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Reading Walter Benjamin's 'Critique of Violence' with Carl Schmitt's Notion of 'Political Theology': A Study of Sovereign Violence through Justice, and the Genesis of the Social Order

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ABSTRACT

Linking of free speech, with the birth of the first communities, which then went on to form polities, in terms of its experiencing of the 'political' is necessary in order to make sense as to how justice played an important role in circumscribing natural rights within the realm of what is justiciable and what is not. The first community was based on the fact how key importance was given to the notion of free speech; the only truest functionality of the initial communities, that came anywhere close to the idea of Equality in the broadest sense of the term. Taking a historiographic methodology of analysing statecraft, from the formation of the primitive community, it would appear since then, how political experience since then has been but a function of a series of violent legitimisations since then. The very formulation of the legal system from the sophist's idea of justice, has been but a product of historic legitimisations, that has formed a gradient of institutionalised rejection of human experiences and a subsequent formulation of the normative, which rejects the errant forms and exiles it outside its control.

The methodology, that this essay, seeks to follow is perhaps a distinctly radical one, for it speculates, the impossibility of defining Equality, in the world fascistically enframed in terms of legal systems that has now become a somewhat of a distinct character to each modern nation. This essay, seeks to consider free speech as a political metaphor for equality and try to argue with the aide of the historical gradient, as to how, the birth of the social order, has been

but a product of few violent instances; namely the birth of the legal order from the sophistic idea of justice and the gradually rising importance of the sovereign, in repeated drawing and re-drawing of its limits of power. The essay, would in fact, stress more on the violence perpetuated in terms of the invocation of 'willed' abrogation of rights and expression towards the formation of the 'social order' from the primordial collective or the community, through a study of few politically significant instances.

As a literary critical essay, this could write-up should be understood as a possible negotiation of Walter Benjamin's works on 'political emergency' to Carl Schmitt's theorisations on the possibility of a 'Political Theology'. The author of these essay believes that, since both these authors were personalities adorning the contrasting ideological spectra, and existed around the same time; their writings should offer us a much needed understanding their understandings of an 'extreme society'

Keywords: Free-Speech, Polity, natural rights, justice, the *historic*, the *historical*, community, sovereign, limits-of-power, state of emergency, social order.

INTRODUCTORY REMARKS: ON METHODOLOGY AND PURPOSE

Linking of free speech, with the birth of the first communities, is necessary in order to make sense as to how justice played an important role in circumscribing natural rights within the realm of what is justiciable. (The first community was based on the fact how key importance was given to the notion of free speech; the only truest functionality of the initial communities, that came anywhere close to the idea of Equality in the broadest sense of the term.) Taking a historiographical methodology of analysing state-craft, from the formation of the primitive community, it would appear how political experience since then has been but a function of a series of violent legitimisations. The very formulation of the legal system from the sophist's idea of justice, has been but a product of historic legitimisations, that has formed a gradient of institutionalised rejection of human

experiences and a subsequent formulation of the normative, which rejects the errant forms and exiles it outside its control.

The methodology, that this essay, seeks to follow is perhaps a distinctly radical one, for it speculates, the impossibility of defining Equality, in the world fascistically enframed in terms of legal systems. This essay, seeks to consider free speech as a political metaphor for equality and try to argue with the aid of the historical gradient, as to how, the birth of the social order, has been but a product of few violent instances; namely the birth of the legal order from the sophisticated idea of justice and the gradually rising importance of the sovereign, in repeated drawing and re-drawing of its limits of power. The essay, would in fact, stress more on the violence perpetuated in terms of the invocation of 'willed' abrogation of rights and expression towards the formation of the 'social order' from the primordial collective or the community, through a study of few politically significant instances.

THE ROOTS OF CIVIC LIFE: FREE SPEECH AND BIRTH OF COMMUNITY

The roots and the evolution of the Greek polis must be made better sense of, in order to have a better grasp over the realities of Western statecraft during the nascent stages of democracy. To the ancient Greeks, the rights and the protection that the state apparatus provided to its "citizens" were of more importance than the body of the state itself; a reason perhaps as to why in Greek Tragedies exile was considered to be the harshest punishment rendered.

Jean-Pierre Vernant, in his "Spiritual Universe of The Polis", considers that the system on which the Greek Polis had founded itself on gave pre-eminence to "freedom of speech and expression" over any other instruments of power. Speech became the political tool par excellence, and to some, the key to all authorities in the state. This power of speech, was conceived

by the Greeks to be something divine, which brings to mind the sublime of the religious rituals, or the final judgement of the king; the *themis*.¹

The birth of the state was something important for it had led to an evolution of the “utterance” from the realm of the *ritual and the formulaic*. At once, the act of speech, became a characteristic of the public life. It presupposed a public to which it was addressed as to have a conceit of its own, which could be influenced perhaps to an extent but not changed, thus *public opinion* came into being. Since then, it has remained the primary force of any community. All questions of public *interest* had to be settled by the *sovereign*, but that which was out of its domain of sovereignty had to be resolved through the art of oratory. A discourse was thus formulated between antithetical arguments, and a close union was forged between the *politics* and *logos*; the art of statecraft and public opinion.

The birth of *community* was perhaps further accentuated by the fact that with the birth of the *polis*, emerged a sentiment of commonality of interests, which encouraged a sentiment of openness. Vernant feels that this sentiment of openness was far more expansive in its sentiment as it had inspired a cultural emulation of the practices of the ruling classes, thus exposing divine characterisations to the public view, leading to a sentiment of democratisation. The consequence of this effort was the fact that it gave rise to a culture within the rudiments of community that had already existed. Vernant uses the example of the Homeric epic in this regard, that evolved from court poetry to something sung at popular festivals.

Knowledge, values, mental techniques (in short what the ancient Greeks had called *noos*) became the ideological apparatus

1 Jean-Pierre Vernant, “The Spiritual Universe of The Polis,” *The Origins of Greek Thought*, (Cornell University Press: New York, 1984),

of a common culture, and encouraged hermeneutics, for they were not private tokens of power anymore. Authority thus could not be imposed anymore on the basis of personal, religious or clan prestige or even the cult of the persona; the era had started calling for a dialectical mastery in the ruling class.

THE “LEGITIMATE CRIMINAL”: A CASE FOR JURIDICAL VIOLENCE IN SOCIETY FORMATION

I believe that there is an important disjunct at play between the notions of the community and the society, which could be only made sense of only through an assessment of the disjunct between the concepts of “Natural Law” and the “Positive Law”. While, as argued in the introductory section of this essay, the most primitive of the communities formed themselves, their rituals on the basis of the Natural Laws of expression and free speech; the contemporary society, which has been one of ‘political becoming’ ever since, has grown ever more directed and end driven in terms of its continuous cutting of edges in terms of defining itself.

At the moment of the formation of the first primitive city, we must understand that the first citizens had no political history, to “justify”, for something that could offer a semblance to justice. This situation, that of a lack of “precedence”, provided the perfectly ahistorical beings with a belief in what could perhaps be called as a moment of endless expression. It was at this moment of perfectly anarchic multiple expressions, that the collective must have understood the necessity for “the legal”, or the positive law.

It is in this moment, that Benjamin’s binarisation of Natural Law and Positive Law attains significance in terms of their positioning, vis-à-vis, violence. One must indeed agree to Walter Benjamin’s dictum that:

“Thesis of natural law that regards violence as a natural datum is diametrically opposed to that of positive law, which sees violence as a product of history”²

He observes that it is the violent *force de loi*, or the force of the law, can only be engendered post the historic violence that congeals out of the need to have a legal precedence. One could almost argue, that this “historic” moment is born out of a sense of ‘decisionism’ that we shall pick up a bit later for explanation. The momentous binarisation between the Natural Law and the Positive law, further more creates a sort of an obfuscation that of between the means and the end the means are supposed to lead to. This obfuscation, that makes it harder to posit violence in the order that we speak of; at the locus of the birth of primitive legal order. Like any other entity born out of violence, the legal order begins to grow but wary of the power of the violence that has made its position possible in the first place. As a result, what is perpetrated, is the of a definition based finite conceptualisation of violence that outlaws the limitlessness of violence. Laws, thus, by effect, keep on being *revised* in terms of their historical context of birth. This revisionist element of the legal order is a key element in preserving the precedent based birth of it; subsequent revisions on the same are but the attempts made by the legal order to curtail its limitlessness which would make interpreting the same, harder at a future moment.

Thus, indeed in a way, ‘decisionism’ becomes a key ingredient of justice, as it seeks to ‘define’ the primitive pre-legal (only in terms of a lack of the legal ambit) community towards a society with a codified systemic law. A high point in this trajectory, and also a Kantian antinomial point in certain ways, was the Renaissance age Europe, during which Republican humanist thought achieved a high point, and defined the ‘Cult

2 Walter Benjamin, *Critique of Violence, Reflections*, (Schocken Books: New York, 1986), 278.

of Man' and his relationship to his state. Legal history, from this point onward, basically became a historiographic recording of *shifts* of centres; an attempt to preserve its own structure, by preserving its precedential basis intact. It is in this regard, that we must make sense of Schmitt's notion of "decisionism" as a culturally-coded legal instrument, that choses to further a collective's own way of life as the norm. It tries to further the momentary "state of exception" that had been called into existence by the violence that gave birth to legal order which in term informed on the "cultural" to form the social out of the community.

What appeared as a result was that the scope of the exception started widening, and it was not long before, the state began to define itself and its enemies, in terms of "exception", and "exclusionary" politics of the primitive communities started re-structuring themselves.

It is this progressively yawning gap between the pre-exception state and the "state of exception" rapidly veering towards being the norm itself is something, that Agamben observes to be a worrying situation in "The State of Exception as a Paradigm of Government". He cites Carl Schmitt, in speaking of the birth of a "willed state of emergency" from a "real state of emergency", while actually clarifying that they cannot actually be differentiated, for the rudiments of the *willed state more often than not lies in the real state of emergency*.³

It is in turn, interesting to observe that even when a real state of emergency is invoked by the "sovereign" as a political-martial response to some external aggression, a willed state is more often than not utilised as a "paradigmatic device", and

3 Giorgio Agamben, *The State of Exception*, (University of Chicago Press: Chicago, 2005), 1-31.

continued as a norm, against internal subjects or citizens of a state.

So, while decisionism, formulates the domain of the sovereign, it finally becomes a paradigmatic force which attaches itself to the structure of the sovereign as a 'trace'; as an authority device that in time turns the sovereign into a dictatorial power.

"In the great criminal this violence confronts the law with the threat of declaring a new law, a threat that even today, despite its impotence, in important instances horrifies the public as it did in primeval times. The state, however, fears this violence simply for its law-making character, being 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"⁴ So when a radically dictatorial regime, that has itself achieved power through a popular rebellion, ends up outlawing the "right to strike" for its own working classes, it in a way becomes a proof of the fact, as to how the 'legitimacy' of the 'violence', cannot be questioned, even though the authoritarian power actually ends revising its own stance and becoming its own enemy, a 'legitimate criminal', who follows the dictum:

"No sacrifice is too great for our democracy, least of all the sacrifice of democracy itself."⁵

Likewise, in such a situation, the "primeval community" is truly forged into a society whose rights and stability need to be "protected", in lieu of a pyrrhic extortion from its own history, in a world where exception is well on its way (not quite at the present moment) to be a law.

4 Walter Benjamin, *Critique of Violence, Reflections*, (Schocken Books: New York, 1986), 280-1.

5 Clinton Rossiter, *Constitutional Dictatorship*, (Routledge: Abingdon), 313-14.

DEFINING BY EXCLUSION: THE JUDICIAL VIOLENCE, AND 'THE SOVEREIGN'

If judged on the basis of ideological spectrum, German jurist and political theorist Carl Schmitt comes closest to the rhetoric that is being talked about here. His political theory was based on the idea of exception (*ausnahmestand*) from where he launched an attack on liberalism. According to Schmitt, unforeseen and sudden situations are bound to render any political order unstable, because they can rarely be judged by "precedents", and laws are thus only limited to judge them. He feels that "liberalism disregards this inherent contingency and doesn't account for exception in its constitution". It is for this reason, Schmitt feels that the "exercising of emergency powers" is what remains the primary function of sovereignty. He states:

In respect of sovereignty, it is "precisely the exception that makes relevant the subject of sovereignty that is the whole question of sovereignty"⁶

It is hard to say whether the "state of emergency" concept had any pre-cursor in the previous polities, however, if it is read as a metaphor of the "state of exception" thesis, it makes certain points very evident. Firstly, there is the question of the precedence of the state interest over the communities' and in some cases other weaker states as well. Secondly, it explains as to how the Sovereignty has developed in the Post-Renaissance world, into a power centric phenomenon; that defends Dictatorial "regimes". In his controversial work, "Political Theology: Four Chapters on The Concept of Sovereignty", Carl Schmitt contends that such a decentred power structure actually supports the birth of Dictatorship, in which the "exception" (after the "crisis") is accepted as the rule and the point of

6 Carl Schmitt, Definition of Sovereignty, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab, (The MIT Press: Cambridge, Massachusetts and London, 1985),6.

departure from normalcy becomes irrelevant. Schmitt discreetly tries to legitimise the dictatorial authority – and its “temporary suspension” of constitution to be only an intensification of “transcendental/theological authority” of the sovereign.

In a lecture given at the Roland Barthes Centre (University Paris VII-Denis Diderot), philosopher Giorgio Agamben, explained as to how Schmitt’s theorisation on the sovereign are to an extent paradoxical:

“The sovereign, who can proclaim a state of emergency, is thereby ensured of remaining anchored in the legal order. But precisely because the decision here concerns the annulation of the norm, and consequently, because the state of emergency represents the control of a space that is neither external nor internal, “the sovereign remains exterior to the normally valid legal order, and nevertheless belongs to it, since he is responsible for decision whether the Constitution can be suspended in toto.” To be outside and yet belong: such is the topological structure of the state of emergency, and since the being of the sovereign, who decides over the exception, is logically defined by this very structure, he may also be characterised by the oxymoron of an “ecstasy-belonging.”⁷

He goes on to cite numerous examples as to how the Bush Administration utilised Guantanamo Bay, during the Afghan intervention to deprive individuals of their citizenship; rendering them without identity working all the while within the state of exception provided by the “War against Terror” rhetoric. Agamben also takes the example of Nazi Germany; he validates his exclusion thesis by talking about how Hitler promulgated the Decree for the Protection of the People in The State which suspended all the articles of the Weimar Constitution that related to civil liberties. So from the legal point,

7 Giorgio Agamben, *The State of Emergency: an extract from a lecture given at the Centre Roland-Barthes* (Universite Paris VII, Denis-Diderot), accessed September 15, 2017, <<http://www.generation-online.org/p/fpagambenschmitt.htm>>

one could understand the entire Third Reich to be in a state of twelve year-long state of emergency. There is in some respects a confusion between the "Force de loi" (force of law) and the 'Force of Authority', the problem lies in mistaking the one for the other. This is something that Derrida talks about, in his reading of Walter Benjamin's "Critique of Violence". Perhaps Schmitt in ways more than one misidentifies and just passes it off as a truism, just like Goebbels' idea about the "Big Lie".

Agamben furthermore talks about a measure in the Roman law called the "*iustitium*" which had the trappings of the "state of emergency". It could be exercised when the Roman Senate understood that the Republic was facing an external threat, which compelled each citizen to take all the possible measures to assure state security. However, Agamben states that the *iustitium* did not lead to the suspension of the legal framework. He feels that, theorists like Schmitt actually used the ambivalence of these situations to make the most extreme of conclusions wherein, internal legal framework of a country could be abolished when faced with any threat. In the spectrum opposing to this we have a modern example that exposes the very problematic of such a political set up.

In any case, it is thus, in my idea perhaps the strongest examples par excellence as to how the force of authority works *qua* the force of law in the post-Ideological world.

CONCLUSION

"It's as well to begin as one intends to continue, isn't it?"

– John le Carre, 'The Spy Who Came in from the Cold.'

Carl Schmitt, while likening the abilities of the of the Sovereign to the realm of a form of "secularised theology", comments very interestingly that the: "exception in jurisprudence is analogous

to a miracle in theology.”⁸ I find this comment worth considering, mainly because of the fact that, it invokes the Nietzschean scoffing at how theological belief systems basically situate a law on the locus of Natural “Rights”, to engender a form of a cult that reflects the “decision-making” ability of the authority. In a way, this is actually no different than the sovereign who wishes only to see its own pixels of reflection, within its citizens.

What we are then actually left with is a force like *deus ex machina*, or the promulgated law acting as a divine external force, which acts like a ‘graceful and merciful lord who proves by pardons and amnesties the supremacy of his own laws’⁹. At once, it becomes evident as to how the religious model of forgiveness, works in the same fashion as does the realm of the political, when it bears itself onto the order of the community and turns it into a society, or a ‘cult’ (used in Nietzschean sense of the term), that is securely protected from the outer world in terms of its own laws, following which, the members of the society become but bodies with properties.

Going back to Walter Benjamin’s idea of the ‘Criminal’ again, we thus at once realise that the position of power or that of the Criminal becomes a ‘signified’, within which a contradiction is played out; that of being *either the historic or the historical*; to take a precedence-centric, event-based view of history, or to take a totalised consideration of it; in terms of its temporalisation in future time.

8 Carl Schmitt, Political Theory, *Political Theory: Four Chapters on the Concept of Sovereignty*, trans. George Schwab, (The MIT Press: Cambridge, Massachusetts and London, 1985), 36.

9 Carl Schmitt, Political Theory, *Political Theory: Four Chapters on the Concept of Sovereignty*, trans. George Schwab, (The MIT Press: Cambridge, Massachusetts and London, 1985), 38.

POST SCRIPTUM: THE PROFANE LEGAL AND THE FUTURE TIME

“Samson with these immixt, inevitably
Pulld down the same destruction on himself;
The vulgar only scap’d who stood without.

Chor. O dearly-bought revenge, yet glorious!
Living or dying thou hast fulfill’d
The work for which thou wast foretold
To Israel, and now ly’st victorious
Among thy slain self-kill’d
Not willingly, but tangl’d in the fold
Of dire necessity, whose law in death conjoin’d
Thee with thy slaughter’d foes in number more
Then all thy life had slain before”
John Milton, ‘Samson Agonistes’.

In a way, one of the key limitations of Walter Benjamin’s understanding of violence is that it is limited in terms of its functionalities, to the end it is supposed to herald. In a way, violence becomes an apparatus, within Walter Benjamin’s theorisation. As a result, a situation is perpetually invoked in which, once, the end is realised, the limit is more often than not transgressed, in the act of preserving the end. The act of law enforcement, ends up muddying the link between the law-preserving and the law-making violence; as a result, a vicious circle is envisioned in terms of defining what is truly revolutionary and what is not.

A Conundrum, which never Leaves the Messianic

The social order which is established as the new “historical state”, would sooner or later consider the very forces through which it came into being reactionary, as in, in an attempt to preserve itself, it would end up outlawing the very expression of the ‘profane’ within, something that has only been recently become ‘willed’ in terms of being declared normative. As an example, we can think of how fascistic forces, which come up

through popular short-lived movements, end up outlawing or muzzling those very avenues of violence. Something in the similar lines is stated by Georges Sorel, in his work 'Reflections on Violence', which notices and accepts the limitations of a class struggle – the proletarian movement, as espoused by Marx:

"The people who pride themselves on being orthodox Marxists have not wished to add anything essential to what their master has written and they have always imagined that, in order to argue about the proletariat, they must make use of what they have learned from the history of the bourgeoisie.

They have never suspected, therefore, that a distinction should be drawn between the force that aims at authority, endeavouring to bring about an automatic obedience, and the violence that would smash that authority. According to them, the proletariat must acquire force just as the bourgeoisie acquired it, use it as the latter used it, and end finally by establishing a socialist State which will replace the bourgeois State."

So, what ensues basically, is a continuous replication of the authoritative hierarchy, which inaugurates the social order and periodically negates the authenticity of the experiences of its own political subject, in terms of considering public opinion as an expressive matrix, that forever seeks to preserve the status quo. So, what was thought and accepted as revolutionary violence, becomes a proverbial rabbit's hole, to another world, in future time, where replication has again become imminent.

It is perhaps for such a reason, that the force of the law must act as an intermediary, between the force that seeks to be legitimized in terms of its act of circumscribing the society within newer rules, newer definitions, and newer limits. It is the justiciable law that circumscribes the human experience within that of the social, and categorises it to the order of the legal: as citizenry.

So, when Samson, brings down the temple of Dagon, on his captors, thus killing them and himself, he is perpetrating a

violent replication of the setting up of the primordial law. Samson, through his own vicarious suicide creates a problematic precedent that has transgressed in its time of actualisation, the realm of justifiability. It is only when the chorus utters, 'calm of mind all passions spent', that the precedent becomes the basis of a new law, which shall be justiciable in a future time. It is only through this radical precedent, that there is a violent irruption of sacred which interrupts the linear profane time, that the human experience engages directly as a jigsaw piece to the bigger picture of *the historical; an act of circumscribing the subjective histories within the historical ordained by the law*. In this way, subjectivities are aligned by the law at its own limits, in order to invoke a new historic age, a new social order.

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