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INFORMAL COMBATANTS AND SELFLESS CRIMINALS ON THE LOCUS OF TERRORISM IN MODERN POLITICAL SOCIETIES

Dominique LINHARDT

ABSTRACT. In the sociology of Norbert Elias, the regulation of violence is closely linked to the development of the state: the more the state monopolizes the means of legitimate violence, the more outrageous appears any use of violence that departs from the norms sanctioned by the state. The terrorist phenomenon which, as we have it nowadays, has emerged since the 19th century, has to be understood in this context: it is a kind of violence that incorporates into its equation the scandal it represents. However, simply suggesting that terrorism violates the state monopoly of violence is not enough to understand where precisely lies the lever by which terrorism offends the social conscience in modern societies. In order to move further, this paper aims at bringing back a distinction within the state monopoly of violence that stems from the German tradition of thinking about the history of state building which Elias himself cultivated. The state monopoly of violence indeed covers two aspects that have gradually been separated in the context of modern societies with increasing clarity: on the one hand, the state monopoly of violence is meaningful in relation to the fight against crime, and on the other hand, it is relevant with regard to war-making. Now, if one considers terrorism from the perspective of this heterogeneity of the state monopoly of violence, one can see that one of its characteristics is precisely to subvert this distinction and to expose the struggle against terrorism to particular difficulties. The aim of this paper is threefold: 1) to show how terrorism, as a type of organization, a form of action and a sort of event, tends to break up the distinction between crime and war and the institutions that carry it; 2) to shed light on how certain aspects of the institutional responses to the treatment of terrorism become intelligible when seen as an effect of this problem; and 3) to suggest that this particular pattern of terrorist organization, action and events helps to understand the shaping of the social and emotional responses to it.

INTRODUCTION

As in the presentations we have just heard, my talk concerns terrorism as it constitutes a specific collective experience of conflict and violence. This experience departs from the more established social forms of violent interaction, namely war and crime, in relation to which terrorism is constantly sought to be defined, without succeeding in narrowing it down neither to the one nor to the other.

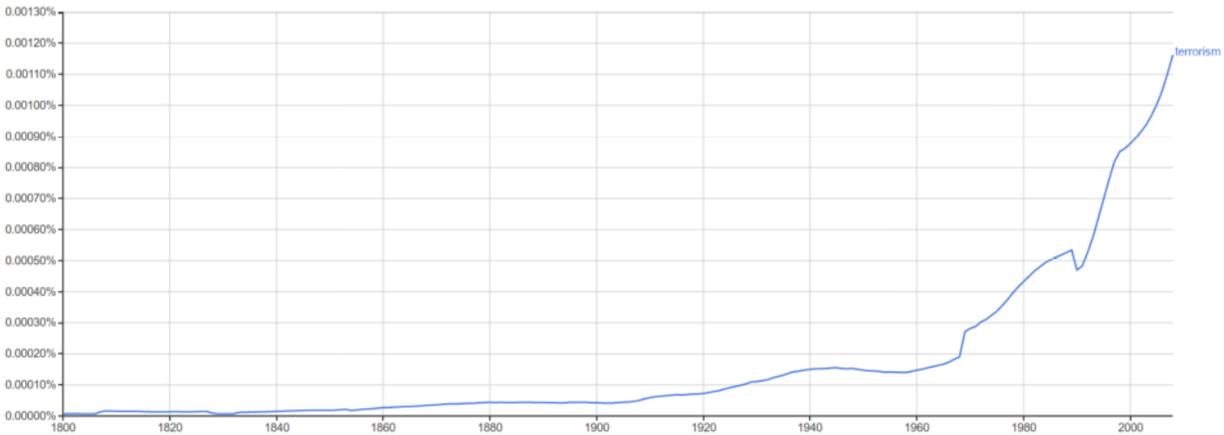


Fig. 1: Occurrence of the word “terrorism”, 1800–2008.
(Google Ngram Viewer, standard corpus, smoothing = 10.)

Yet, as suggested by this graph (fig. 1), this experience seems to be constantly gaining importance – and this relatively independently from the “waves” of terrorism that modern societies have faced over the course of their history.

In view of this observation, I will make two assumptions:

1. First, I will argue that our societies’ experience of terrorism refers to a particular way of challenging and “disrupting” the state monopoly of legitimate violence.
2. Second, I will assume that this challenge is related to the uncertainty of what terrorism has of being “political”.

1. *HOW IS TERRORISM BEING POLITICAL?*

In this regard, the category of “political crime” offers as insightful starting point.

Considering the European context of the last two centuries, it is easy to recognize a tendency, both in social representations and in judicial rules and practices, to differentiate between “political crimes” and “ordinary crimes”. As a number of studies have shown – for example an already dated, but still meaningful article by Henri Lévy-Bruhl (1964)–, the general logic behind this dissociation is to consider that political criminal acts, are considered as “less serious”, which is especially reflected by greater magnanimity in the way their perpetrators are treated.

The reasons for this indulgence rely on a difference in the moral assessment of ordinary crimes and political crimes. The ordinary criminal is perceived to be driven by rogue motives, in search of the selfish satisfaction of his or her vilest impulses. In contrast, in the case of the political criminal, the motivations for breaking the law are deemed to go beyond his or her personal interests: they are based on common causes and higher principles. Political crime carries with it the idea of sacrifice, presupposing a certain altruism that must be taken into account.

To illustrate this tendency, let us take a quick example. It was not unusual, in the 19th century, for politically motivated criminals to get organized to defend their needs. This is the case, under the French Restoration, with the creation of a “Commission of the convicts for political offences”. Here is what is prescribed in article 4 of its by-laws:

“Any person convicted on political grounds who has been the subject, before or after his conviction, of one or more *judgements for acts reprovved by honour*, and recognized as such by the Commission deciding as a jury, may not be a member of the Commission.”

“Judgements for acts reprovved by honour” refers here, of course, to ordinary, i.e. morally disgraceful crimes. It shows that the moral superiority of political crime over ordinary crime was already so well established in the first third of the 19th century that it could be publicly upheld by the convicts themselves. Specific and comparatively more generous legal provisions have given support and substance to this claim. This trend persisted and strengthened until at least the 1980s. And to this day, defendants and their supporters regularly reclaim the advantages attached to it.

It is not irrelevant that it was the nineteenth century that brought about an increase in sensitivity to political crime. The “age of revolution”, marked by turmoil and regime changes, has been propitious to this attitude of indulgence. In a European context where opposing political forms were competing and alliances were likely to be overturned at any moment, it is not surprising that a concern arose to anticipate possible reversals in the political situation.

However, during this same period, another difference crystallized – a difference that is somehow “internal” to the category of political crime. And it is a particular type of violence that led to this distinction: regicide. More precisely, it can be referred to a specific event: a failed attack on Napoleon III by Edmond Belmarre, a Belgian citizen. The event is not in itself relevant to my argument. But its consequences are. Indeed, a few months later, the following clause was introduced in a Franco-Belgian cooperation treaty:

“An attack on a foreign head of government or members of his or her family *shall not be deemed a political offence* if the attack is committed either by murder, assassination or poisoning.”

To understand the exact meaning of this operation, we have to consider the difference between nonpolitical, ordinary crimes, on the one hand, and crimes that are in a way artificially stripped of their political quality, on the other hand. The latter could, *in principle*, respond to them: they are ideological in nature, oriented by the longing for collective change and not aimed at the satisfaction of an immediate material interest. The use of the “Belgian clause” does not deny that these acts are politically motivated. The point is to avoid that the wrongdoers may, by invoking this characteristic, enjoy preferential treatment. In this sense, we are indeed dealing with two types of political crimes: those that call for leniency and those that prohibit it.

The formula “shall not be deemed a political offence”, despite its strangeness, deserves more than irony. According to Henri Lévy-Bruehl, it makes it possible

“to break through an essential fact of political crime (...): to enjoy the advantages attached to this qualification, the crime must not exceed a certain degree of violence or cruelty” (Lévy-Bruehl, 1964, p. 137).

From this point of view, the trauma inflicted by a crime on the public sensitivity is less when it appears disinterested – except when the act is seen to be too serious. In such a situation, there is likely to be a turnaround. Not a criminal act that calls for relative softness: the crime appears to be a felony, worsened by its political motivation – it outrages the common consciousness even more than a selfish crime committed with equivalent violence.

This was the case, in the nineteenth century, of the regicide. This is now the case with terrorism: a shift is taking place that makes terrorists seen as something other than “disinterested criminals”; they take the attribute “informal fighters”, those to whom the President of the French Republic François Hollande, for example, referred in the evening of 13 November 2015 when he spoke of an “army of jihadists” attacking France. But this army and the war it is deemed to be waging are precisely eluding the forms in which societies have long been striving to contain armed conflict.

2. DISRUPTING THE STATE MONOPOLY OF VIOLENCE

This observation helps to explain the tendency to react to these crimes more harshly and to use even more severe methods in the fight against terrorism than in the fight against ordinary crime.

This orientation towards what James Whitman (2003) describes as a “harsh justice” demonstrates a characteristic tension in the response to terrorism. This tension crosses societies and refracts into the action of states as holders of the monopoly of legitimate violence. To get an idea of what is at stake, a return to the history, or rather the prehistory of the latter concept, to the time before the normalization of the concept after World War I, is useful.

A salient aspect of this complex history is that, before the 1920s, there was no consensus on the exact meaning of the idea of a “monopoly of legitimate violence”. By simplifying the picture, it is possible to say that two main conceptions of this monopoly were competing. The first one appears in the writings of authors such as Jehring, Dühring, Jellinek or Ehrlich. These authors have in common that they think of the state monopoly as a monopoly of punishment and, consequently, the state’s history as a history of the evolution of the criminal institutions. In contrast, the second, refers to what Hans Joas (Joas, 2000) called the “militarist tradition” in the social sciences: the authors who can be associated with it – Gumplowicz, Ratzenhofer, Oppenheimer, Hintze, later Rüstow – have a conception of the state monopoly as a “military monopoly”, as a “monopoly on weapons” to use a typical expression which was later used by theorists of “total state”.

	MILITARY MONOPOLY	PUNITIVE MONOPOLY
<i>Characteristic expressions</i>	“Monopoly of weapons” (<i>Waffenmonopol</i>)	“Monopoly of coercion” (<i>Zwangsmonopol</i>)
<i>Starting point</i>	Violence <i>between</i> social groups	Violence <i>within</i> social groups
<i>Dynamics of state formation</i>	Exogenous	Endogenous
<i>Figuration of state violence</i>	Dual (combat/domination)	Arbitral (judgement/interposition)
<i>Legitimization mechanism</i>	Ex-post/teleological	Procedural/antifinalistic
<i>Substructure of the state</i>	Socio-economical (predation/exploitation)	Lagal-administrative (commandement/supervision)
<i>Transcendence of political unity</i>	Sublimation of unequal and hierarchical social relations	Expression of collective (democratic) deliberation

Tab. 1: Two framings of the state monopoly of legitimate violence.

But these conceptions of the state monopoly of legitimate violence are not only different; they oppose term by term (tab. 1).

Both versions of the concept give completely different representations of the starting point of state building and the general logic of the process; they engage representations of state violence and the mechanisms of its legitimization that are radically opposite; they account for the foundations of state power and the type of political unity it fosters in mutually exclusive terms. In short, the least that can be said is that nothing makes them spontaneously compatible.

Each of the entries in this table would require extensive development. But that is not the point I am interested in here. What I would like to emphasize is that this heterogeneity between the two conceptions of the state monopoly makes the subsequent normalization of the concept enigmatic. For there is no doubt that this takes the form of a superior synthesis which does not ignore the differences between the two concepts of state monopoly of violence from which it inherits: it integrates them by making these differences internal differentiations of the *same* monopoly of legitimate violence. The modern state makes war *and* enforces order; these two types of activities are not mutually exclusive, but articulated. In Elias, a characteristic expression, which he uses several times, expresses this fact: “whether army or police” – “*ob Heer oder Polizei*”: two “expressions” of the state monopoly of legitimate violence.

However – and this is the hypothesis I would like to share with you – It is probably not unreasonable to think that this synthesis meets its conditions of possibility in the historical context in which it has been formulated that it is based on the stage reached by the nation state at the turn of the 20th century as it provides the setting in which the two facets of the state monopoly can coexist without conflicting. In particular, it seems to me that the degree and nature of the territorial hold of the states at that time is of great importance, as it organizes a strict division between the inside and outside of the political societies along which military institutions, on the one hand, and police and criminal institutions on the other, are distributed while minimizing the risks of interference.

The problem of terrorism as we know it today puts this separation to the test. The various phenomena that we classify under the heading of “globalization” have weakened the boundaries between the inside and the outside. The “jihadist army” of which François Hollande speaks is made up of both young men and women, often from the working-class neighbourhoods on the outskirts of large cities, and armed militants, members of organizations based in Syria and Iraq, Libya and the Sahel. And the distance between one context and the other is

often that of the price of an airline ticket. It is no longer exceptional today to encounter confusing situations. In which, for example, state institutions conduct legal proceedings against a person and, at the same time, target him in a bombing in Rakka. It is not uncommon for soldiers engaged in external operations to conduct police operations. In observing these situations, it is difficult to consider that the two facets of the state monopoly of violence adjust harmoniously: they give rise to uncertainties and collisions. It is not surprising, as a result, to see the emergence of reflexive efforts to clarify these situations. The “doctrine of enemy criminal law” is an example, as is the concept of “global security”. However, we cannot stop there. For the social sciences, these efforts are part of what needs to be described and explained. And the entry of studying terrorist conflicts from the perspective of the dynamics generated by these uncertainties and the efforts of actors to resolve them seems to me to be a particularly useful starting point.

CONCLUSION

To conclude, let us consider these two quotes from the *Studies on the Germans*:

“It would be wholly unrealistic to say that this monopoly of intrastate violence goes without any problems. People will have to continue to work on it, and sociological terminology can help to make them more aware when doing so.”

“Such monopolies of physical violence, which today are usually controlled and supervised by state governments, represented by the military and police as executive organs, are, like so many human inventions, double-edged achievements; they have a Janus-head.” (Elias, 1992, p. 228)

In the first, Elias points out that the history of state monopolies of violence is not over because they pose and will pose “problems”. In the second, he insists on the two-edged nature of the state monopoly. By linking the two proposals, we could say that terrorism reveals that among the problems posed by the state monopoly of legitimate violence, there is precisely its two-edged nature. Beyond terrorism, this entails a more general proposition: the way in which military and punitive monopolies are articulated is not a matter of principle; their alignments and misalignments have to be historicized.

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