

VIOLENCE AND THE ORIGINS OF LEGISLATIVE AUTHORITY

David Allinson

This paper reflects a two-fold attempt. Firstly, to give an account the works of Walter Benjamin, Hannah Arendt and Slavoz Zizek on Violence. Secondly, it aims to illuminate a uniform trend in their work. This trend identifies the necessity of a certain amount violence in order to create the pre-conditions of a lawful society. Benjamin's critique shows that the authority of law, when seen naked, is based on a myth. However, what is being advocated here is not childish anarchism. This critique of violence illuminates the complex relationship between violence and the law, in its subjective and systemic manifestations. However, while Law has a tempering effect upon otherwise socially destructive interpersonal violence, despite its necessity, it is simply another form of the violence which it seeks to contain.

There is a myth surrounding the form of authority that a legal system retains over its subjects. Walter Benjamin's *Critique of Violence* (which is the central focus of this paper) utilizes a form of natural law to demonstrate that the 'legal condition' is primarily the result of our consenting to a rational contract. Therein, individuals give up all of their violence for the sake of the state, which retains a monopoly on violence. As a caveat, some degree of state violence is necessary, as it creates the pre-conditions of a lawful society. Consequently, Law is simply another form of the violence which it seeks to contain.

In *Reflections on Violence*, Hannah Arendt offers an initial (and negative) definition of violence. This definition distinguishes violence from power and authority. Arendt takes issue with Mao-Tse Tung's conviction that 'power grows out of the barrel of a gun', identifying it with the Marxist tendency to associate violence with the primary catalyst of history. While Marx certainly regards the state as an instrument of violence at the command of the ruling class, Arendt points out that the actual power of a ruling class

does not rely on violence (2002, 21). On the contrary, she says: "violence may destroy power, and it is utterly incapable of creating it" (2002, 34).

The actual origin of power, according to Arendt, is the outward manifestation of the support and consent of a population. Power is the result of civil obedience –to laws, to the rulers, to institutions– "which is is the outward manifestation of support and consent" (Arendt 2002, 30). Arendt defines this sort of power as an *instrument* of rule. "Superiority lasts only so long as the power structure of the government is intact – that is, so long as commands are obeyed and the army or police force are prepared to use their weapons" (Arendt 2002, 29). A state's ability to assert it's power stems from the functioning of it's administrative, punitive and military institutions. Where commands are no longer obeyed, the means of violence are no longer of any use.

Authority is further distinct from violence. Zizek offers, as an example of this, the image of a father beating their child: "there is something laughable about the image, something impotent. A real, authoritative father figure should only have to look at you –the threat is important. The mere threat of violence should be enough for them to assert their dominance" (Zizek 2008). The image of the father beating their child is laughable because he lacks authority: hence he is violent. The genuinely authoritative father figure has no need for recourse to violence.

Beyond the fact that it is distinct from power and authority what do we mean here by violence? "Violence is a product of nature", claims Benjamin "as it were, a raw material"

(1985, 133). Benjamin sees every individual as being possessed with a certain amount of potential violence. If every individual possesses natural ends, they will naturally employ means to attain them. Benjamin perceives the use of violent means to attain just ends as no greater problem than the desire of an individual to move their body in the direction of a desired goal (1985, 133). This is akin to the Platonic thesis that every individual is possessed with a conception of the good, and has a natural proclivity to pursue it. Violence, to Benjamin, is simply the potential result of individuals possessing ends, and therefore having to employ means which will conflict with others around them. "These views" claims Benjamin "have been recently rekindled by Darwin's biology, which, in a thoroughly dogmatic manner, regards violence as the only original means, besides natural selection, appropriate to all the vital ends of nature"¹ (1985, 133).

Simply by living in a society where our ends will naturally conflict, we possess a potential for violence. However not all means to ends are violent, says Benjamin: "if violence were, as first appears, merely the means to secure directly whatever happens to be sought, it could fulfill its end as predatory violence" (1985, 137). Violence would be therefore completely unsuitable to regulate a stable social condition. Consequently, violence is loosely defined here as ends-directed action, enacted with a greater or lesser amount of force.

However, this definition of violence is still extremely vague. I will now use Zizek's distinction between subjective and systemic violence to further refine Benjamin's

¹ Hence Derrida describes Benjamin's *Critique of Violence* as "the exploitation of a certain form of Darwinism" (1992, 32)

definition of violence. Žižek understands the term 'violence' to commonly mean whatever is experienced as a violent intrusion (2008). By this he means the common understanding is closely related to the first form of violence: the subjective. *Prima facie*, subjective violence is violence at its most visible: inter-personal violence, criminal acts, terrorism, or international conflict. This is violence where there is a clearly identifiable agent who did it; a criminal, a terrorist, a policeman, a soldier... any individual. Subjective violence is the violence that is right in front of our eyes. However, subjective violence is just the most visible manifestation of violence, for this experience of violent intrusion is measured by a neutral standard. On the other hand, there is objective, or 'systemic' violence, which is the neutral standard against which the subjective act seems 'violent'².

Žižek calls systemic violence "the often catastrophic consequences of the smooth functioning of our economic and political systems" (2008, 1). Systemic violence is the social, political and economic forces that are required to sustain things, so that they can go on 'as normal'. *Prima facie*, systemic violence is the smooth functioning of the police force, the criminal justice system, market forces, etc. It is the not immediately apprehensible violence we experience as the background of everyday life. To articulate this, Žižek tells a joke about a worker suspected of stealing. Every evening, as the worker leaves the factory, the wheelbarrow he rolls in front of him is carefully inspected. The guards find nothing, it is always empty. Finally, the penny drops: what the worker is

² Hence, a corollary that Žižek doesn't really deal with is that we have no way of distinguishing societies of varying degrees of violence. This is because, Žižek claims, we are socially 'normalised' to a certain level of violence. How this normatively comes about, he leaves us to assume. But the consequences of this vagueness cannot be dealt with here.

stealing are the wheelbarrows themselves. Zizek claims that the same is true for systemic and subjective violence. Systemic violence and subjective violence cannot be perceived from the same standpoint. It is "something like the notorious 'dark matter' of physics" as Zizek puts it, "the counterpart to an all-too-visible subjective violence" (2008, 2). It is normally invisible, because it sustains the very zero-level standard against which we perceive something as subjectively violent. Systemic violence must therefore be taken into account, in order to make sense of what otherwise seem to be 'irrational' expressions of subjective violence (Zizek 2008, 2).

To recapitulate so far, violence is: individual action directed at an end (as per Benjamin), which is distinct from power and authority (as per Arendt), and there is a further important distinction to be made between subjective, and systemic violence (as per Zizek). Yet how does this conception of violence relate to the law? "The task of a critique of violence" claims Benjamin "can be summarized as that of expounding its relation to law and justice" (1985, 132). Arendt and Zizek inform our basic understanding of what violence is in a social and political sense. Their work on violence therefore forms the conceptual groundwork that precedes Benjamin's critique. We can now proceed to Benjamin's explanation of systemic violence: as the formative concept in the establishment of a rational contract which creates the pre-conditions of law.

Benjamin claims that "all natural ends of individuals must collide with legal ends, if pursued with a greater or lesser degree of violence" (1985, 135). Since violence is, (as stated above) almost alone in being appropriate to natural ends, it therefore has a central

role in law. In order to explain systemic violence in relation to the law, Benjamin utilizes a modified theory of natural law. Therein, individuals partake in a rational contract, and give up all their violence for the sake of the state. This assumes (as per natural law) that the individual, before the conclusion of this rational contract, has *de jure* the right to use - at will- the violence that is *de facto* at their disposal.

However, this is a rational contract, not an empirical one, hence the notion of 'consent' is vague because at no-point is an individual presented with an explicit contract to sign. In fact, we have no choice but to consent. For example, say I am subject to some grievance: someone robs me of my money or physically attacks me in the street. Why don't I organize an angry mob for a good old fashioned lynching? –instead, the law intervenes. I have the ability to avenge myself, but am prevented from doing so. The rational contract is the systemic violence that *de jure* accommodates for this arrangement. It is therefore illegal for me to avenge myself, or to form a vigilante group –for in order to become a legal subject, an individual must relinquish their right to violence.

The consent to enter into the rational contract is therefore given by acknowledging the legal authority of the state. When it comes to Benjamin's account of natural law, Rousseau was wrong: 'we are born in chains, and everywhere-' well, the situation stays fairly uniform: the state has a monopoly on violence, and has an interest in maintaining it. "Therefore", Benjamin concludes "the violence of the individual, when not in the hands of the law, threatens the law merely by existing outside of it. This is why it is illegal (as per the previous example) to organize the lynching of a thief, by threat of punishment.

“At its most fundamental level” says Derrida, “European law tends to prohibit individual violence and to condemn it not because it poses a threat to this or that law but because it threatens the juridical order itself” (1992, 33). Because the state has an interest in maintaining its monopoly of violence, we have no choice but to reciprocate this rational contract, for fear of punishment.

This punishing violence that the state threatens us with, systemically, and in the sense of law-making, means the restrictions of liberty enacted by the state, acting under the authority of the rational contract. Hence, to study systemic violence is to study two dialectical forces; law-making and law-preserving violence (Benjamin 139). These are the two main functions of the law: to create new laws, and to preserve existing ones.

In law-making, the function of violence is two-fold. Firstly, law preserves as its end what is to be established as law. An example of systemic violence here is the legal and governmental bodies responsible for passing legislation. Secondly, as its means, law preserves violence as the tool with which to accrue those ends. Systemic state-violence is present in this sense as the police force, the criminal justice system, and other bodies responsible for state-sanctioned restrictions upon individual liberty. True, these are manifestations of violence used for legal ends, but that is precisely the point. Law manifests itself as the counter-violence of punitive sentencing for individual infractions of particular laws. Hence, under the authority of the rational contract, the state enacts violence to both establish, and maintain the law.

However, as mentioned above, we are forced to acknowledge and reciprocate the rational contract. This forced consent is then used to generate the monopoly of violence that is represented by these two functions of the state's legal institutions. With these two facts in mind, I now return to Derrida's claim that "at its most fundamental level, European law tends to prohibit individual [read: subjective] violence and to condemn it not because it poses a threat to this or that law but because it threatens the juridical order itself" (1992, 33). However, this claim has an exception in the form of the worker's guaranteed right to strike.

Benjamin characterises organized labor as an example of a legal subject (apart from the state) entitled to exercise systemic violence. "The state fears this violence simply for its law-making character", claims Benjamin "they are obliged to acknowledge it as law-making whenever external powers force it to concede them the right to conduct warfare, and classes the right to strike" (1985, 138). Strikes show that it is possible for a legitimate collective to found and modify legal conditions outside the apparatus of the state.

However, there are two problems with this example of labor strikes as a body –aside from the state- that is capable of modifying the legal condition with violence. First of all, Werner Hamacher notes that although we call a strike an 'action' against the state, he objects that it is not really an exercise of violence, but a 'non-action': which a strike really is (1993, 13). It is a failure to comply, endorse, and so to perpetuate the law. Benjamin rebuts Hamacher's objection, asserting that a strike *is* violent, and that the violence takes the form of an extortion. Benjamin claims that the sort of inaction a strike

represents is violent “if [the strike] takes place in the context of a conscious readiness to resume the suspended action under certain circumstances that either have nothing whatever to do with this action or only superficially modify it” (1985, 136). This ‘non-action’ significantly amounts to a severing of relations and a deprivation of service to the state. Understood in this way, the right to strike is the right to use force in attaining certain ends, regardless of those ends.

Especially salient in the case of a strike is that this violence is exercised by the labor force, outside the power of the state, who remain at their mercy until work is resumed. More specifically, such conduct, when active in a revolution, may overthrow the state. A labor strike therefore represents the presence of a legitimate collective authority –aside from the state- that can exercise violence to change the legal condition.

Before we move on to the second objection, however, we must explain why the state does not simply respond to a strike with its own violence. In short: what makes a strike ‘legal’? This question is important, because the modification of the legal system, as per the example of the labor strike, draws its legitimacy from legal ends. What we mean here by ‘legal’ ends and ‘natural’ ends must here be explained. The misunderstanding in natural law by which a distinction is drawn between violence used for just and unjust ends must be emphatically rejected. “Rather” Benjamin suggests, “law demands of all violence a proof of its historical origin [not end], which under certain conditions is declared legally sanctioned” (1985, 135). The different functions of violence, depending on whether it serves individual or legal ends, must be placed in context of its legal and

historical conditions. The labor force is tolerated by the state because the violence it utilizes is historically based within the legal system. This simply means that a labor force can say that it commits its extortionate violence because of whatever particular legislation the labor force deem to be 'unfair working conditions'. A labor force object to the law, and remain within the law: its ends are 'legal'.

However, this brings us to the second problematic objection: that in the case of the labor strike, the modification of the legal condition happens in isolation. Benjamin proceeds to rebut the second objection by a consideration of military violence: giving the case of war (being a paradigm for all violence used for natural ends) to exemplify legally a-historical 'natural' law. "The possibility of military law rests on exactly the same objective contradiction in the legal situation as does that of strike law, that is to say, on the fact that legal subjects sanction violence whose ends remain for the sanctioners, natural ends" (1985, 137-8). A military force acts from outside the state's legal apparatus, changing the legal condition just as in a strike. However, they do this for natural, as opposed to legal ends. War is a natural end, according to Derrida, because subjects declare war in order to sanction a violence whose basic motivation seems non-legal (the other wants to lay hold of territory, goods, women; he wants my death, I kill him) (1992, 39). This is an important distinction: between natural and legal ends, because it further shows why the state requires a monopoly of violence to retain control of the natural ends of its citizenry. For instance, the influence of a state lasts only as long as it retains legal authority over the natural ends of its subjects. In the case of strikes, this control is retained, and they remain

'legal' ends. In war, this control is lost, that is -the modification occurs outside of the authority of the legal system. Therefore the ends of a military action are 'natural'.

The major implication of this insight (and the reason for laboring over this distinction) is that it explains the necessity for the state's total monopoly on violence and the tendency of law to divest the individual, at least as a legal subject with legal ends, of all violence: don't speed, don't smoke, above all -don't harm others, etc. Derrida claims that the state maintains a monopoly on violence not to protect any given legal end, but law itself. It does this "by decreeing to be violent" this time in the sense of declaring outlaws: anyone who does not recognize its authority (Derrida 1992, 33). Violence must remain legally sanctioned, within the controlling arm of systemic violence. The actual laws themselves are less important than the fact that the authority of the law is maintained in total. Derrida's analysis of this law-making character of violence exposes much of the state's intentions: to maintain a monopoly of violence, and furthermore, to call those 'outlaw' who do not recognize that ruling as authoritative. When an individual becomes a criminal, they exercise the violence they had previously relinquished in the rational contract. The criminal then stands to confront the law with the threat of declaring a new law -the one they make for themselves. This violence is a natural end, and hence is a representation of violence akin to military action: in that it threatens the legal state itself.

An outcome of this analysis of law-making violence is that the legal system and criminals share a common origin: the seminal act of violence. This is characterized by Benjamin in the figure of the 'great criminal'. 'Criminals' are those who act according to natural ends,

but who lack proof of their historical origin. However, as Derrida notes, the admiring fascination exerted by the people on the figure of the 'great criminal' can be explained as follows: the great criminal is not someone who has committed this or that crime for which one feels a secret admiration. So this is not the case when a crowd cheers on a streaker at a football game. The great criminal is someone who, in defying the law, lays bare the violence of the legal system, and of the judicial order itself (Derrida 1992, 33). The only significant difference is that the criminal lacks proof of the historical origin of their end, and so cannot legally be sanctioned (1985, 135). The difference in origin between the state and the criminal comes down to the fact that the state has a historical claim to legitimate violence, based on a natural end, that precedes the criminal's.

As an example of a 'great criminal', consider Bill Gates: once a notorious computer hacker, who 20 years on became the most single most authoritative figure in the information technology industry ³. This operation, in Hegelian terms, would be the transition from one state of affairs to the next, in the 'negation of the negation'. However, the passage from the simple-direct negation 'this is not a legitimate legal condition', to the self-negation 'authentic legal condition' is an oxymoron. The oxymoron of the 'authentic legal condition' is expressed by Robbespierre at the trial of King Louis XVI, which was importantly -for Robbespierre- 'no trial at all' (Zizek 2007, xxx).

There is no trial to be held here! Louis is not a defendant! You are not Judges! You are not, and you cannot be anything but a statesman and representatives of the nation. [...] Proposing to put Louis on trial, in whatever way that could be done would be to regress to royal and constitutional despotism; it is a counter-revolutionary idea, for it means putting the revolution itself in contention. In fact, if Louis can still be put on trial, then he can be acquitted! (Zizek 2007, xxx)

³ Some would say Bill Gates is still a criminal, but all the better for the purpose of this example.

Robbespierre advocates that a legal condition *is* usurpation. Louis XVI cannot be acquitted, because he is not on trial –there was not trial at all. There can be no claim to 'legal' ends when the law is temporarily suspended in transition from one state to another. Hence, only the brute violence of natural ends govern in revolution. Revolution is, in a sense, a scratching out of all previous claims to historical legitimacy and a clean slate for whoever ends up in authority. That new authority then gets to dictate the terms of the rational contract. Saint-Just said that "every king is a rebel and a usurper" (1792). This is very much the theory being advocated here. Those in power are simply criminals under a different name; there is no genuine legitimacy to the legal authority, merely a rational contract into which we enter. Hence, the state rightly fears criminals, and retains its monopoly on violence ⁴.

While this conclusion sounds at first like the bawling of an adolescent steeped in childish anarchism, it is far from it. Such a response to the conclusion that there is no legitimate legal authority would demonstrate merely a lack of reflection on the philosophical and historical origins of law. Hegel's thoughts on the matter are about as far from 'Anarchy in the U.K.!' as is imaginable. Hegel sees the notion of 'absolute freedom from authority' as enthroned in the French revolution, naming it 'the freedom of the void' (1977, 360). Such freedom, accrued by violence, seems to strike at empty meaning: of endless struggle for

⁴ This is perhaps why Louis XVI originally decreed that the maiden voyage of the first hot-air balloon to carry people would be manned by convicted criminals! A wealthy businessman and a scientist originally petitioned to be first. Yet this may have been an original and inventive attempt to remove criminals from the state *entirely*- giant airborne prison ships, hindenberg style.

authority, and hence the sheer terror of the negative that contains nothing positive, nothing that fills it with content (1977, 362).

This purely negative brand of liberty, so Hegel claims, is a fury of destruction that was clearly capable of dethroning the *ancient regime*. However, it proves incapable of building anything to replace it. This incapacity is a logical one, however, not an empirical one. Having laid waste to its ideological opponent, it is natural in Hegel's view that the Jacobin and Giodornist radicals who drove the French Revolution eventually became stagnant and impotent as political parties when they lost their opposition, their focus, and therefore their philosophical content. Hence, Benjamin's claim that "if violence were, as first appears, merely the means to secure directly whatever happens to be sought, it could fulfill its end as predatory violence" (1985, 137). The Jacobin's political philosophy came down to cutting the heads off wealthy people and it was therefore a wholly bankrupt social ideal, completely unsuitable when regulating a stable social condition. Consequently, the revolution became stagnant when the object of the Jacobin's political philosophy was removed. The movement ground to an intellectual halt, starved of ideas – something akin to a hunger strike, where the protester begins to feed upon their own body.

In a similar warning against the absence of authority, "a certain fury lies at the heart of society, and can always burst destructively out again" claims Terry Eagleton (2005, 50). Eagleton cites Edmund Burke's *Reflections on the French Revolution*, advocating the conservative view that the English constitution had a "tempering effect with an awful

gravity upon the spirit of freedom, leading in itself to misrule and excess" (2005, 50). Freedom, (in the sense of subjective violence) without authority (in the sense of systemic violence) has something anarchic and excessive about it. Burke claims that only law will 'temper' it. However, as has been shown, the law is never legitimately authoritative in the way it initially appears. The law itself is simply another variety of the very violence it seeks to contain. "This is in Burke's view" notes Eagleton: "the real crime of the French Jacobins –that they have ripped the comely veils of hegemony from the law and exposed its phallic barbarism for all to see" (2005, 50).

In conclusion, what is being advocated here is not a childish anarchism. This critique of violence illuminates the complex relationship between violence and the law, in its subjective and systemic manifestations. Benjamin's critique shows that the authority of law, that when seen naked, is based on a myth. However, an amount of systemic violence is necessary, because it creates the pre-conditions of a stable society. It has a tempering effect upon otherwise socially destructive subjective violence. Yet, despite its necessity, the law is simply another form of the violence it seeks to contain.

- *The University of Queensland*

BIBLIOGRAPHY

Arendt, Hannah. (2002) "Reflections on Violence". In: Violence: A Reader. Besteman (Ed.) New York: New York University Press, pp. 19-34

Benjamin, Walter. (1985) "Critique of Violence" In: One-Way Street, and Other Writings. Jephcott, Shorter (trans.) London: Verso. pp. 132-154

Derrida. (1992). "Force of Law: The 'Mystical Foundation of Authority'" In: Deconstruction and the Possibility of Justice. Cornell, Rosenfeld, Carlson, (Ed.s) New York: Routledge

Eagleton. (2005) Holy Terror. Oxford: Oxford University Press

Hamacher, Werner. (1993) Afformative Strike. Lingis (Trans.) Pittsburgh: Dunquesne University Press

Hegel. (1977) Phenomenology of Spirit. Oxford: Oxford University Press

Plato. (2006) Republic. Allen (trans.) New Haven: Yale University Press

Saint Just. (1792) Speech to the National Convention. [Online] Available at: http://www.royet.org/nea17891794/archives/discours/stjust_jugement_louis16_1_13_11_92.htm

Shakespeare. (2005) Troilus and Cressida. Shirley (ed.) New York: Cambridge University Press

Zizek. (2007) Robbespierre: Virtue and Terror. London: Verso

Zizek. (2008) 'Violence: Interview', Youtube [Online] Available at: <http://au.youtube.com/watch?v=97DVhWxS-ZI>

Zizek. (2008) Violence. London: Profile