fact taken it up, developed, reimplanted, and modified it in certain respects, but it has certainly not reexamined its basis or its modes of working” (Foucault 2004a, 261). The Red Terror of the Bolsheviks was justified as a necessary instrument against the class enemy. Violence no longer derived its legitimacy from its necessity for the protection of national universality but from the status of the proletariat as a universal class.<sup>111</sup> The

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<sup>111</sup> Against Hegel’s notion of rational bureaucracy as a universal class, Marx insists on a dialectical process of particularity and universality and argues that the postulation of class interest as representative of the whole of society can only be overcome by the *Aufhebung* of class differences as such. In capitalist modernity, Marx claims, “the proletariat alone is a really revolutionary class” and thus the universal subject of history (Marx and Engels 1999a, 75). See also Marx, Karl. *The Poverty of Philosophy*. Moscow: Progress Publishers, 1973, Ibid., “A Contribution to the Critique of Hegel’s Philosophy of Right: Introduction.” In *Early Political Writings*, edited by Joseph O’Malley, 57-70. Cambridge: Cambridge University Press, 2006, Marx, Karl and Frederick Engels. *The Communist Manifesto*. Edited by John E. Toews. Boston and New York: Bedford/St. Martin’s, 1999a and Ibid., *The German Ideology*. Edited by Chris J. Arthur. New York: International Publishers, 1999b. See also Avineri, Shlomo. *The Social and Political Thought of Karl Marx*. Cambridge: Cambridge University Press, 1968.

outcome, Foucault maintains, was “a socialist State which must exercise the right to kill or the right to eliminate, or the right to disqualify” (Ibid.).

By way of conclusion, it is worth noting that a Soviet state deployed the same justification of state violence as an ostensibly neutral and rational liberal order. It might be argued that this fact brings into view the illusion of liberal neutrality and problematizes the identification of legality and legitimacy. The Bolshevik revolution forces one to reevaluate Foucault’s claim that “The most racist forms of socialism were, therefore, Blanquism of course, and then the Commune, and then anarchism – much more so than social democracy, much more so than the Second International, and much more so than Marxism itself. Socialist racism was liquidated in Europe only at the end of the nineteenth century, and only by the domination of social democracy” (Ibid., 262). While this might be true for France in particular and Western Europe more generally, the Russian Revolution of 1917 marks the beginning of a process in which the concept of terror is fixed to the state’s use of force while the term terrorism is assigned to illegitimate violence exercised by non-state social or political actors who claim to speak for the people. The legitimacy of state violence and the illegitimacy of non-state terrorism appear as effects of the identification of the state with the postulated totality of a class or nation. The political developments through which the state has become not only formally representative of but essentially identical with the people, be it as a nation or as a class, coincide with the final verdict of the terrorist as the enemy of the state and, hence, the enemy of the people.

## The terrorist as the enemy of humanity

### 1.10 Terrorism as the subject of legal debate

#### 1.10.1 The criminalization of terrorism

We have seen in chapter 2 that terrorism had initially emerged in the French Revolution as a label for a political system or regime of terror.<sup>112</sup> After the Thermidorian Tallien had introduced the term as a name for the Jacobin Reign of Terror and attempts of the radical left to subvert the discourse of terrorism had failed, the concept was eventually turned into a rhetorical weapon against any form of political opposition to the Thermidorian order. In chapter 3, we found that the transformations in the meaning of terrorism over the course of the nineteenth century paved the way for an understanding that fixed terrorism to non-state or anti-state violence. As a consequence, non-state terrorism was distinguished from state terror. At the same time as terror became the term used to describe the totalitarian regimes of the twentieth century, there was a multiplication and standardization of terrorism discourse.<sup>113</sup> This chapter will investigate the ways in which terrorism became the object of legal efforts to establish a universally accepted definition. While it is true that the successful appeal to terrorism discourse had previously had legal repercussions insofar as it allowed for a tactical use or suspension of the law with regard to terrorists – these procedures have been discussed in chapters 2 and 3 – there had been no effort to determine terrorism as a criminal offense with certain predetermined sanctions. The twentieth century, by

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<sup>112</sup> This understanding of terrorism resembles a line of early modern political thought that is most notably expressed in Montesquieu's identification of terror as the principle of despotic governments. See Montesquieu, Charles de. *The Spirit of the Laws*. Edited by Anne M. Cohler, Basia C. Miller and Harold S. Stone. Cambridge: Cambridge University Press, 2002.

<sup>113</sup> For discussions of terror as the principle of totalitarianism see for example Arendt, Hannah. *The Origins of Totalitarianism*. San Diego and New York: Harvest, 1973 and Friedrich, Carl J. and Zbigniew K. Brzezinski. *Totalitarian Dictatorship and Autocracy*. Cambridge: Harvard University Press, 1965.

contrast, saw the emergence of a distinctively legal discourse of terrorism that sought to unambiguously define and criminalize it. As will become clear in what follows, this discourse broadly fixed the meaning of terrorism to anti-state violence aiming to terrorize the public in pursuit of political goals.

Rather than treating the criminalization of terrorism in the twentieth century as accidental, this chapter charts legal debates about terrorism in order to relate them to more general developments in a wider economy of power. We will see how the emergence of a certain legal discourse of terrorism in the second half of the twentieth century allowed for its mobilization as a relay of power. We will explore how terrorism and its concomitant processes and practices function in the projection of power internationally and in the expansion of imperial sovereignty in a global economy of power in the making.

### **1.10.2 Political violence as a legal problem in the interwar period**

We have seen in chapters 2 and 3 that the successful invocation of terrorism had previously had legal repercussions. The perceived threat of terrorism had not only allowed for the severe restriction of freedom of expression but had also exposed those accused of terrorism to all sorts of punishment not covered by the law. By successfully branding individuals as terrorists, the law could be altered or suspended altogether to avoid the legal strait jacket that regulated ordinary crime. Yet despite the use and abuse of law for political purposes, there had been no attempt to legally define terrorism and to classify it as a criminal act with certain predetermined sanctions.<sup>114</sup>

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<sup>114</sup> It might be argued that it was precisely its political usefulness that allowed terrorism to survive as a tactical element in social and political struggles, which variously reproduced, colonized, and transformed the meaning of terrorism in order to wield it against those who had used it before. For a structurally parallel argument see Foucault's discussion of the decreasing importance of the state in a context of governmentalization and his contention that "the governmentalization of the state has nonetheless been



It was not until the late 1920s that a specifically legal discourse of terrorism emerged and an international effort was made to make terrorism illegal. For this purpose, states tried to formulate an unequivocal and universally acceptable definition of terrorism, in particular in the context of international law. Even though there has so far been little consensus on a legal concept of terrorism, a customary understanding nevertheless emerged and was formalized in the 1937 Convention of the League of Nations that fixed the term terrorism to “criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public” (reproduced in Bassiouni 2001, 71).

An important historical point of reference in early legal debates about terrorism was the Belgian “*attentat* clause” of 1856 and disagreement over the extradition of political criminals. The clause was proposed in opposition to the principle of non-extradition of political criminals provided for by Belgian law. When France demanded the extradition of Jules Jacquin, a Belgian citizen who had fled to Belgium after an assassination attempt on Napoleon III, Belgium amended its extradition law and adopted the *attentat* clause which determined that assassinations of foreign heads of government as well as their families should not be considered a political crime and should not be covered by non-extradition (Oppenheim 1905, Saul 2008).

The attempt to codify responses to terrorism in the new international legal system institutionalized in the League of Nations after the First World War harkened

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what has allowed the state to survive. And it is likely that if the state is what it is today, it is precisely thanks to this governmentality that is at the same time both external and internal to the state, since it is the tactics of government that allow the continual definition of what should or should not fall within the state’s domain, what is public and private, what is and is not within the state’s competence, and so on. So, if you like, the survival and limits of the state should be understood on the basis of the general tactics of governmentality” (Foucault 2009b, 109). My argument here is similar insofar as terrorism is understood not as a historical or natural given but as the – discursively articulated – effect of power relations. In other words, over and against all attempts to settle its meaning, terrorism owes its persistence precisely to its lack of essence that results in an undefinability which in turn allows for its strategic use, seizure and transformation.

back to the precedent of the *attentat* clause. At the same time as the League of Nations pondered the problem of terrorism, a series of International Conferences for the Unification of Penal Law focused on the streamlining of national legislation against terrorist acts and furnished international debates on terrorism with the perspective of criminal jurisprudence. In 1926, Romania put forward a proposal to the League of Nations to formulate a convention that would allow for the punishment of terrorism; yet no action was taken (Saul 2008). In 1934, France submitted a proposal to the League. At the same time, a draft convention, known as the Vienna Draft, was elaborated by the International Criminal Police Commission in Vienna. In this context, the distinction between political crimes and ordinary crimes staked out by the *attentat* clause resurfaced as both documents, the French proposal and the Vienna Draft, pushed for a legal conceptualization of terrorism as a list of “offences punishable ‘as ordinary crimes’” (Ibid., 171). However, no systematic effort was undertaken by the League to criminalize terrorism at the time.

When Austrian chancellor Dollfuss, Romanian minister Duca, and King Alexander I of Yugoslavia were assassinated later the same year, the fear of a repetition of the 1914 assassination of Archduke Franz Ferdinand in Sarajevo and its fatal consequences for peace in Europe finally forced the League to act. The decisive event for putting terrorism on the international legal agenda was the assassination of Alexander I of Yugoslavia, more specifically the legal problems it posed. In remarkable analogy to the situation of 1856, the Yugoslav king had been killed on a state visit to France, but the suspects had managed to flee to Italy. When France demanded their extradition, Saul explains, “The Court of Appeal of Turin refused to surrender the accused on the grounds that the offences were politically motivated and thus non-extraditable. The Court found that ‘the assassination of a sovereign is a political crime

if it is prompted by political motives ... and offends against a political interest of a foreign state', as are 'crimes committed or attempted in the course of the said regicide'" (Ibid.). The League of Nations declared that "the rules of international law concerning the repression of terrorist activity are not at present sufficiently precise to guarantee efficiently international co-operation" and, in December 1934, established the Committee for the International Repression of Terrorism (CIRT) with the purpose of drafting a convention "to assure the repression of conspiracies or crimes committed with a political and terrorist purpose" (Ibid., 172).

In opposition to the Vienna Draft, which had defined terrorism by way of a list of ordinary crimes and punishable as such, the League made a decisive political move that opened the way for a critical rearticulation of terrorism. The League emphasized the necessity to introduce a distinction between political crimes that fell under the non-extradition clause and political crimes that had a special character and should therefore not be covered by the clause. Even though this approach represented a break from the Vienna Draft as well as from the precedent of the Belgian *attentat* clause, it was in continuity with a draft proposed in 1935 by the fifth of the International Conferences for the Unification of Penal Law. This draft, also known as the Copenhagen Draft, maintained that "It is necessary that certain acts should be punished as special offences apart from any general criminal character which they may have under the laws of the State, whenever such acts create a public danger or a state of terror, of a nature to cause a change in or impediment to the operation of the public authorities or to disturb international relations, more particularly by endangering peace" (Ibid., 170). In addition, the scope of CIRT's task was restricted by a resolution passed by the League Assembly in 1936. Affirming the old principles of the *jus publicum Europaeum*, the resolution not only insisted on the necessity of respecting the doctrine of non-

intervention but also limited the notion of terrorism to attacks on “the life or liberty of persons taking part in the work of foreign public authorities and services” (Ibid., 172).

The definition of terrorism as a crime against state representatives suggested by the League would not, as such, imply that terrorism is a special crime not covered by the non-extradition clause. In fact, it is only in combination with the provision of the Copenhagen Draft regarding crimes creating public danger or a state of terror that terrorism can be determined as a special crime. Given the relative ambiguity of the Copenhagen Draft as to what constituted public danger, a state of terror, an impediment of the workings of national and international politics or a threat to peace, the establishment of an act of violence as terrorism depended on whether or not states thought a condition of terror had been caused. The understanding of terrorism as violence against state representatives and as causing a state of terror not only fixed the meaning of terrorism as anti-state violence but also created a significant amount of flexibility and discretion for states to identify terrorism on a case-by-case basis depending on whether or not they thought a state of terror or public danger had been caused. What is more important with regard to the effects of these processes on international law is that, as a special crime, terrorism was not covered by the non-extradition clause. As a consequence, individuals guilty of the special political crime of terrorism appeared as subjects of international law. This inclusion of individuals in international law amounts to a new international legal paradigm, namely international criminal jurisdiction.<sup>115</sup>

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<sup>115</sup> On the emergence of international criminal jurisdiction see Bassiouni, M. Cherif. *International Criminal Law*. Vol. 1-3, Leiden: Brill, 2008, Bantekas, Ilias and Susan Nash. *International Criminal Law*. Abingdon and New York: Routledge, 2007, Cassese, Antonio. *International Criminal Law*. Oxford: Oxford University Press, 2008 and Sadat, Leyla Nadya and Michael P. Scharf, (eds.) *The Theory and Practice of International Criminal Law. Essays in Honor of M. Cherif Bassiouni*. Leiden: Martinus Nijhoff Publishers, 2008. For a critique of international criminal jurisprudence see Zolo, Danilo. “The lords of peace: From the holy alliance to the new international criminal tribunals.” In *Global Democracy:*

Indeed, in November 1937, two conventions were adopted on the basis of a CIRT draft to define international terrorist offenses and to establish an international criminal court to prosecute and punish these offenses (Ibid., 172-173). As was seen above, the first article of the Convention for the Prevention and Punishment of Terrorism defined terrorism as “criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public” (reproduced in Bassiouni 2001, 71). Article 2 called on the contracting states to criminalize the following acts committed on the state’s territory “if they are directed against another High Contracting Party and if they constitute acts of terrorism within the meaning of Article 1:”

Any willful act causing death or grievous bodily harm or loss of liberty to:

- a) Heads of State, persons exercising the prerogatives of the head of the State, their hereditary or designated successors;
  - b) The wives or husbands of the above-mentioned persons;
  - c) Persons charged with public functions or holding public positions when the act is directed against them in their public capacity.
2. Willful destruction of, or damage to, public property or property devoted to a public purpose belonging to or subject to the authority of another High Contracting Party.
  3. Any willful act calculated to endanger the lives of members of the public.
  4. Any attempt to commit an offence falling within the foregoing provisions of the present article.
  5. The manufacture, obtaining, possession, or supplying of arms, ammunition, explosives or harmful substances with the view to the commission in any country whatsoever of an offence falling within the present article (Ibid., 71).

The convention also demanded the criminalization of conspiracy, incitement, participation and assistance in acts of terrorism regardless of which country was the target of such an act (Ibid., 71-72). Yet while the outbreak of the Second World War

prevented the convention from being put into effect, international debates about the legal status of terrorism resumed in the second half of the twentieth century.

### **1.10.3 Legal debates after World War Two**

In a recent survey of the political stakes of legal debates on terrorism, Jörg Friedrichs argues that the motivations and mechanisms resulting in the 1937 convention form a pattern that runs through the development of international law throughout the twentieth century. On the level of international law, institutionalized in the United Nations, the political interests of member states stifled an accepted legal definition of terrorism. As a consequence, international counter-terrorist legislation from the 1960s until the late 1990s focused on particular criminal acts such as the hijacking of airplanes, the taking of hostages, or the acquisition of nuclear materials. But while there might be little agreement in the way of actual legislation, the positions exchanged in debates among UN member states provide illuminating insights into the instrumentalization of the rhetoric of terrorism in international law (Friedrichs 2006).

Friedrichs notes two distinct periods of defining terrorism. The first one is marked by the response to an increase in terrorist attacks in the 1970s and specifically the attack on Israeli athletes at the 1972 Olympic games in Munich. It led to a draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism submitted by the United States. Against this document, which did not include a legal definition of terrorism, the Non-Aligned Movement under the leadership of Algeria insisted on the necessity to identify the root causes of terrorism before repressive measures could be taken. The main argument against the US draft was that national liberation movements would be outlawed as terrorism, while the real danger of state terrorism would go unpunished. In order to settle the dispute, an Ad Hoc

Committee on International Terrorism was established in 1973 but suspended in 1979 due to failure to reach consensus. As a consequence of the impossibility to reach agreement, Friedrichs argues, “the international community had to limit itself to conventions against particular manifestations of terrorism.”

The word ‘terrorism’ normally did not even appear in the main text of these sector-specific conventions, although it was sometimes used in the title and preamble. In none of these early conventions was there any explicit attempt to define terrorism. The focus was on specific criminal acts, and the political intent of the perpetrators was set aside. Thereby it was possible to avoid conflicts over basic definitional principles, permitting textual agreement to be reached (Ibid., 77).<sup>116</sup>

This “piecemeal approach,” Friedrichs further suggests, has led to the establishment of a “common understanding of terrorism” without solving the problem of formulating a legal definition (Ibid.). According to the principle that all definition in law is dangerous, the lack of legal definition had the convenient effect of putting states in a “position to determine on a case-by-case basis who the international public enemy ... happens to be” (Ibid., 89).<sup>117</sup>

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<sup>116</sup> The UN website on UN Action to Counter Terrorism provides a list of the thirteen major legal instruments in dealing with terrorism including the 1963 Convention of Offences and Certain Other Acts Committed on Board Aircraft, the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, the 1979 International Convention against the Taking of Hostages, the 1980 Convention on the Physical Protection of Nuclear Material, the 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, the 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, and the 1991 Convention on the Making of Plastic Explosives for the Purpose of Detection. It is only in 1997 that terrorism is explicitly addressed by the UN in the International Convention for the Suppression of Terrorist Bombings, following by the 1999 International Convention for the Suppression of the Financing of Terrorism, the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism and the 2010 United Nations Global Counter-Terrorism Strategy. With the exception of the last document, which is available at <http://www.un.org/terrorism/strategy-counter-terrorism.shtml>, all documents can be accessed at [http://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2\\_en.xml&menu=MTDSG](http://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml&menu=MTDSG) (accessed July 9, 2011).

<sup>117</sup> According to Friedrichs, this is a quote by the Roman lawyer Iavolenus. In its entirety, the principle reads “*omnis definitio in jure periculosa est, parum est enim ut non subverti possit*,” i.e. every definition in the law is dangerous, for there is little that cannot be subverted (Ballentine 1916, 348). The position of

The next genuine attempt to legally define terrorism began in the late 1990s with the establishment of an Ad Hoc Committee on International Terrorism in 1997. The aim of the committee was the identification of appropriate instruments to counter international terrorism. In 1999, the General Assembly called for a comprehensive convention that was to include a definition of international terrorism (Ibid., 74). Discussions were resumed and, based on Article 2 of the International Convention for the Suppression of the Financing of Terrorism, a new element was introduced into the framework of international law. It will be seen shortly that, at first sight, new legislation appeared to respond to the demands of Third World countries and the Organization of the Islamic Conference (OIC). These states had initially insisted on a distinction between terrorism and national liberation as well as on the inclusion of state terrorism in a comprehensive convention. When this approach was rejected by Western countries, the OIC changed its strategy and agreed that “the exemption of state terrorism is acceptable but should be expanded to cover all parties during an armed conflict, whether regular forces or national liberation movements” (Ibid., 75). “For the members of the OIC,” Friedrichs claims, “maintaining the distinction between freedom fighters and terrorists was a strategic objective that superseded earlier efforts at delegitimizing so-called state terrorism” (Ibid., 76). Put differently, at the heart of the conflict over state terrorism and national liberation was a more fundamental question about the legitimacy of non-state violence.

Both the demand to include state terrorism in a definition of international terrorism (as proposed by the Non-Aligned Group in the 1970s) and the insistence to exclude violence exercised in armed conflicts regardless of the status of the parties (as

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the United States and its allies in international debates over a legal definition of terrorism would certainly seem to be informed by this principle. The lack of a fixed definition of terrorism allows for the application of certain counter-terrorist measures independent of whether or not acts of violence meet a particular definition, thereby preserving and even extending discretionary powers in determining what counts as terrorist violence.



demanding by the OIC in the 2000s) might usefully be understood as efforts to undermine the state's monopoly on legitimate violence. Both positions suggest that the legitimacy of violence is separate from the political status of its perpetrator and lay claim to equal treatment for equal violence. In the terms of the Non-Aligned Movement, this amounts to the demand that when state violence looks like terrorist violence, it should be treated as such. Alternatively, as suggested by the OIC, this means that certain forms of violence hitherto regarded as terrorism have to be recognized as legitimate.

On the face of it, it seemed that subsequent legislation in the context of terrorism acknowledged the demands of the Non-Aligned Group and the OIC. The International Convention for the Suppression of the Financing of Terrorism (1999), for example, seemed to adopt an unbiased and inclusive view of terrorism in terms of a list of offenses considered to be criminal under international law without distinguishing between state or non-state perpetrators. However, the convention introduced a further provision that additionally defined terrorism as “any other act *intended* to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the *purpose* of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act” (United Nations 1999, my emphasis). The invocation of intention and purpose should grab our attention. By positing intention and purpose as constitutive elements of terrorism, the 1999 Convention ushers in a subtle means by which terrorism can nevertheless be determined on a case-by-case basis and on ideological grounds. This also maintains an implicit identification of terrorism with non-state violence. For while state violence arguably kills civilians on a much larger scale than any terrorist attack, states justify the death of

non-combatants as an unfortunate side effect of war (Zolo 2009b, 128). In other words, the killing of innocents is not the intention and purpose of state violence but an unwelcome yet unavoidable corollary of a mission to end violence. In this context, Friedrichs regards the inability, or rather unwillingness, to reach a legal definition of terrorism as a tactical advantage for those powers that do not want to compromise their global hegemony by submitting to a legally binding definition (Friedrichs 2006, 85).

That there still is a plethora of legal documents concerning terrorism without ever having defined its exact meaning points to the fact that a conventional understanding of terrorism has taken hold in international law and politics. This point is supported by Zolo's observation that "in spite of the fact that no less than twelve international conventions have been signed in the attempt to establish a common approach to terrorism," there is no legal definition but only an "internationalist prevailing doctrine" (Zolo 2009b, 126). It is also illustrated by an all too familiar truism expressed by the British permanent UN representative Greenstock: "There is common ground amongst us all," he maintained, "on what constitutes terrorism. What looks, smells and kills like terrorism is terrorism" (cited in Friedrichs 2006, 84).

That the views of major powers prevailed over the demands of the OIC and the Non-Aligned Group in a commonly accepted doctrine of terrorism reflects the unequal relations of power in international institutions. The standard view of terrorism as "criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public" is based on ideological and political motives and is, moreover, not legally binding (reproduced in Bassiouni 2011, 71). This conception of terrorism fails to account for the root causes of terrorism, something that has been repeatedly called for by the Non-Aligned Group, Third World countries and the OIC. It allows for anti-terrorist measures

on a national and international level that have become standard practice and entail enormous consequences such as the suspension of constitutional rights or the waging of wars of aggression in the name of preemptive action and national self-defense. The lack of a customary doctrine of terrorism also facilitates the exclusion of state violence from being considered as terrorism. As Zolo has noted, “Terrorists are exclusively members of organizations that operate privately and under cover, never military personnel or their commanders serving national armies” (Zolo 2009b, 128). In the rare cases that state terrorism is invoked, Zolo argues, just war theorists such as Walzer justify it “in the name of his grotesque theory of the ‘supreme emergency’” (Ibid., 129). “In spite of all this,” Zolo continues, “it now seems undeniable that, while the strategies of terrorism in its various forms are increasingly coming to resemble ‘global civil war’ – to use Carl Schmitt’s expression – ‘global war’ has in its turn taken on the features of terrorism, if we agree to define terrorism, according to Western practice, as the indiscriminate use of violence against the civilian population of a country with the aim of spreading panic and pressurizing the political authorities” (Ibid., 130).

Zolo is certainly correct in pointing out the similarities between state violence and terrorism, in particular with regard to the current war effort against international terrorism. Before we examine the parallels between state violence and terrorism, however, we first have to understand the political interests that require and make possible an understanding of terrorism as ideologically or religiously inspired political violence that poses an imminent threat to national sovereignty and global order. We will see that it is for the purpose of expanding power that states establish an understanding of terrorism as omnipresent and yet elusive in a process that Sheldon Wolin has aptly described as “mimesis: the character of the enemy supplied the norm for the power demands that the democratic defender of the free world chose to impose on itself”

(Wolin 2008, 37). We therefore now turn to an examination of the function of a particular rhetoric of terrorism in these processes of expanding power.

## 1.11 Terrorism and the making of a global governmental regime

### 1.11.1 A just war against the new barbarians

A possible answer to the question what political rationalities and changes of power require and promote the contemporary conception of terrorism can be found in the work of Carl Schmitt. In “The Nomos of the Earth in the International Law of the *Jus Publicum Europaeum*” (1950), Schmitt built on his critique of liberalism to outline what he saw as the dangers inherent in an evolving liberal international system.<sup>118</sup> As opposed to the European public law of the sixteenth to twentieth century, which sought to ritualize warfare between states while safeguarding order within states, contemporary international law seeks to eliminate war by outlawing it. The consequence, according to

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<sup>118</sup> To recapitulate, Schmitt argues in “Political Theology” (1921) that any understanding of the legal order has to start from an analysis of the exception. Schmitt argues that the exception is more interesting than the rule because the rule itself derives its existence from the exception. In other words, the exception is the condition of possibility for rule and order in the first place. Since for Schmitt the decision in and on a state of exception is the mark of sovereignty, the political comes into view as the realm of sovereignty rather than as the sphere of law. The critical implication of Schmitt’s contention is that the excess of the political with regard to the law is ignored in constitutional parliamentary democratic systems. What is worse, constitutional parliamentary democracy proclaims to reconcile a pluralism of opinions and interests by means of purely formal and universal laws. For Schmitt the crisis of Weimar parliamentarism was not the result of the emergence of fascism but of the fundamental depoliticization of the parliament caused by the abandonment of the essentially *political* importance of creating identity and distinguishing between friend and enemy. He hints that once different opinions are attributed equal political standing, the necessary inequality characterizing the political is projected onto a different sphere which subsequently dominates politics. As a consequence, the parliament is reduced to an empty formalism and becomes instrumentalized as an arena in which powerful economic interests confront each other. See Schmitt, *Political Theology*, Ibid., *The Crisis of Parliamentary Democracy*. Translated by Ellen Kennedy. Cambridge and London: The MIT Press, 1988, Ibid., *The Concept of the Political*, Ibid., *Roman Catholicism and Political Form*, Ibid., *Legality and Legitimacy*. See also McCormick, John P. *Carl Schmitt’s Critique of Liberalism: Against Politics as Technology*. Cambridge: Cambridge University Press, 1999, the essays collected in Dyzenhaus, David, (ed.) *Law as Politics. Carl Schmitt’s Critique of Liberalism*. Durham: Duke University Press, 1998 and Scheuerman, *Carl Schmitt’s Critique of Liberal Constitutionalism*.

Schmitt, is a global civil war in which discriminatory violence is waged in the name of civilization against the new barbarians.

Schmitt sketches the justness and ordering of war in different periods of the historical development of international public law and the law of nations. For the *jus gentium* of the Christian Middle Ages, which rested on the legal authority of the Catholic Church, wars waged by order of the church were *eo ipso* just. “Formally speaking,” Schmitt explains, “the church’s authority was decisive in the determination of just war. Accordingly, from the standpoint of substantive law, a just war was one waged *ex justa causa* ... regardless of whether the war was aggressive or defensive, either strategically or tactically” (Schmitt 2003, 120).

It was precisely this justification of war in terms of a just cause that the European public law of the sixteenth to the twentieth century sought to eliminate.<sup>119</sup> With the rise of the European state system, the organizing principle of international law was no longer the authority of the church but, Schmitt claims, “the *equal sovereignty of states*.”

Instead of *justa causa*, international law among states was based on *justus hostis*. Any war between states, between equal sovereigns, was legitimate. Given this juridical formalization, a rationalization and humanization – a bracketing – of war was achieved for 200 years (Ibid., 121).

As opposed to the recognition of war as an occurrence between legitimate enemies grounded in the sovereignty of states, Schmitt further contends that modern

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<sup>119</sup> According to Schmitt, the work of Francisco de Vitoria, a scholastic moral theologian, marks a decisive step in the transformation of the medieval Christian *jus gentium* that paved the way for the development of the *jus publicum Europaeum*. See Schmitt, Carl. *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*. Translated by Gary L. Ulmen. New York: Telos Press, 2003. See also Vitoria, Francisco de. “On the American Indians.” In *Political Writings*. Edited by Anthony Padgen and Jeremy Lawrance, 231-292. Cambridge and New York: Cambridge University Press, 1991a and Ibid., “On the Law of War.” In *Political Writings*. Edited by Anthony Padgen and Jeremy Lawrance, 293-327. Cambridge and New York: Cambridge University Press, 1991b.

international law aims to eliminate war by criminalizing it.<sup>120</sup> As “essentially criminal,” contemporary international law demands that war “cease to be simply a legally recognized matter...; it again should become *just* in the sense that the aggressor is declared to be a felon, meaning a criminal” (Ibid., 119). This means that war can only be justified as a response to an illegal war of aggression whose instigator is a criminal in the eyes of the law. The consequence, according to Schmitt, is a transformation of war into an effort to annihilate the opponent. Schmitt maintains that “The victors consider their superiority in weaponry to be an indication of their *justa causa*, and declare the enemy to be a criminal, because it no longer is possible to realize the concept of *justus hostis*.”

The discriminatory concept of the enemy as a criminal and the attendant implication of *justa causa* run parallel to the intensification of the means of destruction and the disorientation of theaters of war. Intensification of the technical means of destruction opens the abyss of an equally destructive legal and moral discrimination (Ibid., 321).

The necessity to pronounce the enemy guilty of the crime of aggressive war in terms of international law, Schmitt further argues, requires justifications of retributive violence. These justifications amount to “ideological phenomena” which must measure up to “the industrial-technical development of modern means of destruction. ... Given

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<sup>120</sup> On the criminalization of aggressive war see also Schmitt, Carl. *Theory of the Partisan: Intermediate Commentary on the Concept of the Political*. Translated by Gary L. Ulmen. New York: Telos Press, 2007a, Ibid., *Die Wendung zum diskriminierenden Kriegsbegriff*. 1938. Berlin: Duncker & Humblot, 2007b and Ibid., *Völkerrechtliche Großraumordnung mit Interventionsverbot für raumfremde Mächte: Ein Beitrag zum Reichsbegriff im Völkerrecht*. 1939. Berlin: Duncker & Humblot, 1991 and Ibid., *Das internationale Verbrechen des Angriffskrieges und der Grundsatz “Nullum crimen, nulla poena sine lege”*. Edited by Helmut Quaritsch. Berlin: Duncker & Humblot, 1994. All three essays have recently been published in English as *Writings on War*. Edited and translated by Timothy Nunan. Cambridge: Polity Press, 2011. For further analysis of Schmitt’s relevance for contemporary international relations see Axtmann, Roland. “Humanity or Enmity? Carl Schmitt on International Politics.” *International Politics* 44 (2007): 531-551, Odysseos and Petito, (eds.) *The International Political Thought of Carl Schmitt* as well as Rasch, William. “A Just War? Or Just a War?: Schmitt, Habermas, and the Cosmopolitan Orthodoxy.” *Cardozo Law Review* 21, no. 5/6 (1999): 1665-1684, Ibid., “Conflict as a Vocation. Carl Schmitt and the Possibility of Politics.” *Theory, Culture & Society* 17, no. 6 (2000): 1-32 and Ibid., “Human Rights as Geopolitics: Carl Schmitt and the Legal Form of American Supremacy.” *Cultural Critique* 54 (2003): 120-147.

the fact that war has been transformed into a police action against troublemakers, criminals, and pests, justification of the methods of this ‘police bombing’ must be intensified. Thus, one is compelled to push the discrimination of the opponent into the abyss” (Ibid., 321).

For Schmitt, in other words, contemporary developments constitute an inversion of the principles of the European public law. Whereas from the sixteenth to the twentieth century intervention was condemned and war was regulated, today war is condemned and intervention has become a standard procedure. It is in this context that a particular conception of terrorism must be situated and analyzed as a necessary element for the justification of aggressive violence authorized by major powers as preventive and defensive action against terrorism. Such an interpretation of terrorism will also help to address the factual errors and ideological undertones of Schmitt’s account. Despite the normative flaws of Schmitt’s account and the problematic explanations for contemporary law and politics, Schmitt nevertheless identified a number of worrisome developments in international law and politics. By way of an analysis of terrorism discourse as a critical instrument of imperial power, we will develop an alternative explanation for the developments Schmitt observed.<sup>121</sup>

### **1.11.2 The “Bush doctrine” and the justification of the War on Terror**

The transformation of the justification of violence resulting from a criminalization of war and violence described by Schmitt underpins the ideological foundations of the current War on Terror. The legitimization of violence as punitive, retributive, preventive or in the name of (anticipatory) self-defense against war

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<sup>121</sup> For an excellent account of the factual errors, the ideological bias and the profound anti-Americanism of Schmitt’s discussion of the European public law see Scheuerman, William E. “International Law as Historical Myth.” *Constellations* 11, no. 4 (2004): 537-550.

criminals and troublemakers is most dramatically summed up in the “Bush doctrine,” a commonly used expression named after American President George W. Bush to describe a number of foreign policy principles. These principles are based on the belief, stated most concisely by Bush in his second inaugural address, that “The survival of liberty in our land increasingly depends on the success of liberty in other lands. The best hope for peace in our world is the expansion of freedom in all the world” (Bush 2005). A detailed elaboration of these principles had already been given three years before Bush’s second inauguration, in the National Security Strategy of the United States (NSS), issued by the National Security Council a year after 9/11 in September 2002.<sup>122</sup> “The great struggles of the twentieth century between liberty and totalitarianism,” then-President George W. Bush opens his introduction to the document, “ended with a decisive victory for the forces of freedom – and a single sustainable model for national success: freedom, democracy, and free enterprise” (National Security Council 2002, 1). “The United States will use this moment of opportunity,” Bush continues, “to extend the benefits of freedom across the globe.”

We will actively work to bring the hope of democracy, free markets, and free trade to every corner of the world. ... The United States will stand beside any nation determined to build a better future by seeking the rewards of liberty for its people. Free trade and free markets have proven their ability to lift whole societies out of poverty – so the United States will work with individual nations, entire regions, and the entire global trading community to build a world that trades in freedom and therefore grows in prosperity (Ibid., 2-3).

This export of freedom and democracy, however, is invoked in order to legitimize imperial ambitions and the expansion of power. Dressed up as an intervention that benefits a universal interest, the NSS is clear that freedom is not

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<sup>122</sup> The document is available at <http://georgewbush-whitehouse.archives.gov/nsc/nss/2002/> (accessed April 2, 2011).



granted unconditionally; rather, “For freedom to thrive, accountability must be expected and required” (Ibid., 3). As the only nation powerful enough to deliver the globe from poverty, the United States is also the authority to which the rescued nations are accountable. As Sheldon Wolin has argued, the consequence is that the United States is at liberty to determine the kind of freedom that will be exported. “The freedoms being dangled before the unfree,” he claims, “are, in reality, disguised power.”

Free trade and free markets in the hands of the already powerful are not symmetrical with free trade and markets in the hands of ‘weak’ societies. Instead, the effect upon the poor nations of opting for them invariably turns simple weakness into dependence on those nations whose economies have made them dominant powers and who, accordingly, have the right to declare a state weak and call its performance to account. ... Thus when the *NSS* document presents the ‘free market’ as one of the three constituent elements of the ideal political system, the market is a surrogate, a stand-in for globalization/empire (Wolin 2008, 85).

Indeed, the *NSS* explicitly promotes a version of freedom that is defined in economic terms. “The concept of ‘free trade,’” it is pointed out, “arose as a moral principle even before it became a pillar of economics. If you can make something that others value, you should be able to sell it to them. If others make something that you value, you should be able to buy it. This is real freedom, the freedom for a person – or a nation – to make a living” (National Security Council 2002, 18). The importance of such freedom is anchored in a desire for security. In order to maintain global order, the *NSS* suggests, American grand strategy is designed according to a logic by which poverty results in failed states, which in turn present a high risk of terrorism and a threat to the security and prosperity of the United States. In an interdependent world, the economy is not a zero-sum game. Rather, the already powerful depend on the growth and progress of disadvantaged and less economically successful states for the

maintenance and expansion of their wealth.<sup>123</sup> As a consequence, the freedom offered to failed, failing and weak states, is the freedom to participate in a system that is said to be the only way to prosperity. For those who are already successful – and of course, this success is measured by their own standards – freedom has no value in itself; it is useful insofar as it is instrumental for economic growth. In short, freedom appears as a necessary condition for the smooth functioning of the market. The expansion of freedom is not aimed at benefiting the poor and oppressed, but is driven by the exclusive self-interest of major powers.

According to Wolin, the argument propounded in the NSS has its roots in a political rationality that he identifies as reason of state. Echoing Foucault's analysis of *raison d'État* discussed in chapter 2, Wolin explains that, according to this doctrine, "when issues of war and diplomacy were at stake, those who were responsible for the safety of the nation should be allowed a freer hand, greater discretionary power, to meet external threats without being hampered by the uncertainty attending the cumbersome and time-consuming legitimating processes of legislatures or courts" (Wolin 2008, 90).

What the NSS ultimately represents, Wolin maintains, is an attempt to represent terrorism as a permanent and imminent threat, thereby rendering unfettered power temporally and spatially limitless. The myth production of the NSS is an endeavor to legitimize an inflation of power on a national and global level and justifies a global war

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<sup>123</sup> The dependence of major powers on the economic progress of developing states is reminiscent of a principle of classic *raison d'État* explained by Foucault in "Security, Territory, Population." Foucault maintains that the emergence of *raison d'État* in the sixteenth century resulted in the establishment of a mercantilist economic system based on the recognition that states existed as a plurality of states that were in a precarious balance whose disturbance would impair the strength of each. The creation of a diplomatic-military apparatus aimed to preserve the European equilibrium by means of war, a new diplomacy of a physics of states, and the development of a *jus gentium* and a permanent military apparatus (Foucault 2009b, 300-306). In a similar way, one might argue that for Wolin, the economic logic outlined in the NSS 2002 amounts to an imperial version of *raison d'État* and its adaptation to a globalized and interdependent economy. We will see in an instant that this is, in fact, what Wolin suggests.

as a liberating mission. According to the NSS, “Freedom is the non-negotiable demand of human dignity; the birthright of every person – in every civilization.”

Throughout history, freedom has been threatened by war and terror; it has been challenged by the clashing wills of powerful states and the evil design of tyrants; and it has been tested by widespread poverty and disease. Today humanity holds in its hands the opportunity to further freedom’s triumph over all these foes. The United States welcomes our responsibility to lead in this great mission (National Security Council 2002, 3).

The doctrine outlined in the NSS also substantiates Zolo’s argument that global politics is marked by a legal paradigm in which “Imperial universalism, the Catholic ‘just war’ doctrine and the biblical mystique of the ‘holy war’ have come together in a discriminatory conception of the global space” (Zolo 2009b, 99). Zolo contends that the medieval doctrine of *bellum iustum* has transmogrified into a “‘humanitarian claim’ according to which the use of force – and the killing of innocents – is compatible with the defence of human rights” (Zolo 2002, 3).<sup>124</sup> This new constellation of old and new elements gives rise to an imperial power that is, according to Zolo, *legibus solutus* at the international level, while “in the domestic sphere its power is ‘non-representative’” and opposed to the principles of the European *Rechtsstaat* (Zolo 2009b, 109-110). This constellation is what Zolo identifies as a new imperial universalism in which the global expansion of power is justified in the name of freedom, humanity and security. Its effect is that the new emperors, i.e. the US and its “coalition of the willing,” are getting away

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<sup>124</sup> For a similar account of the parallels of modern international law and medieval Christian just war theory see Douzinas, Costas. *Human Rights and Empire: The Political Philosophy of Cosmopolitanism*. Abingdon: Routledge, 2007, Gros, Frédéric. *States of Violence*. Translated by Krzysztof Fijalkowski and Michael Richardson. London, New York and Calcutta: Seagull Books, 2010 and Kochi, *The Other’s War*. Kochi highlights the “close historical links between both modern international law and the just war tradition within a history of the European colonization of the non-European world” on the basis of an analysis of the theories of just war developed by Augustine, Aquinas and, in particular, Vitoria (Kochi 2009, 40). For contrasting interpretations of Vitoria that attribute his revival to a profound misinterpretation of Vitoria’s work see for example Schmitt, *The Nomos of the Earth* and Tuck, Richard. *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant*. Oxford: Oxford University Press, 1999.

with crimes against peace (as for example in the case of Vietnam, Afghanistan, Guatemala, Lebanon, Cuba, San Domingo, Grenada, Libya, Panama, Nicaragua or, most recently, in the NATO intervention in Kosovo and in the wars waged against Afghanistan and Iraq), while “Whoever denies the hegemony of Western values, by recourse to terrorism, belongs to the horde of the new barbarians and the new infidels: the enemies of humanity against which it is necessary to wage a war that is global, just and holy all at the same time (Ibid., 99).<sup>125</sup>

The NSS, however, not only justifies imperial power in the name of freedom and humanity but also invokes humanity differentially, justifying the War on Terror as a civilizing mission which will bring freedom and democracy to the oppressed and liberate the world from terrorism. This differential attribution of humanity gives lie to the universality of human rights and imperial universalism and reveals the latter’s inconsistencies.<sup>126</sup> It is this strategic invocation of humanity in support of a global War on Terror we will now examine.

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<sup>125</sup> Zolo’s claim that the War on Terror is a holy war is substantiated by Bush’s repeated description of the war as a crusade. In response to the attacks of 9/11, Bush warned that “This crusade, this war on terrorism is going to take a while” (Bush 2001b). In a speech to US troops in 2002, Bush repeated this view of the War on Terror, claiming that “we’ve got no better friends than Canada. ... They stand with us in this incredibly important crusade to defend freedom, this campaign to do what is right for our children and our grandchildren” (Bush 2002). Picking up on the religious justification of the war effort, Sheldon Wolin argues that “power is not so much justified as *sanctified*, excused by the lofty ends it proclaims, ends that commonly are antithetical to the power legitimated by the constitutional imaginary” (Wolin 2008, 20, my emphasis).

<sup>126</sup> For a more optimistic account of liberal universalism as a corrective of the deviations of international law see Scheuerman, *International Law as Historical Myth*. For a defense of universal human rights see also Ignatieff, Michael. *Human Rights as Politics and Idolatry*. Princeton: Princeton University Press, 2001. For critical engagements with universal human rights see for example Luhmann, Niklas. *Grundrechte als Institution*. Berlin: Duncker & Humblot, 1965. A forceful critique of universal human rights that affirms cultural difference is offered by Ehr-Soon Tay, Alice. “‘Asian Values’ and the Rule of Law.” In *The Rule of Law: History, Theory and Criticism*, edited by Pietro Costa and Danilo Zolo, 565-586. Dordrecht: Springer, 2007.

### 1.11.3 Imperial universalism and the differential attribution of humanity

As we have seen in our discussion of the NSS, US doctrine asserts that freedom is the birthright of every person in every civilization and is a demand of human dignity. If we were to take this claim at face value, we would have to conclude that the denial of freedom and human rights manifest in the current war effort against terrorism can only be justified if one is dealing with individuals or populations who are neither persons, nor civilized, nor fully human, or are at least not recognized as such.<sup>127</sup> On this view, it would seem that a particular rhetoric of terrorism achieves the differential attribution of humanity, which in turn excludes those considered not fully human from the protective framework of international law and human rights. In fact, the argument that the War on Terror presupposes at the same time as it produces the selective allocation of humanity has most convincingly been developed by Judith Butler in her essay “Indefinite Detention” (2004) as well as in her recent book “Frames of War. When is Life Grievable?” (2009).

In the earlier text, Butler argues that the practice of indefinite detention is rhetorically produced as the opportune response to beings who are represented, for example by government officials such as former Secretary of Defense Donald Rumsfeld, as bestial and monstrous “killing machines” who, as such, “are something less than human, and yet – somehow – they assume a human form” (Butler 2004a, 74).<sup>128</sup> This bestialization of the detainees gives substance to Butler’s claim that “the

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<sup>127</sup> It is in this context, I believe, that Kochi’s reworking of Hegel’s ethics of recognition acquires its full force. Kochi argues that “When such a moment of recognition is absent and when the warring other is treated with less value than an animal to be slaughtered ... then the possibility of peace slips away and a limited war of recognition turns into a total war of annihilation” (Kochi 2009, 170). On the question of recognition see also Rogers, Juliet. “Torture: A Modicum of Recognition.” *Law and Critique* 21, no. 3 (2010): 233-245. For an argument against the possibility of an ethics of recognition with respect to terrorism see Gros, *States of Violence*.

<sup>128</sup> On bestiality, monstrosity and abnormality in relation to power and/or terrorism see Derrida, Jacques. *The Beast and the Sovereign*. Volume 1. Chicago: University of Chicago Press, 2009, Foucault, Michel. *History of Madness*. Edited by Jean Khalifa. Abingdon: Routledge, 2006, Ibid., *Abnormal. Lectures at the*

humans who are imprisoned in Guantánamo do not count as human; they are not subjects protected by international law. They are not subjects in any legal or normative sense. The dehumanization effected by ‘indefinite detention’ makes use of an ethnic frame for conceiving who will be human, and who will not” (Butler 2004b, XVI). In this context, notions of humanity and civilization work “to produce the human differentially by offering a culturally limited norm for what the human is supposed to be.”

It is not just that some humans are treated as humans, and others are dehumanized; it is rather that dehumanization becomes the condition for the production of the human to the extent that a ‘Western’ civilization defines itself over and against a population understood as, by definition, illegitimate, if not dubiously human (Butler 2004a, 91).

In this context, the lack of a legally binding definition of terrorism facilitates the expansion of Western power through means that increasingly come to resemble its own understanding of terrorism. A definitive and unambiguous legal definition of terrorism would either have to include certain forms of state violence, or it would have to explicitly exclude violence authorized by major powers, thereby revealing its ideological bias and its complicity in maintaining unequal positions of power. Because terrorism is, however, “the catchword of a self-defined Western perspective that considers itself bound to certain versions of rationality and the claims that arise from them,” even the most inhumane acts of violence perpetrated by “Western civilization” are excluded from terrorism (Ibid., 72). Moreover, measured against Western

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*Collège de France 1974-1975*. Edited by Arnold I. Davidson. Translated by Graham Burchell. New York: Picador, 2004c, Ibid., *Discipline and Punish. The Birth of the Prison*. Translated by Alan Sheridan. London: Penguin Books, 1991a, Habermas, Jürgen. “Bestialität und Humanität: Ein Krieg an der Grenze zwischen Recht und Moral.” *Die Zeit*. <http://www.zeit.de/1999/18/199918.krieg.xml> (accessed April 4, 2011), 1999 (translated as “Bestiality and Humanity: A War on the Border between Legality and Morality.” *Constellations* 6, no. 3 (1999): 263-272), Puar, Jasbir K. and Rai, Amit S. “Monster, Terrorist, Fag: the War on Terrorism and the Production of Docile Patriots.” *Social Text* 20, no. 3 (2002): 117-148, Rai, Amit S. “Of Monsters.” *Cultural Studies* 18, no. 4 (2004): 538-570 and Ibid., “The Promise of Monsters: Terrorism, Monstrosity and Biopolitics.” *International Studies in Philosophy* 37, no. 2 (2005): 81-93.

conceptions of rationality, terrorists appear “*like* the mentally ill because their mind-set is unfathomable, because they are outside of reason, because they are outside of ‘civilization’” (Ibid.). As a consequence, Butler maintains, “one has to wonder whether it is not simply selected acts undertaken by Islamic extremists that are considered outside the bounds of rationality as established by a civilizational discourse of the West, but rather any and all beliefs and practices pertaining to Islam that become, effectively, tokens of mental illness to the extent that they depart from the hegemonic norms of Western rationality” (Ibid., 71).

The frames that tie together ideas of humanity, civilization, and modernity according to the principles established by Western rationality also give way to a particular temporal and spatial ordering. Zolo has appropriately termed this strategy “imperial mapping” in his analysis of the calculations of Western powers in the Balkan wars (Zolo 2002, 11-15). In the War on Terror, imperial mapping comes back with a vengeance and is furnished with a temporal dimension that pitches the War on Terror not only as part of a military campaign that is retributive, preventive and self-defensive at the same time, but also as a humanizing, modernizing and civilizing effort with regard to populations considered to be premodern, not fully human and barbarian. “If,” as Butler suggests, “the Islamic populations destroyed in recent and current wars are considered less than human, or ‘outside’ the cultural conditions for the emergence of the human, then they belong either to a time of cultural infancy or to a time that is outside time as we know it.”

It follows from such a viewpoint that the destruction of such populations, their infrastructures, their housing, and their religious and community institutions, constitutes the destruction of what threatens the human, but not of the human itself. It is also precisely this particular conceit of a progressive history that positions ‘the West’ as articulating the paradigmatic principles of the human (Butler 2009, 125).

With regard to the War on Terror this means that those populations that do not belong to the sphere of the modern are considered fair game in a war effort that claims to be an act of liberation. The criteria that determine the barbarian and uncivilized status of individuals and populations are measured against the essential tenets of liberal modernity that are supposedly lacking in its uncivilized enemy. Here one is forced to recall Zolo's claim that invoking humanity in the context of war functions as a means to "morally degrade their foe, singling him out as an 'enemy of humankind', and to justify their own *inhumanity* in dealing with him" (Zolo 2002, 39). According to Butler, the scenes of torture in Guantanamo and Abu Ghraib show the double bind of torture in the assessment and production of the inhuman. "Those who devised these schemes of torture," she argues, "sought to understand the specific vulnerabilities of a population formed within Islam, and developed their plans as a kind of sexual targeting that was at once a form of religious bigotry or hatred."

But what we have to remember is that the subject of Islam was also constructed through the torture... the torture was not merely an effort to find ways to shame and humiliate the prisoners of Abu Ghraib and Guantánamo on the basis of their presumptive cultural formation. The torture was also a way to coercively produce the Arab subject and the Arab mind. That means that regardless of the complex cultural formations of the prisoners, they were compelled to embody the cultural reduction described by the anthropological text (Butler 2009, 126).

On this account, torture functions as a means to test and ratify assumptions about cultural and religious codes that the victim of torture is forced to break.<sup>129</sup> The images from Abu Ghraib capture scenes in which sexual taboos are violated. The shame resulting from homosexual or misogynist acts is then read as a lack of civilization. In other words, the prisoners are uncivilized to the extent that they are assumed to embody certain prohibitions and inhibitions concerning sexuality that are considered backward

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<sup>129</sup> For a different account of torture in the context of a new understanding of the relation between law and the reality of war see Scheuerman, William E. "Torture and the New Paradigm of Warfare." *Constellations* 15, no. 4 (2008): 561-575.



and barbarian by ostensibly progressive societies. Implicit in this argument seems to be the idea that sexual freedom here acts as a surrogate for liberal freedoms. Torture appears as the “abbreviated form” of a project of secularization in which sexual freedom signifies the most advanced, most progressive position (Ibid., 130). “In the case of sexual torture,” Butler maintains, “a noxious deployment of the notion of sexual freedom is at work: ‘we embody that freedom, you do not; therefore, we are free to coerce you, and so to exercise our freedom, and you, you will manifest your unfreedom to us, and that spectacle will serve as the visual justification for our onslaught against you’” (Ibid., 131). Feminism and progressive sexual politics have, as expressions of the liberal and modern project of secularization, become hijacked for a coercive and racist civilizing mission. The acts of torture are “actions of a homophobic institution against a population that is both constructed and targeted for its own shame about homosexuality; the actions of a misogynist institution against a population in which women are cast in roles bound by codes of honor and shame, and so are not ‘equal’ in the way that women ostensibly are in the West” (Ibid., 129). The paradoxical logic at work in these practices reveals, according to Butler, that “the ‘civilization’ at issue is part of a dubious secular politics that is no more enlightened or critical than are the worst forms of dogmatic and restrictive religion.”

In fact, the historical, rhetorical, and logical alliances between them may be more profound than we think. The barbarism at issue here is the barbarism of the civilizational mission. ... If the scenes of torture are the apotheosis of a certain conception of freedom, it is a conception free of all law and free of all constraint, precisely in order to impose law and to exercise coercion. That there are competing notions of freedom at stake is obvious, though it is probably worth noting that the freedom to be protected from coercion and violence is one of the meanings that has been lost from view (Ibid., 132).

In other words, torture is the most visible evidence that the civilization exported by the West is at least as barbarian as those populations it claims to civilize are made out to be. In a perverse twist of fate, torture as the technique, instrument and sign of the allegedly liberating mission of the US and its allies brings to light the coercion, repression, violence and unfreedom that lie at the heart of Western politics itself (Ibid., 130-132).

#### **1.11.4 Reconfiguring the political in the War on Terror**

The processes analyzed by Butler appear to be an eerie confirmation of Schmitt's predictions about the development of international liberal legal frameworks. Half a decade before the United States declared a global War on Terror, Schmitt had argued that "When a state fights its political enemy in the name of humanity, it is not a war for the sake of humanity, but a war wherein a particular state seeks to usurp a universal concept against its military opponent."

At the expense of its opponent, it tries to identify itself with humanity in the same way as one can misuse peace, justice, progress, and civilization in order to claim these as one's own and to deny the same to the enemy. The concept of humanity is an especially useful ideological instrument of imperialist expansion, and in its ethical-humanitarian form it is a specific vehicle of economic imperialism. Here one is reminded of a somewhat modified expression of Proudhon's: whoever invokes humanity wants to cheat. To confiscate the word humanity, to invoke and monopolize such a term probably has certain incalculable effects, such as denying the enemy the quality of being human and declaring him to be an outlaw of humanity; and a war can thereby be driven to the most extreme inhumanity (Schmitt 1996b, 54).

While Schmitt sees this as the outcome of the depoliticization inherent in liberalism – after all, he (wrongly) assumed that "The concept of humanity excludes the concept of the enemy" and is thus the anti-political concept *par excellence* and the

logical consequence of the global triumph of liberalism – it seems that what really is at stake in the invocation of humanity in the War on Terror is a repositioning of the political on a global scale (Ibid.). In fact, in “The Concept of the Political” (1932), Schmitt himself argues that “The concept of the state presupposes the concept of the political” (Ibid., 19). In other words, the political is prior to and superior over the state. Rather than being determined by the state, its relation with the state or party politics, the political is constituted and defined by the distinction between friend and enemy as the ultimate distinction in which all political action is rooted. On this account, the state appears as a particular institutional form resulting from and corresponding to a certain configuration of the political.

Indeed, Schmitt further argues that “Due to its orientation towards the possible case of emergency of the effective battle against an effective enemy, the political entity is necessarily either the decisive entity with regard to the grouping of friend and enemy, and in this (and not in any absolutist) sense it is sovereign, or it does not exist at all” (Schmitt 2002, 40, my translation).<sup>130</sup> The political is thus determined by the decision on friend and enemy, and it is this distinction that makes the entity that decides sovereign. The political, therefore, is either sovereign in this sense, or it is not political and, hence, is not at all. In the Westphalian system of states, friendship and enmity are determined along the lines of national borders. Under conditions of a balance of states, sovereignty pertains to the state not as being a state, but as being the entity that distinguishes between friend and enemy. As Schmitt maintains, “That the state is an

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<sup>130</sup> The German original states that “*infolge der Orientierung an dem möglichen Ernstfall des effektiven Kampfes gegen einen effektiven Feind ist die politische Einheit notwendig entweder die für die Freund- oder Feindgruppierung maßgebende Einheit und in diesem (nicht in irgendeinem absolutistischen) Sinne souverän, oder sie ist überhaupt nicht vorhanden*” (Schmitt 2002, 40). I may suggest the translation given in the text as more accurate than Schwab’s translation in his 1996 English edition, which reads as follows: “in the orientation toward the possible extreme case of an actual battle against a real enemy, the political entity is essential, and it is the decisive entity for the friend-or-enemy grouping; and it is in this (and not in any kind of absolutist sense), it is sovereign. Otherwise the political entity is nonexistent” (Schmitt 1996b, 39).

entity and in fact the decisive entity rests upon its political character” (Schmitt 1996b, 44).

Under conditions of porous national borders and increased global interdependence, the old principles and structures of the Westphalian system increasingly appear out of joint. As Schmitt was well aware in 1963, the era of statism was rapidly coming to an end and the pivotal position of the state was significantly compromised by international and transnational political developments. Yet despite the demise of what Schmitt laments as the dethroning of the state as “that gem of European form and occidental rationalism,” i.e. as the monopoly on political decision, he was convinced that its concepts will be conserved – “and as *classical* concepts at that” (Schmitt 2002, 10, my translation).<sup>131</sup> The traditional European state, Schmitt maintains, was characterized by internal peace and order, and the political only existed in the sphere of foreign politics between sovereign states. What Schmitt regards as intrinsically classical about this period is the possibility to clearly distinguish between inside and outside, war and peace, army and civilians, and neutrality and partiality. These classical concepts, appropriate in the heyday of the European state system, have lost their meaning in a time when traditional distinctions are becoming increasingly tenuous or have disintegrated entirely.<sup>132</sup> As Frédéric Gros argues, the old distinctions analyzed by Schmitt have “become confused, and they are replaced with a unique

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<sup>131</sup> See Schmitt’s preface of 1963 to the reprint of the original text of 1932 in Schmitt, *Der Begriff des Politischen*, 9-19. The original states: “*Der Staat als das Modell der politischen Einheit, der Staat als der Träger des erstaunlichsten aller Monopole, nämlich des Monopols der politischen Entscheidung, dieses Glanzstück europäischer Form und occidentalen Rationalismus, wird entthront. Aber seine Begriffe werden beibehalten und sogar noch als klassische Begriffe*” (Schmitt 2002, 10).

<sup>132</sup> This disintegration manifests itself quite literally in a globalized economy that does not permit for a clear-cut distinction between inside and outside. Economic demands, e.g. for cheap labor and the circulation of goods, result in an increasing porousness of borders. In this regard, Wendy Brown has offered an instructive analysis of the new walling projects as attempts to compensate for a loss of national sovereignty. See Brown, Wendy. *Walled States, Waning Sovereignty*. New York: Zone Books, 2010.

*continuum* of preoccupations and concerns” (Gros 2010, 282).<sup>133</sup> The outcome, Schmitt claims, is a disastrous instrumentalization of traditional classical concepts “as weapons in a revolutionary war which are used in a purely instrumental way, non-binding and without obligation to reciprocity” (Schmitt 2002, 12, my translation).<sup>134</sup> He further predicts that the consequence is a “war against war” that is “considered to constitute the absolute last war of humanity.”

Such a war is necessarily unusually intense and inhuman because, by transcending the limits of the political framework, it simultaneously degrades the enemy into moral and other categories and is forced to make of him a monster that must not only be defeated but also utterly destroyed (Schmitt 1996b, 36).<sup>135</sup>

The bracketing of war in accordance with the recognition of state sovereignty and the principles of the *jus publicum Europaeum* entail a limitation of enmity which, according to Schmitt, benefits humanity more than any war waged in its name.<sup>136</sup> The

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<sup>133</sup> Following Foucault, Gros further maintains that the replacement of clear distinctions with continuums results in “a single community of integrated living beings: a *continuum* of security, from the police officer to the soldier, a *continuum* of threats, from the disruption of the food supply to the risk of terrorism, a *continuum* of violence, from natural catastrophes to civil war, a *continuum* of intervention, from armed aggression against an outlaw State to humanitarian aid, a *continuum* of victims, from distraught refugees to malnourished children” (Gros 2010, 283). On the notion of the continuum see also Foucault, *Security, Territory, Population*.

<sup>134</sup> In the German original, Schmitt notes that “*die überkommenen klassischen Begriffe des gehegten Krieges als Waffen des revolutionären Krieges benutzt werden, deren man sich rein instrumental, freibleibend und ohne Verpflichtung zur Gegenseitigkeit bedient*” (Schmitt 2002, 12).

<sup>135</sup> Commenting on this point, Gros suggests that the representation of the enemy as social vermin that must be destroyed “might even be a question of seeking an enemy that measures up to the horror of today’s means of extermination” (Gros 2010, 247). Without wishing to discuss this claim in any more detail in the context of this thesis, Gros’ contention that “the destructive capabilities of technological wars seem to have *produced* the figure of the criminal enemy *in order to* justify their monstrous deployment” deserves serious attention (Ibid., 247, my emphasis).

<sup>136</sup> Against Schmitt, Gros here argues that it is not at all clear that the regulation of warfare actually protects civilians and limits the risks and damages for all involved parties. This is because the juridical abstraction of the state as the enemy entails the extension of enmity to a state’s population. Moreover, Gros maintains that Schmitt’s argument is based on a series of identifications (punishment, criminalization, discrimination, annihilation, etc.) that are by no means logically necessary. See Gros, *States of Violence* and Schmitt, *The Concept of the Political*. In contrast to Gros, one might suggest, following Foucault, that what makes reality intelligible is not logical necessity but “simply showing that it was possible; establishing the intelligibility of reality consists in showing its possibility” (Foucault 2010a, 34). While the affinities between punitive justice, the criminalization of war, the (moral, political and legal) discrimination of the enemy and his annihilation postulated by Schmitt might not be logically necessary, they are nonetheless real. In other words, even though Schmitt’s account for legal and political

production of global sovereignty by way of invoking humanity produces paradoxical effects – most importantly a war against war – that exploit the threshold between sovereign particularism and imperial universalism (Schmitt 1996b). These effects can only be legitimated in the guise of a concern for the safeguarding of lives at home and abroad. The portrayal of certain populations as not properly human gives lie to the universalistic claims of the humanitarian nature of the war effort and evokes Schmitt's variation on Proudhon that "whoever invokes humanity wants to cheat" (Ibid., 54).

While Schmitt correctly draws attention to the problematic consequences of imperial universalism dressed up as humanitarianism, he fails to recognize that humanity is not a given universal quality but the result of a fundamentally political distinction. As a form of distinguishing between friend and enemy, humanitarianism constitutes (a new configuration of) the political. The decisive political entity is no longer the state, but a new global sovereign who establishes imperial universalism as the new *nomos* – in the Schmittian sense of *Landnahme* as the spatial foundation of any order. For Schmitt, "sovereign is who decides in and on the state of exception" (Schmitt 2005b, 5, my translation).<sup>137</sup> In this sense, as Zolo has remarked, "the United States is

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developments certainly has to be challenged, we should not dismiss his arguably acute observations of legal and political developments.

<sup>137</sup> The English translation of Schmitt's opening sentence of "Political Theology" is "Sovereign is he who decides on the exception" (Schmitt 2005b, 5). This translation is problematic because it fails to account for the polysemy of the German word "über." The German "*über den Ausnahmezustand entscheiden*" means both to decide whether there is as well as what happens in a state of exception. The German original, "*Souverän ist, wer über den Ausnahmezustand entscheidet*" should therefore be more appropriately translated as "Sovereign is he who decides on and in the state of exception" (Schmitt 2004a, 13). For noting the ambiguity of the German "über" see McCormick, John P. "The Dilemmas of Dictatorship: Carl Schmitt and Constitutional Emergency Powers." In *Law as Politics. Carl Schmitt's Critique of Liberalism*, edited by David Dyzenhaus, 217-251. Durham: Duke University Press, 1998. For relevant secondary literature on the continued relevance of the concepts of politics, sovereignty and the state of exception in Schmitt's work see Agamben, Giorgio. *Homo Sacer: Sovereign Power and Bare Life*. Translated by Daniel Heller-Roazen. Stanford: Stanford University Press, 1998, Ibid., *State of Exception. Homo Sacer II, 1*. Translated by Kevin Attell. Chicago: University of Chicago Press, 2005, Axtmann, *Humanity or Enmity?*, Brodacz, André. "Die politische Theorie des Deizisionismus: Carl Schmitt." In *Politische Theorien der Gegenwart I*, edited by André Brodacz and Gary S. Schaaf, Wiesbaden: VS Verlag für Sozialwissenschaften, 2002, Brown, *Walled States, Waning Sovereignty*, Huysmans, *International Politics of Exception*, Ibid., *The Jargon of Exception*, Kalyvas, *Democracy and the Politics of the Extraordinary*, McCormick, *The Dilemmas of Dictatorship*, McQuillan, Colin. "The

the sovereign source of a new international law – a new ‘Nomos of the Earth’ – in a situation which the threat of global terrorism enables it to present as a global and permanent ‘state of emergency’” (Zolo 2009b, 123).

In this chapter, we have examined the critical role of a legal discourse of terrorism in the emergence of a new global political regime. The challenges posed by processes of political and economic globalization have resulted in a shift from the old Westphalian system of nation states to imperial sovereignty under the aegis of the United States and its allies. The corollary of such a transformation is the emergence of a new legal paradigm of international criminal justice that substitutes the criminalization of war for the ordering of inter-state violence regulated by the European public law. This has led to a situation in which war is justified in the name of eliminating war. Under the pretext of terrorism, universal human rights and the claim to preventive self-defense are used to legitimize illegal violence in aggressive wars waged by the West for the protection of its interests and the expansion of power.

The justification of aggressive state violence against terrorism shows striking similarities to the rationality motivating the use of force fleshed out by Foucault and discussed in chapter 2. To recapitulate, Foucault argues that the reconciliation of the sovereign right to kill and the universal validity of the law as a framework designed to

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Real State of Emergency: Agamben on Benjamin and Schmitt.” *Studies in Social and Political Thought* 18 (2010): 96-108, Neal, Andrew. “Foucault in Guantanamo: Towards an Archaeology of the Exception.” *Security Dialogue* 37, no. 1 (2006): 31-46, Neocleous, Mark. “The Problem with Normality: Taking Exception to “Permanent Emergency.”” *Alternatives* 31 (2006): 191-213, Odysseos and Petit (eds.), *The International Political Thought of Carl Schmitt*, Pan, David. “Against Biopolitics: Walter Benjamin, Carl Schmitt, and Giorgio Agamben on Political Sovereignty and Symbolic Order.” *The German Quarterly* 82, no. 1 (2009): 42-62, Prozorov, Sergei. “X/Xs: Toward a General Theory of the Exception.” *Alternatives: Global, Local, Political* 30, no. 1 (2005): 81-112, Rasch, *Conflict as a Vocation*, Ibid., *Human Rights as Geopolitics*, Rogers, Nicole. “Terrorist v Sovereign: Legal Performances in a State of Exception.” *Law Text Culture* 12 (2008): 159-184, Scheuerman, *Carl Schmitt’s Critique of Liberal Constitutionalism*, Ibid., *Between the Norm and the Exception. The Frankfurt School and the Rule of Law*. Cambridge and London: The MIT Press, 1997a, Ibid., *Carl Schmitt: The End of Law*. Lanham and Oxford: Rowman & Littlefield Publishers, 1999, Taubes, Jacob, (ed.) *Religionstheorie und Politische Theologie. Band 1: Der Fürst dieser Welt. Carl Schmitt und die Folgen*. Munich, Paderborn, Vienna, Zurich: Wilhelm Fink/Ferdinand Schöningh, 1985, Van Munster, *The War on Terrorism* and Weber, Samuel. “Taking Exception to Decision: Walter Benjamin and Carl Schmitt.” *Diacritics* 22, no. 3/4. (1992): 5-18.

limit violations of individual freedom depends on the representation of state violence as necessary for the defense of the nation. The War on Terror appears as the limit condition of this economy of power which justifies the exercise of the sovereign right to kill in the name of the salvation of one's race. While this race was articulated from the end of the eighteenth until the beginning of the twentieth century in terms of a nation or class that claimed universality, the contemporary context of financial, economic and cultural globalization and interdependence formally extends the universality of rights to include all of humanity. As a consequence, sovereignty is reconfigured as imperial sovereignty which legitimates the exercise of its capacity to kill in the name of the salvation of the human race. Its opposite, the monster that must and must not be utterly destroyed for power to play its game, is the terrorist, the new enemy of all.<sup>138</sup>

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<sup>138</sup> The terrorist thus seems to be the true heir of the pirate as the *hostis humani generis*. See Heller-Roazen, Daniel. *The Enemy of All: Piracy and the Law of Nations*. New York: Zone Books, 2009.



## **Conclusion: judging violence**

### **1.12 Understanding terrorism**

Before we revisit the main findings of the previous chapters, let us recall the problem this thesis sought to address. We have established in chapter 1 that there are two main ways to approach terrorism in contemporary academic discourse. The first is marked by an emphasis on empirical research and is policy-oriented in its objectives. It is predominant in scholarship known as Terrorism Studies and Critical Terrorism Studies and in much of the socio-psychological work undertaken to identify a terrorist profile. This approach attempts to understand terrorism by way of definition, that is, through the identification of certain constitutive elements such as the nature of the act, the immediate target of the attack or the larger aim of the tactical use of violence. Because these elements are regarded as historically constant and readily recognizable, this approach claims to have identified a long history of terrorism that dates back to the Zealots of ancient Judea. It fails to recognize, however, that searching for forms of violence that correspond to contemporary definitions of terrorism is an anachronistic transposition of current assumptions onto historical practices. Attempts to understand terrorism by definition therefore ignore the historical and contextual specificity of the violence examined. They present a one-dimensional, purely descriptive view of terrorism that does not take into account the different ways in which terrorism is discursively represented in order to achieve political goals. Moreover, definitional approaches purport to express objective statements about terrorism. By laying claim to scientific neutrality, many scholars of terrorism conceal their ideological allegiances which are manifest in the normative judgment of violence built into definitions of terrorism as illegitimate, morally wrong or evil.

In response to the problems posed by terrorism scholarship that seeks to define terrorism, a different approach emerged that is characterized by an understanding of terrorism by way of its function within a wider network of power relations. This view largely builds on the theoretical insights of critical theory as well as contemporary radical philosophy. We have seen that the most influential analyses of the problematic developments coming to light in response to terrorism – for instance the dismantling of legal norms, the suspension of rights and liberties or the justification of aggressive state violence – are either marked by a reductive and generalizing account of power that fails to consider practices peculiar to counter-terrorism (as in the case of Agamben) or by an almost exclusive focus on the post-9/11 era (as we have seen with regard to Butler). Recent theoretical scholarship has thus not succeeded in providing a satisfying corrective to traditional terrorism scholarship because it suffers from a reductive account of power that could be corrected by way of considering mechanisms of power in the fight against terrorism, or because it remains confined in its temporal focus on the twenty-first century.

In order to respond to this deficit in terrorism scholarship, this thesis presented an account of terrorism as a relay of power in the historical development of terrorism discourse. Recognizing the importance of the historical manifestations discussed in traditional terrorism scholarship, but rejecting its anachronistic and reductive understanding of terrorism, we followed contemporary theoretical work in analyzing terrorism not as the cause but as the effect of certain practices of power. In other words, we sought to address the problematic treatment of history prevalent in traditional scholarship by approaching historical examples of terrorism through the methodological framework of recent theoretical work, thereby also responding to the latter's limited temporal perspective. This allowed us to explore the emergence of terrorism in the

context of historically specific political rationalities, thereby shedding light on the formation and the transformations of contemporary relations of power which require terrorism at the same time as they bring it into existence. In other words, the analysis of terrorism developed in this thesis sought to provide a new grid of intelligibility on the basis of contemporary theoretical work through which selected moments in the history of terrorism examined by empirical research were then passed.

For this purpose, we started not from the status of a universal that is given to terrorism by traditional scholarship. Rather than considering concrete practices as deriving from or responding to terrorism, we examined the conditions under which something like terrorism could emerge. Following Foucault, “instead of deducing concrete phenomena from universals, or instead of starting with universals as an obligatory grid of intelligibility for certain concrete practices,” we started “with these concrete practices and, as it were, pass[ed] these universals through the grid of these practices” (Foucault 2010a, 3). In order to take a fresh look at historical examples of terrorism without imposing on it habitual assumptions, we followed Foucault in “not, then, questioning universals by using history as a critical method, but starting from the decision that universals do not exist, asking what kind of history we can do” (Ibid.). For Foucault, the critical advantage of such an approach is that it allows one to show “by what conjunctions a whole set of practices – from the moment they become coordinated with a regime of truth – was able to make what does not exist ... nonetheless become something, something however that continues not to exist” (Ibid., 19). This does not mean that the object of such an inquiry is an error or an illusion; on the contrary, Foucault maintains that the point is “to show how the coupling of a set of practices and a regime of truth form an apparatus (*dispositif*) of knowledge-power that effectively

marks out in reality that which does not exist and legitimately submits it to the division between true and false” (Ibid.).

The methodological framework deployed in this thesis thus corresponds to Foucault’s genealogies in which archival material is revisited in order to play “local, discontinuous, disqualified, or nonlegitimized knowledges off against the unitary theoretical instance that claims to be able to filter them, organize them into a hierarchy, organize them in the name of a true body of knowledge, in the name of the rights of a science that is in the hands of the few” (Foucault 2004a, 9). We sought to chart the practices through which something like terrorism was brought into existence and continues to be rearticulated in relation to changing configurations of power and hegemonic political interests. We therefore explored three critical moments in the history of terrorism in order to highlight the differences, discontinuities and transformations in the rhetoric as well as in the function of terrorism in relation to a broader political context.

### **1.13 The deployment of terrorism**

The starting point of our genealogical investigation was the emergence of terrorism as a political concept in the French Revolution. In chapter 2, we examined a number of archival sources such as the speeches of Robespierre and Tallien and the pamphlet literature of Babeuf in order to shed light on the articulation of terrorism in the context of conflicts between competing political factions. The decisive moment in the formation of a discourse of terrorism was Tallien’s speech in the National Convention on August 3, 1794. Denouncing the Jacobin Reign of Terror as a system of terrorism, Tallien outlined the principles of the new Thermidorian government in opposition to the political rationality underpinning Robespierre’s rule. While

Robespierre had claimed that terror was the manifestation of justice in times of revolution and necessary for the preservation of the republic, Tallien saw this invocation of justice as a way of justifying illegitimate violence. For Robespierre, there was no contradiction between the legitimacy of a political order and its foundation in violence. In fact, he claimed that “If the mainspring of popular government in peacetime is virtue, the mainspring of popular government in revolution is virtue and terror both” (Robespierre 2007c, 115). On this view, terror was an expression of virtue in a revolutionary situation and was, thus, absolutely necessary for the establishment of a legitimate order. For Tallien, however, invoking virtue and the common good appeared as a *carte blanche* for random violence against anyone who disagreed with Jacobin ideology. In other words, he saw the violence of Robespierre’s rule as the outcome of a dogmatic and arbitrary understanding of justice in the name of which the prosecution of political opponents could be justified as necessary for the common good.

In contrast to Jacobin terrorism, Tallien’s alternative consisted in a political system in which real freedom was not achieved through submission to an ideological view of justice and the common good but through the pursuit of individuals’ private interests. The Thermidorian program therefore constituted a revitalization of the liberal principles that had guided the revolutionaries of 1789. Its main instrument was a legal order that was supposed to restrict the actions of government and protected individuals from violence and interference. In this system, violence was only legitimate if it was legal, that is, if it was exercised by state authorities for the preservation and execution the law. The task of legitimate government, Tallien maintained, was to “monitor wrong *actions*, to threaten and punish them with proportionate penalties” (*à surveiller les mauvaises actions, à les menacer et à les punir de peines proportionnées*) and to

replace the fear of arbitrary terror by a “fear of the laws for actions contrary to the laws” (*la crainte des lois pour les actions contraires aux lois*) (Tallien 1847, 613-615).

Based on the resulting criminalization of violence in the hands of individuals and a monopolization of legitimate violence by the state, the Thermidorians extended their concept of terrorism as the name for Robespierre’s system of government to include supporters of Jacobin ideology and eventually all forms of political opposition that challenged the fundamental premises of the Thermidorian regime. The rhetoric of terrorism was turned into a powerful weapon that allowed the new government to justify violence against political opponents of all stripes. Remaining Jacobins and other radical left factions as well as royalists were equally denounced as enemies of freedom. They were branded terrorists, outlawed and subjected to state violence exercised under the pretext of terrorism.

Following Foucault’s genealogy of modern power, it was argued that the articulation of terrorism in the French Revolution cannot be adequately understood without considering the emergence of the nation state and the period of liberal stabilization achieved by the Thermidorians. On this account, terrorism appeared as an effect of the rise of the bourgeoisie as the universal subject of politics. Under conditions of the codification of ostensibly universal bourgeois values in an equally universal legal order, the withdrawal of legal protection and the use of force against members of the state was achieved through the representation of political opposition as an existential threat to the nation. It is in this context that a rhetoric of terrorism allowed for the portrayal of political opponents as enemies of the nation and for the justification of their violent prosecution.

The White Terror of the Thermidorians against political opponents under the pretext of terrorism led to attempts on the part of the radical left to subvert the dominant

understanding of terrorism. The pamphleteer Babeuf accused the Thermidorians of abusing the discourse of terrorism in order to justify political repression. Moreover, faced with ever increasing state violence, Babeuf argued that the Thermidorians were themselves guilty of terrorism. When his attempts to extend the term to the new government failed, Babeuf took a third attempt at reconceptualizing terrorism. He claimed that because terrorism had become a synonym for patriotism, it was in fact desirable to be a terrorist.

We saw in chapter 3 that this affirmative understanding of terrorism resurfaced in late imperial Russia in the discourse of revolutionaries who attacked representatives of the autocratic tsarist regime. Russian terrorism had developed alongside a plethora of distinct ideological movements that opposed political authority in general and the tsar's despotism in particular. Even though economic necessity had forced the regime to implement a considerable number of liberal reforms with regard to serfdom, military organization or the judicial system, there was little social and political progress. After failed attempts to topple the regime by means of propaganda and education of the oppressed and impoverished masses, riots broke out and gave rise to a terrorist campaign that saw itself in continuation with the Jacobin terrorists of the French Revolution. However, this positive understanding of terrorism did not prevail.

Threatened by terrorist violence and by widespread social discontent, the regime sought to assert its power and to restore order. It succeeded in establishing a rhetoric of terrorism that conflated a number of disparate ideological movements whose common denominator was opposition to the tsarist regime. Even though this discourse of terrorism failed to adequately account for the realities of the revolutionary struggle, it had powerful effects. Through a rearticulation of terrorism that allowed for the inclusion of all kinds of oppositional movements, the regime presented terrorists as

enemies of the state whose prosecution necessitated emergency measures that revoked earlier reforms and that resulted in increased repression rather than a more liberal political climate. These counter-terrorist measures were justified for the protection of “the existing state structure” and “the security of individuals and their property” (Waldron 1995, 2). They consisted in the suspension of the new penal code, terrorist trials by martial law and exceptional tribunals, and the condemnation of terrorists to exile or execution. The entire country was plunged into a *de facto* state of exception for decades.

The analysis developed in chapter 3 further showed that the rhetoric of terrorism established by the tsarist regime played an important role for the justification of the government’s reversal of liberal reforms. Trapped between economically necessary liberalization and the tsar’s unwillingness to concede power, the concept of terrorism was rearticulated and redeployed for the purpose of maintaining despotic power against economic demands for increased freedom. Yet the exceptional measures against terrorism introduced to restore the tsar’s authority gave rise to a new distribution of power that further weakened rather than reinforced the tsar’s position. In order to eliminate terrorism in his vast empire, the tsar was forced to shift power to lower levels of the administration if he wanted to restore order and preserve the state. The exceptional prerogatives given to local bureaucrats, however, gave way to a fragmentation and dissemination of sovereign power, to the emergence of new centers of political decision-making as well as to a strategic use of exceptional measures by local bureaucrats to expand their own power. In other words, the unintended consequences of measures introduced to strengthen the tsar’s position against terrorism effectively eroded the tsar’s authority and transferred sovereign power to the bureaucratic apparatus. Rather than achieving the restoration and stabilization of the



tsarist regime, the introduction of counter-terrorist measures shifted practices of sovereignty to lower administrative levels, produced new forms of power and created new centers of political decision-making. The outcome was a fragmented political system resulting from paradoxical effects and contradictory consequences of the tsar's desperate attempts to preserve his status against the consequences of necessary economic reforms and their political ramifications.

The instrumentalization of terrorism discourse in late imperial Russia stands testament to the uneven and sometimes altogether unsuccessful development of modern politics from absolute monarchical rule to liberal democratic societies. External pressures and growing economic interdependence made it impossible for Russia to go back to its old ways but neither did the country develop into a liberal democracy of the Western type. The rhetoric of terrorism was situated at the point of intersection of the tsar's desire to hold onto traditional authority and the people's demand for liberalization. It made possible a course of history that was not the necessary result of a certain historical narrative but rather the outcome of "haphazard conflicts," a "profusion of entangled events" and the "singular randomness of events" (Foucault 1991b, 88).

It is futile to speculate whether the acceptance of a more liberal political climate and a loss of power on the part of the tsar would have set Russia on the path toward liberalism. What is important to note is that terrorism played a critical role in the repression of liberal demands in late imperial Russia. In contrast to the developments in the French Revolution, terrorism here appears as a strategy of resistance to rather than a means of stabilizing a liberal political order. While the concept of terrorism put into circulation in the French Revolution was crucial for the stabilization of a liberal system that eliminated its political opponents by portraying them as an existential threat to the nation, the tsarist regime in late imperial Russia deployed terrorism discourse for the

purpose of preserving despotic power and repressing liberal political interests. Yet another function of terrorism discourse emerged over the course of the twentieth century and manifested itself most dramatically in legal debates over the definition and criminalization of terrorism.

These debates constituted the point of departure for the exploration of terrorism in the twentieth and twenty-first century presented in chapter 4. We have seen that despite an intensification of efforts to establish a legal definition of terrorism, there is still no unequivocal and universally accepted legal concept. Moreover, many of the problems of terrorism scholarship outlined in chapter 1 resurface in the context of legal conceptions of terrorism. We have found that contemporary legal discourse has resorted to a relatively flexible understanding of terrorism that relies on conventional wisdom rather than legally binding criteria. As such, it is highly susceptible to ideological instrumentalization. It should therefore come as no surprise that in the absence of an unequivocal and universally valid legal concept of terrorism, international legal practice is based on a prevailing doctrine that identifies terrorism according to the problematic principle that “one knows it when one sees it.”

Given the political interests and transformations in global power relations which necessitate and make possible this particular view of terrorism, “one knows it when one sees it” should be restated as “one only sees what one wants to see.” In an international legal and political context that is characterized by the attempt to eliminate war, particularly aggressive war, terrorism is rearticulated as the ultimate international crime and warrants the exercise of aggressive and, therefore, formally illegal state violence in the name of preemptive self-defense and humanitarian intervention. While modern European public law regulated warfare through the principles of *jus ad bellum* and *jus in bello*, contemporary international law criminalizes the use of force but exempts those

acts of violence that are exercised for the safeguarding of universal human rights or in the name of national self-defense. The representation of terrorism as a threat to freedom, security and humanity serves to exempt the major powers from their own laws, enabling the pursuit of imperial interests in the guise of humanitarian motives and a concern with freedom, democracy and security.

Legal standards regulating warfare and the legitimate use of violence are, however, not only suspended with regard to the self-proclaimed guardians of international law and global peace, but also with respect to the terrorists who violate them. Against the universalist claims of human rights and the regulation of the treatment of enemy combatants, today's terrorists are declared unlawful combatants and excluded from the legal procedures determined by the law of war. It was argued that the denial of ostensibly universal rights to certain populations is achieved through an insidious association of terrorism with barbarity and monstrosity. If terrorists are successfully represented as less than human, they can be excluded from the protective framework of human rights. As the enemies of humanity, terrorists are subjected to the most inhumane forms of violence which are justified as necessary for the defense of humanity. This humanity, however, is an exclusionary concept and is distributed differentially according to the interests of imperial sovereignty.

### **1.14 A critique of violence**

By showing how apparently similar forms of violence fulfill very different historical functions and how different practices of violence are all classified as terrorism, the genealogy developed in this thesis challenges and corrects the reductive and anachronistic accounts of terrorism presented by traditional terrorism scholarship. It also demands a more complex engagement with questions of power that does not

deduce political practices and mechanisms of power from the seemingly stable institutional structure of the state. Instead of examining the state and identifying the possible responses to a phenomenon like terrorism given within its institutional framework, we tried to chart the ways in which the realization of political interests requires certain practices of power that are reconciled through particular discourses of terrorism. As Foucault points out, “There is no question of deducing this set of practices from a supposed essence of the state in and for itself.”

We must refrain from this kind of analysis first of all because, quite simply, history is not a deductive science, and secondly, for another no doubt more important and serious reason: the state does not have an essence. The state is not a universal nor in itself an autonomous source of power. The state is nothing else but the effect, the profile, the mobile shape of a perpetual statification (*étatistation*) or statifications, in the sense of incessant transactions which modify, or move, or drastically change, or insidiously shift sources of finance, modes of investment, decision-making centers, forms and types of control, relationships between local powers, the central authority, and so on. In short, the state has no heart, as we well know, but not just in the sense that it has no feelings, either good or bad, but it has no heart in the sense that it has no interior. The state is nothing else but the mobile effect of a regime of multiple governmentalities (Foucault 2010a, 77).

In these continuous processes of statification, terrorism constitutes one mechanism through which an ensemble of disparate and often contradictory political practices and technologies of power is integrated and reconciled in the institutional framework that we call the state. It is in opposition to terrorism that the state claims the monopoly on the legitimate use of violence.

As has become obvious in previous chapters, however, the ostensible legitimacy of state violence is not as self-evident as dominant discourse makes us believe. The strength of genealogy thus not only lies in its ability to highlight the discontinuous development of terrorism as the product of changing relations of power, but also in the

uncovering of those frameworks through which we distinguish between legitimate and illegitimate forms of violence. As an essentially critical project, a genealogy of terrorism is therefore tied to a larger project of a critique of violence as such. Following Foucault, I understand critique not as a “demolition job, one of rejection or refusal, but a work of examination that consists of suspending as far as possible the system of values to which one refers when testing and assessing it” (Foucault 1990a, 107).<sup>139</sup> This does not mean that we should try to deliver judgment on when violence in and for itself is legitimate and when it is not, or by which criteria this distinction ought to be made. To begin with, such judgments cannot be passed independent of context. They also become all the more difficult since context itself undergoes change. However, if we want to stop cycles of preemptive, reactive and retaliatory violence, then we have to rethink terrorism in terms other than those of criminal or moral judgment. Instead, by way of showing the historicity of those ways of seeing and evaluating that have become habitual, genealogy challenges “what we take to be ‘real’” and shows that “what we invoke as ... naturalized knowledge ... is, in fact, a changeable and revisable reality” (Butler 2007, xxiv).

Elaborating on this point, Butler has argued for an examination of the violence of the normative frameworks through which we understand violence. In order to steer clear of the vicious cycle of pronouncing judgments while describing the acts of violence we are witnessing, she insists that we have to stand “to the side of the ‘for and against’ arguments in order to change the framework in which we think about these kinds of events or, rather, to understand how such phenomena are seized upon by

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<sup>139</sup> For further elaboration on the concept of critique see Foucault, Michel. “What is Critique?” In *The Politics of Truth: Michel Foucault*, edited by Sylvère Lotringer and Lysa Hochroth, 23-83. New York: Semiotext(e), 1997a and Ibid., “What Is Enlightenment?” In *Ethics: Subjectivity and Truth*, edited by Paul Rabinow, 303-319. New York: The New Press, 1997b. Thomas Lemke has discussed the specificities of Foucault’s positive project of genealogical critique in the context of Foucault’s work on governmentality in his *Foucault, Governmentality, and Critique*.

certain moral and cultural frameworks and instrumentalized for the purpose of strengthening the hold of those frameworks on our thinking” (Butler 2009, 152). Butler further argues that once we abandon habitual ways of perceiving violence and “once we are able to think comparatively about these forms of violence – which means understanding them as part of a contemporary spectrum of death-dealing – we will see that the disruptions and invasions caused by state violence far exceed those caused by acts falling under the category of ‘terrorism’” (Ibid., 157). In other words, the disruption of normalized frameworks of judging violence brings into sharp view the moral undecidability of violence as such. Violence here appears as if in an “anomic zone” in which the relation between violence and law is suspended and violence is nothing but a “cipher for human action” (Agamben 2005, 59).

While genealogy certainly is a useful method to uncover the problematic assumptions underpinning our ways of perceiving and evaluating violence, the normative undecidability of violence as such does not always require laborious and meticulous genealogical research. Sometimes the impossibility of judging violence becomes painfully obvious when we lack the context which provides points of reference for the evaluation of violence. The events of 9/11 present a particularly instructive example of the undecidability of violence in a situation where habitual moral and legal standards were inoperable. When a plane crashed into the North Tower of the World Trade Center in New York City at 8.46AM on September 11, 2001, there was talk on the news about an incident, a fire, an explosion, even disaster. Twenty minutes later, while people were following the unraveling of events on live television, a second plane struck the South Tower. Still, there was no word of terrorism. The media reported a second explosion and ascribed the crash of both planes to failing navigation systems. Only after Chief of Staff Andrew Card informed President George W. Bush that

“America is under attack,” reporters started to speculate whether they might be witnessing a terrorist attack, while Bush continued with his photo op (National Commission on Terrorist Attacks upon the United States 2004, 38). It is in these moments of undecidability that a change of apprehension becomes possible. When our perceptions fail, one possible response is to change the categories through which we perceive. And “although this insight does not in itself constitute a political revolution, no political revolution is possible without a radical shift in one’s notion of the possible and the real” (Butler 2007, xxiv). In contrast to Butler’s call for political change, many commentators have argued for an intensification of military responses to terrorism and a reform of international legal frameworks to facilitate aggressive intervention. This view is further buttressed by allegedly objective counter-terrorism policies recommended by conventional terrorism and security studies (see chapter 1).<sup>140</sup> As we will see in the next section, it is the disastrous political results of a conventional understanding of terrorism that demand a revolution of habitual ways of judging violence and a change of the political responses to terrorism.

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<sup>140</sup> See also Goldhagen, Daniel. *Worse than War: Genocide, Eliminationism, and the Ongoing Assault on Humanity*. New York: PublicAffairs, 2009, Ignatieff, Michael. *Empire Lite: Nation-Building in Bosnia, Kosovo, Afghanistan*. London: Vintage, 2003, Walzer, *Arguing about War* and *Ibid., Just and Unjust Wars. A Moral Argument with Historical Illustrations*. New York: Basic Books, 2006. For a critical intervention see Douzinas, *Human Rights and Empire*.

### **1.15 The political relevance of a genealogy of terrorism**

In 2010, Omar al-Omari, a 59-year old Jordanian-American, lost his job at the Ohio Department of Public Safety after having been identified as a terrorist suspect at a training seminar for the Columbus Division of Police. The course was run by the Strategic Engagement Group, a non-profit organization run by terrorism experts providing strategic training and education for state officials and law enforcement agencies.<sup>141</sup> During the seminar, the instructors displayed a photograph of Omari with members of a local Muslim advocacy group. Omari was the leader of a Muslim outreach program, and federal counter-terrorism experts had sent Omari abroad to present the program, so his contacts to Muslim groups should have come to no surprise to supposed experts. However, the seminar instructors claimed that Omari had links to the Muslim Brotherhood, Hamas and even Al-Q'aida. Even though no evidence could be produced to substantiate these claims, a climate of distrust mixed with a certain degree of Islamophobia caused state officials to search Omari's records. Eventually, they found something and Omari lost his job – not because he had ties with terrorism but because he had made a minor mistake in his job application forms. For the deputy chief of the Columbus Division of Police, the lessons from Omari's case are clear: “as Americans,” he states, “we are all over the board on our feelings about the terrorism issue. And as a law enforcement professional, even law enforcement is divided in how they view people” (cited in Temple-Raston 2011).<sup>142</sup>

What Omari's case shows is that the prejudiced perception of certain populations is backed by allegedly neutral and objective science and warrants their

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<sup>141</sup> See the organization's website at <http://strategicengagement.org/index.html> (accessed August 9, 2011).

<sup>142</sup> For a detailed account of the story see Temple-Raston, Dina. “Terrorism Training Casts Pall Over Muslim Employee.” <http://www.npr.org/2011/07/18/137712352/terrorism-training-casts-pall-over-muslim-employee> (accessed July 20, 2011), 2011.



exclusion from legal and political frameworks that ought to protect them. As Butler has remarked, “our conception of violence, in both its justified and unjustified forms, has built into it certain preconceptions about what culture ought to be, about how community is to be understood, about how the state is formed, and about who might count as a recognizable subject” (Butler 2009, 156). In other words, while there is, undoubtedly and horrifyingly, something to Agamben’s claim that we are living in a condition in which everyone can potentially be deprived of legal protection, it is also important to note that the suspension of constitutional rights, the infringement of long-standing liberties, and the abuse and torture of citizens who are unlucky enough to be mistaken as terrorists functions on the basis of certain normative frameworks through which violence and terrorism are represented.

In particular since the terrorist attacks on September 11, 2001, perceptions of terrorism have become tethered to racial and religious stereotypes that fix terrorism almost exclusively to populations that appear to be Arab or Muslim. As Butler has demonstrated, rights and liberties are today granted or denied on the basis of racist, nationalist, and anti-Muslim sentiments.<sup>143</sup> She argues that perceptions about the modernity and civilizational status of individuals and populations are racially and religiously inflected and play a crucial role in the legitimation of excessive violence and the suspension of law. They also help to normalize “prejudicial perception and a virtual

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<sup>143</sup> Paradigmatic cases of the religious or ethnic stereotyping of terrorists are not only but probably most visibly those “terrorist look-alikes” who have mistakenly become victims of state violence: Jean Charles de Menezes was shot by police in Stockwell underground station in London; Mohammed Abdul Kahar and Abdul Koyair were arrested and later released without charge in the so-called “Forest Gate Raid,” an incalculable number of individuals were detained and tortured in Guantanamo, Afghanistan, Iraq, and other detention facilities operated by the US and its allies without evidence of any implication in terrorist acts. Prejudices against individuals who are perceived as potential terrorists are inflected by race, ethnicity, religion, class, gender and sexuality and extend the indefinite detention of populations who are deemed suspicious to everyday situations such as airports, subways, or the workplace. The same presumptions give rise to attacks on Arab looking people on the streets or practices such as racial profiling that translates into harassment of US and non-US citizens at borders. For a differentiated study of these processes see Puar, *Terrorist Assemblages*. On the shooting of Jean Charles de Menezes see also Vaughan-Williams, Nick. “The Shooting of Jean Charles de Menezes: New Border Politics?” *Alternatives: Global, Local, Political* 32, no. 2 (2007): 177-195.

mandate to heighten racialized ways of looking and judging in the name of national security” (Ibid., 77). The proliferation of racist and anti-Muslim discourses in the context of national security results in a diffuse sense of fear that substitutes racial and religious prejudices for its empty center. These vague, ill-founded and yet prevalent suspicions in turn shore up support for more pervasive and less accountable state power that is portrayed as the guarantor of security. As a consequence, Butler contends that “some of the very terms through which contemporary global conflicts are conceptualized dispose us in advance towards certain kinds of moral responses and normative conclusions” which in turn have disastrous consequences for citizens belonging to a particular ethnic or religious group (Ibid., 156).

The effects of the ideological bias shaping dominant perceptions of terrorism have become dramatically visible in the recent attacks in Norway. Immediately after the bombing of government buildings in Oslo and the shooting of teenagers at a youth camp in Utøya, media reports were quick to put the blame for these acts of terrorism on fundamentalist jihadis and Al-Q’aida. When it became evident that the perpetrator, Anders Behring Breivik, was a right-wing extremist acting out of xenophobic motives, the rhetoric changed from terrorism to descriptions of the violence as shootings and bombings.<sup>144</sup> Some commentators even argued that Breivik’s actions had to be regarded as an overreaction to legitimate grievances.<sup>145</sup> Breivik’s defense attorney is now trying to claim that his client is insane and can thus not be held responsible for his crimes.<sup>146</sup>

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<sup>144</sup> See Greenwald, Glenn. “The Omnipotence of Al Qaeda and Meaninglessness of ‘Terrorism’”. <http://www.salon.com/news/terrorism/?story=%2Fopinion%2Fgreenwald%2F2011%2F07%2F23%2Fnyt> (accessed July 24, 2011), 2011.

<sup>145</sup> For a powerful retort see Titley, Gavan and Lentin, Alana. “Anders Behring Breivik had no legitimate grievance.” *The Guardian*. <http://www.guardian.co.uk/commentisfree/2011/jul/26/anders-behring-breivik-multicultural-failure> (accessed July 26, 2011), 2011.

<sup>146</sup> See for example BBC News Europe. “Norway attacks: Anders Behring Breivik insane - lawyer.” <http://www.bbc.co.uk/news/world-europe-14294251> (accessed July 26, 2011), 2011 and Erlanger, Steven. “Lawyer Suggests Suspect in Norway Attacks Is Insane.” *The New York Times*. <http://www.nytimes.com/2011/07/27/world/europe/27oslo.html?pagewanted=all> (accessed July 27, 2011), 2011.

Without wanting to enter into the complexities that an adequate analysis of the Breivik case demands, so much is clear: the stereotyped representation of terrorism as fundamentally linked to Muslims and the portrayal of violence perpetrated by Westerners as either insane or as an exaggerated response to real political problems shows the disingenuousness of official rhetoric – most prominently expressed in the last US counterterrorism strategy published in June 2011 – that there is no war against Islam. Even though official discourse would seem to promote a more narrow and focused understanding of terrorism, actual representations of violence circulating in public discourse exacerbate its racist undercurrents. Anti-Muslim sentiments become even more insidious because they are less visible and covered up by an ostensibly less racist discourse. The reality is that non-Muslim perpetrators are regarded as criminals and are tried according to standard legal procedure while Muslims are held responsible for acts of terrorism even when they are not and are subject to measures introduced by emergency legislation in the name of security and the protection of freedom.<sup>147</sup>

What is more, these exceptional counter-terrorist measures are often normalized and engender their own forms of domination, thereby affecting not only those identified as terrorists but the population in general. As Sheldon Wolin explains, the intrusion into personal rights and liberties by executive officials “is first accepted by the public as a practical response to terrorism, but then it is soon cemented as a permanent element in

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<sup>147</sup> For example, Timothy McVeigh was sentenced to death by lethal injection for use of a weapon of mass destruction, conspiracy to use a weapon of mass destruction, destruction with the use of explosives and eight counts of first-degree murder. See “Decision of the Tenth Circuit Court of Appeals, Affirming the Conviction of Timothy McVeigh.” <http://law2.umkc.edu/faculty/projects/ftrials/mcveigh/mcveigh10thcircuit.html> (accessed July 30, 2011), 1997. By contrast, terrorist suspects face torture, detention without charge as well as trial by martial law and military tribunals. In those rare cases when terrorists are tried in civilian courts, there tend to be fewer convictions, and the accused are sentenced for crimes such as conspiracy, the use of explosives or destruction of government property. As Daniel Depetris has plausibly suggested in a recent article, the reason might lie in the nature of civilian courts. “In contrast to military tribunals or military commissions that handle the bulk of war related crimes,” Depetris argues, “civilian courts are governed by strict rules that provide defendants with a whole range of rights. Whereas a military commission may have permitted evidence based on CIA interrogations, civilian trials are more inclined to throw that evidence out” (Depetris 2010). In other words, evidence gathered through the use of torture appears to be incompatible with the principles of the rule of law.

the system of law enforcement. What may have emerged without premeditation is quickly seized upon and exploited” (Wolin 2008, 215).

To be sure, the normalization of exceptional and temporary measures in response to political crises is by no means a new phenomenon. In their attempts to strengthen and expand executive power, governments can rely on long-standing practices of exceptional legislation. Early accounts of the transformation of democratic regimes occasioned by the expansion of executive powers and exceptional measures can be found in the works of Rossiter (1948), Watkins (1940) or Friedrich (1941). In particular, Rossiter predicted that the aftermath of the Second World War was characterized by processes through which “The instruments of government depicted here as temporary ‘crisis’ arrangements have in some countries, and may eventually in all countries, become lasting peacetime institutions” (Rossiter 1948, 313).

In the same vein, Agamben has argued that the use of exceptional measures in the form of executive decree has become integrated into Western democracies as a normal technique of government. Moreover, he suggests that “military emergency now ceded its place to economic emergency” (Agamben 2005, 13). In other words, legislation by executive decree has become a generalized instrument of government and is justified in the name of economic necessity and the security of the nation. The extension of executive power into the legislative sphere, once a useful measure in times of war, has become co-opted for the purpose of enforcing not only security but also economic interests. Based on an analysis of Weimar Germany and the United States, Agamben concludes that today there are two main ways of normalizing emergency. The first is failure to repeal exceptional measures. While so-called sunset provisions are now used to prevent such failure, decrees with these provisions – like, for example, the USA Patriot Act – are made permanent through repeatedly deferring the clause. The

second is an extension of powers granted in wartime and the proclamation of permanent war.<sup>148</sup> As a consequence, Agamben argues, “the sovereign power of the president is essentially grounded in the emergency linked to a state of war” and, therefore, “over the course of the twentieth century the metaphor of war becomes an integral part of the presidential political vocabulary” (Ibid., 21). For Agamben, in other words, the legitimate exercise of presidential prerogative depends on the successful establishment of a rhetoric of war by way of which executive powers are extended into the legislative sphere for as long as the perception of a warlike situation is maintained.<sup>149</sup>

The culmination of this process, it would seem, is a War on Terror which is to all appearances permanent.<sup>150</sup> In the course of this war, the USA Patriot Act of October 26, 2001, as well as the military order issued by George W. Bush on November 13, 2001 allowed for the severe curtailing of civil rights and liberties, the expansion of

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<sup>148</sup> Agamben explains that the US Constitution does not identify who exactly has supreme authority in wartime. Article 1 of the Constitution authorizes the suspension of *Habeas Corpus* in cases when public safety requires it, but it fails to specify who can do so. Because Article 2 assigns the President the role of Commander in Chief of the Army and Navy, it has traditionally been used to make the case for the President’s power to suspend *Habeas Corpus* and his supreme authority in wartime. For three recent and excellent studies of *habeas corpus* see Federman, Cary. *The Body and the State. Habeas Corpus and American Jurisprudence*. Albany: State University of New York Press, 2006, Freedman, Eric M. *Habeas Corpus. Rethinking the Great Writ of Liberty*. New York and London: New York University Press, 2001 and Halliday, Paul. *Habeas Corpus. From England to Empire*. Cambridge and London: The Belknap Press of Harvard University Press, 2010.

<sup>149</sup> Michael A. Genovese has provided an excellent examination of the historical development of presidential prerogative in the United States as well as an instructive analysis of the powers of the president in the context of the War on Terror. See Genovese, *Presidential Prerogative*.

<sup>150</sup> Commentators have suggested that since the election of President Obama the War on Terror has come to an end (see Priest 2009, Shulman 2009). Shortly after he took office, the global War on Terror was redescribed as an “overseas contingency operation.” Likewise, the United States’ most recent counter-terrorism strategy, published in June 2011, abandons the rhetoric of the War on Terror. Yet while the document is very clear that “we are not at war with the tactic of terrorism or the religion of Islam,” there is nevertheless a war going on, namely a “war with a specific organization – al-Qa’ida” (Council on Foreign Relations 2011, 2). It would therefore seem that the 2011 Counterterrorism Strategy represents “an approach that is more focused and specific than were previous strategies” (Ibid.). However, the document introduces a subtle shift that effectively counteracts the ostensible attempt to narrow down the scope of the US war effort. While the war is now directed specifically against Al-Qa’ida, the possibility to identify members, supporters, or followers of al-Qa’ida has been made more difficult and at the same time more inclusive because “Adherence to al-Qa’ida’s ideology may not require allegiance to al-Qa’ida, the organization” (Ibid., 4). Moreover, the rhetoric of counter-terrorism still includes “groups [that] seek to undermine the security and stability of allied and partner governments, foment regional conflicts, traffic in narcotics, or otherwise pursue agendas that are inimical to U.S. interest” (Ibid.). Although the change in rhetoric pushed by the Obama administration is a necessary condition for the withdrawal of U.S. troops from various war zones across the globe, its actual long-term effects remain to be seen.

surveillance and intelligence gathering, increased discretion of law enforcement and immigration authorities with regard to the detention and deportation of terrorist suspects, and authorized indefinite detention and trial by military commission of non-US citizens suspected of terrorist activities.<sup>151</sup> As Rens Van Munster has convincingly argued, the rhetoric of a war on terrorism allowed the United States to institutionalize the state of exception as a permanent condition (Van Munster 2004). Shifting its political strategy from defense to prevention, most visibly in the National Security Strategy of the United States issued in 2002 discussed in chapter 4, American security policy has to intervene before an actual threat is posed. “Security discourses,” Van Munster suggests, “are increasingly dominated by the logic of risk management, a logic which calls for the management and government of potentialities of ‘risky’ populations by means of (statistical) calculations and proactive management rather than through the reactive management of real events and threats” (Ibid., 147). Unlocalizable yet omnipresent, these perceived threats create a climate in which, according to Brian Massumi, “Safe, it would seem, has fallen off the spectrum of perception. Insecurity, the spectrum says, is the new normal” (Massumi 2005, 31).

For Wolin, “The normalizing of deviations occurs when the main political institutions, such as legislatures, courts, elected law enforcement officials (e.g., district attorneys), mayors, governors, and presidents are able to exploit a fearful public and promote the powers of an increasingly militarized police but not their accountability.”

In these examples we see the ingredients whereby antecedents become precedents: an empowered police, an officialdom that sanctions expanded police powers and reduced legal and political

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<sup>151</sup> See Bush, George W. “Military Order of November 13, 2001: Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism.” In *Federal Register* 66 (222), 57831-57836. <http://www.fas.org/irp/offdocs/eo/mo-111301.htm> (accessed March 29, 2011), 2001a. See also “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001.” [http://www.fincen.gov/statutes\\_regs/patriot/index.html](http://www.fincen.gov/statutes_regs/patriot/index.html) (accessed July 9, 2011), 2001.

safeguards, and public opinion that appears to favor methods which weaken legal safeguards and diminish the institutions whose traditional role is to oversee, check, and alert the public to dangerous tendencies in the system” (Wolin 2008, 215).

In other words, in a climate of fear and suspicion and aided by racism and religious stereotypes, practices of surveillance become absorbed by and embedded in everyday life and give rise to a sort of disciplinary self-regulation of society.

While this curtailment of freedom is justified in the name of safeguarding and extending liberty and democracy, it seems to be a naive and short-sighted belief that measures such as the proliferation of disciplinary mechanisms and virtually complete surveillance, the collection of biometric data and the monitoring of private communication, the militarization of airports and stops at national borders that purport to be arbitrary but indeed have a strong racial bias, in fact promote freedom. On the contrary, the erosion of freedom becomes less transparent, less accountable and therefore more problematic if it is justified in the name of security. To borrow from Foucault, we might argue that the irony of the security apparatuses mobilized in the war against terrorism is that they make us believe that what is at issue is the preservation of our freedom.

Rather than contributing to the expansion of freedom and security, discourses of terrorism conceal and legitimate the loss of freedom and security generated by the often violent imposition of state interests. The invention of terrorism, understood as a particular discursive representation of violence, provides one of modernity’s most powerful discourses of legitimating power dressed up as right. Even though current representations of terrorism seek to make us believe in the legitimacy of state violence, they are no more than a fairly successful way of concealing the state’s own origin in unequal relations of power rather than right. Condemning terrorism does, therefore, not amount to an affirmation of legitimate violence. On the contrary, it helps to legitimate

relations of power that are founded in inequality and injustice and depend on violence for their preservation. If Foucault is right that politics is the continuation of war by other means, then terrorism is the name for those who are defeated in this war that only knows temporary victories, whose winners posit their power as right in an act of seizure and whose outcome are always tenuous and provisional relations of power and force (see Foucault 2004a).

The history of terrorism is thus “the history of singular inventions” which are seized upon and deployed by competing political rationalities and interests in the development of modern politics (Foucault 2010b, 310). The history of terrorism must not be referred to some sort of historically constant and unequivocally identifiable form of violence. In fact, it is precisely this understanding of terrorism that must be rejected in order to attain a more productive and a more adequate understanding of terrorism as an element in an ever-changing economy of power. The idea of terrorism *as such* has to be given up if we aim – through a critique of the frameworks for judging violence imposed by discourses of terrorism – for new forms of political legitimacy and new, perhaps non-violent, possibilities of political resistance.



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