

VOJIN DIMITRIJEVIĆ THE REIGN OF TERROR



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Vojin Dimitrijević

## **THE REIGN OF TERROR**

A study on human rights and state terror

*Translated by Ana Knežević Bojović*

Belgrade, 2016

Dedicated to Branislav Dimitrijević, a victim of terror  
(Svilajnac, 1895 – Bergen-Belsen Concentration camp, 1945)

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VESNA RAKIĆ VODINELIĆ

## THE REIGN OF TERROR – RULING BY FEAR OR THE RULE OF FEAR?

Vojin Dimitrijević wrote *The Reign of Terror* more than thirty years ago, published its first edition one year later, and the second – unrevised – edition at the end of the XX century, almost two decades ago. He ended the introductory remarks to the second edition on an enthusiastic note – firmly believing that the end of the XX century was to bring a great, perhaps even final, liberation from fear.

I will not present the book here – it needs to be read carefully.

More than any other book written by Vojin, *The Reign of Terror* is not only the voice of the author – it is a story about him.

The major part of the book is dedicated to the analysis of manipulative techniques and ideologies of ruling – more precisely, of terrorising people by fear, recognition of such techniques and a description of legal and political reactions of the democratic humanity and influential legal scholars to manipulation by fear. Therefore, the author primarily writes about *ruling by fear* and legal and political resistance to it – which was more international than internal in character. However, the study clearly shows – *ruling by fear aims at establishing the rule of fear* – which implies infinite submissive silence of the majority, a life in grey, surrounded by grave poverty of the spirit, body and human contact, an absence of ideas, a hopelessness and numbness through which something only resembling life occasionally shines. This is why this book speaks of Vojin Dimitrijević. In it, he (as an example) had recognised and described, in simple terms, the legal and political systems of humiliation, threat, seeming compliance of the reign of fear with “higher” values and causes, violations of fundamental human rights (mostly the violation of the right to life, the forms of systematic torture through history, the holding of someone in a position of servitude or slavery, the violation of the right to legal

personality). Vojin singled out – as separate chapters – debtor’s prison, terrorism, terror as a form of governance (including genocidal and religious terror), special zones of fear, and in particular irrational terror, which is a purpose in itself, and legal and political systems in which terror is almost everything: form, method and purpose of governance. It was in Vojin’s personality and character not to concede to any humiliation (from common sense to mere “positivistic” nagging), to boldly stand up against threats; he was masterful in uncovering the manipulative backgrounds of “higher” values and causes. With a much needed tinge of irony. He recognised and described violations of human rights not only in his scholarly work, but also in “small” examples from everyday life. In short – this is a study of legal and political phenomena that troubled Vojin the most, and his response to them.

The response of Vojin Dimitrijević is a response of a free man. His belief in the final liberation from fear lies in the optimism of a free man. I believe, however, that the key question is not how many free men are there in the world. The key question is – how many people are there willing to think, regardless of the fact that those in power terrorise their common sense, if nothing else; people who ask questions loudly, curious people who wish to learn.

At the time when Vojin was writing *The Reign of Terror* there seemed to exist a clear line between the world of freedom and the world where freedom was absent. Today, the boundaries of the latter have considerably expanded to the expense of freedom, and the cause for that no longer lies in ideology alone. This is why Vojin Dimitrijević, a man of the XX century, had nurtured extra faith in liberation from fear. But forms and methods of manipulation with absence of human freedom are exactly such as Vojin had described them in this book. One only needs to add new examples. Legal and political systems have withdrawn and made space for absence of freedom. Not only here.

And this is why this book must be read all over the world, in one of the “major” languages, but also in our language (our languages). The techniques of ruling by fear are, fundamentally, the same. The reactions to them so far have not been adequate. Vojin Dimitrijević urges us to ask again: how, who and what? In his book, he offers XX century answers. The people of the XXI century, therefore, have only one part of the recipe. They need to find a few more ingredients Vojin could not have been aware of.



There are, however, no alchemic answers in this task. To recognise the forms of manipulation by fear used by those in power (now not only within “their own” states) and find adequate legal and political reactions to them will require many people and many professions. I believe this is why we will be reading *The Reign of Terror* (not only once) as long as we live in reigns of fear. And, as a start, will begin to voice our questions loudly.

Belgrade, September 2016



# THE REIGN OF TERROR



## A NOTE TO THE SECOND EDITION

This book was written in 1984, and issued for the first time in 1985.

I wrote it the way I could and dared. Today, more is known, and dared to do.

However, *The Reign of Terror* is being issued once more, and is exactly the same as it was when it first came out of print twelve years ago. The reasons for this lie not so much in lack of time as in the conviction that each text, this one included, bears its full significance only if it remains within the timeframe within which it had emerged.

I would like to extend my gratitude to Serbian Academy of Science and Arts member, Vojislav Stanovcic, who reviewed the first edition of this book (at that time, every book had to be reviewed). I am also thankful for the comments and opinions of a multitude of readers, particularly of those who, once the book was sold out, had copied it in order to read it, believing it was worth their while.

Above all, I am delighted by the fact that this, second edition coincides with a major – and hopefully final – liberation from fear.

In Belgrade, January 14, 1997  
Vojin Dimitrijević



# INTRODUCTORY NOTES TO THE FIRST EDITION

Having once written a book on terrorism as a method of political combat against government, I was left with the impression that the terror exercised by those in power was in fact more dangerous, that it took much more innocent victims, that it diminished human dignity much more and that its existence was a permanent threat to society. This terror, however, remained for the most part neglected, not only by me – but in academic literature in general. Lawyers, in particular, due to dilemmas both contrived and real – an issue that will be discussed further – have done precious little in contributing to the understanding of and clarifying the existence of the reign of fear.

It is clear, beyond any doubt, that a study of this length can only concern the governance through and by introduction of fear and anxiety as a political method alone. Such analysis requires generalization, through identification of the common traits of modern reigns of fear, which are in the focus of this study, and their comparison to occurrences in the past. I recognize that this approach may be contested as ahistorical, since it does not always take into account all the specific and unique circumstances and causes. However, to fully yield to such a remark would mean that the science of politics, as an attempt to establish certain general concepts and determine universal rules, is impossible. That risk, therefore, is one that has to be taken.

In order to make the reading easy, the scientific apparatus has been reduced to a minimum. An interested reader, however, will find selected references listed at the end of the book.

I must take this opportunity to express my gratitude for the assistance during the research and writing provided by post-graduate students Branko Milinković, Biljana Petković, Vesna Petrović and Lora Stojanović.

In Belgrade, November 15, 1984  
Vojin Dimitrijević





# INTRODUCTION

## TO RULE AND TO INTIMIDATE

### OPTIMISM, DARK PREMONITIONS AND THE HARSH REALITY OF THE TWENTIETH CENTURY

There are very few of those who do not think that, in addition to the achievements that can be, beyond any doubt assessed as progress, the twentieth century was and is marked by sombre descent back into inhumanity, cruelty, humiliation and lack of freedom.

Our century was greeted with considerable optimism, by various people who had different starting points. For some reason, it was a common belief that the unstoppable progress in science and technology, a continuation from the last century, would also reflect on social relations and, as a logical consequence, bring a better, more comfortable and civilised life for the majority of mankind. The fruits of enlightenment in the immaterial domain, rooted in renaissance and having been the focal point of the XVIII century politics, now became formally materialised in the liberal bourgeois state: the principle of legality was reinforced, human actions were not punishable unless envisaged as a criminal offence beforehand (the *nullum crimen sine lege* principle), the sanction for any offence also had to have been envisaged in advance (the *nulla poena sine lege* principle), the sanction was no longer cruel nor could be publicly executed, and it had to be ordered by an independent tribunal, in an impartial procedure. These are just selected examples most people can understand and relate to; one could add and list many others.

Other regimes, typical authoritarian and autocratic regimes, have had to adapt to the above-mentioned developments in democratic civil societies. They have done so by introducing certain reforms that were often insincere and inefficient. The purpose of such reforms was to provide an appearance of the rule of law, civility and congruity with the rest of the international community.

If the objective of this study was to describe the actual state of affairs at the turn of the XX century, this claim, would, of course, have to be moderated; for, it was by no means a universal feature. The world still witnessed ultimate cruelty and autocracy that were not restricted only to territories where the old systems of limitless tyrannical omnipotence existed, but were also present in colonies or dependent territories of a different kind, ruled by states which otherwise took pride in their democratic and humane institutions. These deficiencies, however, did not interfere with the general optimism. A good example of such an atmosphere was the common belief, which was present before World War I, that the physical torture of human beings – a cruel, meaningless and irrational act – is finally eliminated from the historic agenda and will never happen again.

However, there was also some anxiety with regards to what the future brings. This anxiety was not reserved for conservative spirits who feared the vulgarity of democracy or for apocalyptic historic determinists who favoured the idea of historical cycles and inevitable decline of civilisations over faith in progress. Quite to the contrary, the most indicative premonition was the one offered by highly intuitive individuals, artists, who were the first to sense the possibility that an unparalleled evil may develop from the unfolding events.

It is also symptomatic that it was only in our century that the creation of artistic and philosophical utopias had started to change. Even when set in the future, or out a particular timeframe, earlier utopias were positive: writings such as Plato's *Republic*, St. Augustin's *Civitas Dei*, Thomas More's *Utopia*, Bacon's *New Atlantis*, or even *The Reign of George VI – 1900-1920* by an anonymous author, published in London in 1793, as a rule depicted a society that was considered as good, beautiful and desirable by its authors. Even though some critics were wary of the realisation of such "optimistic" visions, fearing any kind of formal "happiness", it was only after 1900 that negative utopias, anti-utopias or dystopias started to be written. In them, their authors described a future they disapproved and feared. In his *Iron Heel*, Jack London envisages a cruel dictatorship of capital as a reaction to the socialist movement. Even though he did not create anti-utopias in the strict sense, Franz Kafka noted the emergence of a distanced, lonely, confused man, who does not understand and cannot follow

the ways of power and authority. A man who is ready, just like Josef K. in the *Process*, to believe, in advance, that his is guilty of something indefinite and sustain any sanction thereof. Back in 1920, Yevgeny Zamyatin wrote a very important dystopia called *We*, much of which was taken over by the most famous negative utopist, George Orwell (as he readily admits) in his famous *1984*. The two are joined by Aldous Huxley and his *Brave new world* in 1932, and by many others, including the German author Horst Eberhard Richter, whose novel *Everyone talked about peace* ends with an agreement reached among the chiefs of secret securities of great forces to start a mutual war, which they believe is the only way to deal with internal tensions.

Although later dystopian authors have projected their experiences to the future, which implies that their writings were not only an intuitive impression but also a description, the common features of the first dystopias are the following: a grim community is imagined, in which the government has limitless power, whereas an individual is suppressed and de-humanised.

Three such dystopias, written in different times, indicate particularly well the main courses of modern pessimism with regards to the relation between an individual and the government, and also with regards to the general state of the affairs. These are, in order of appearance, the works of Zamyatin, Huxley and Orwell.<sup>1</sup>

While Zamyatin and Huxley expect that a single world state will exist, Orwell sees the world divided into three, in internal terms, identical countries, which are in permanent war with each other, a war in which coalitions perpetually change, but a war which is indispensable for all of them, since none of them can survive without an external enemy. In each of these visions, the state is under an unlimited rule of a small group of people: in Huxley's work, this a group of "controllers", whilst the other two authors vest individuals with such power. Zamyatin calls the ruler the "great benefactor", and he is physically visible for the citizens – even executing the death penalty himself. On the other hand, it is unclear whether Orwell's "Big Brother" truly exists or is he just a fiction of the oli-

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<sup>1</sup> All three books were translated into Serbo-Croatian language. Y. Zamyatin, *Mi*, Belgrade, Prosveta 1969 (translated by Mira Lalić), G. Orwell, *1984*, Belgrade-Zagreb, BIGZ-Cesarec, 1984 (translated by Vlada Stojiljković), A. Huxley, *Vrli novi svet*, Belgrade, "Jugoslavija", 1967 and *Divni novi svet* Zagreb-Sarajevo, A. Cesarec – Svjetlost, 1980 (both issues translated by Vlada Stojiljković).

garchy, the “inner party”, which actually holds all the power. The portraits of the “Big Brother” are posted everywhere, he occasionally gives speeches on TV, but no one has ever met him in person.

There is no alternative to total state control. Zamyatin and Huxley, however, allow for the existence of native reservations, still inhabited by first men, as a kind of curiosity, whilst Orwell firmly basis his narrative on the impossibility of choice. Whilst in Zamyatin’s work all people are the same and are impersonal, so much so that they have lost their names and are instead identified through a combination of letters and numbers, Huxley and Orwell allow the possibility of a person escaping full control and terror – by being a member of the lowest social class, which is conditioned not to have any requests except for satisfying the most fundamental biological needs. Huxley’s men are artificially produced and programmed so as to belong to biologically pre-determined groups, whose intellectual and physical abilities are precisely balanced and adjusted to their role in the state. Orwell’s lowest class are the “proles”, who function outside the political sphere, and are exposed to rudimentary diet, bad alcohol and machine-made entertainment – banal and meaningless.

In all three visions, manipulation has a prominent role as a method of governance. People have no sense of the past. People do not know, people are in fact prevented from knowing and are not allowed to know what had happened before the “ideal” regimes, ones that guarantee utter happiness, were established through a war or a coup. Zamyatin sees this “knowledge” as the underestimating caricature of all the achievements of civilisation, Huxley sees it as a strictly kept secret, available only to the “controllers”, whilst in Orwell’s work, the past, even the most recent past, is perpetually altered so to suit the needs of the government. The people who are no longer in government’s favour, the mistakes that have been made, the predictions that did not come true, are all simply erased or replaced by fabricated events. For that purpose, the Ministry of Propaganda, called the “Ministry of Truth”, also corrects the already published issues of daily newspapers. In addition, Huxley also envisages the use of drugs as the ultimate form of influence: all biological casts are given their daily allowance of narcotics, which helps them feel satisfied.

Furthermore, the state has full monopoly when it comes to disseminating information. In Zamyatin’s work, only the official

gazette and the official declarations exist. Huxley does envisage the existence of the press – it is adjusted to each category of human beings. In addition to the press, subject to constant alterations, Orwell also envisages the state television, which can never be turned off, as the main source of information.

In cases where manipulation fails, reign is ensured by terror. Whilst in Huxley's case such intervention is relatively mild and is reduced mainly to having police using soothing drugs in a fashion similar to that in which the traditional law enforcement agencies use tear gas, both Zamyatin and Orwell portray a constant and overarching fear of repression. The secret police, or the "bureau of guardians" in Zamyatin's *We*, or the "Ministry of Love" and the "Thought Police" in Orwell's work, must know everything: there is a general obligation to denounce. Anyone who shows individuality, curiosity or signs of misapprehension is subjected to brainwashing, torture and death. Orwell, in particular, brings torture to perfection: in addition to a contraption which enables the pain to be carefully dosed, there is also the ultimate, most horrible phase, where the type of torture is adjusted according to the victims' phobias.

In all three cases, a man's personal, intimate sphere is abolished. Huxley presupposes that humans no longer care for it, since they are suitably biologically and socially programmed to feel no need for human touch with other members of the human race, and have no need to keep anything secret. In Zamyatin's work, as mentioned above, individuals no longer have names and they live in glass cages, where they can be seen by everyone. They have no families and enter into sexual relations according to an official schedule (this is the only time when they are allowed to put their curtains down). Children, however, are communal, that is, they belong to the state, and the idea of parenthood is completely abolished. In Huxley's work, men are produced artificially, while in Orwell's book family still exists, but is not established by free choice, whilst children are raised as their parent's main spies and denounciators. Instead of living in glass rooms, Orwell's men live under the permanent surveillance of telescreens, which constantly broadcast official propaganda while at the same time tracking and recording everything that happens in front of them. Whilst Huxley's citizens of the World State can wear clothes of their own choice, Zamyatin's and Orwell's have to wear prescribed uniforms.

Similarly, the emotion we today commonly call romantic love between members of the opposite sexes does not exist in Zamyatin's world; Huxley describes that love had disappeared as a consequence of manipulation, while Orwell strictly prohibits it.

In these societies, art, as an individual expression, is extinct. In Zamyatin's work, art is produced by appointed persons and is tailored to special occasions (execution of death penalties in particular), while in Huxley's book art is artificially produced kitsch, adjusted to different existing social classes.

The mentioned three authors visibly differ with regards to the imagined standard of living of their dystopias' inhabitants. Huxley expects material wellbeing, including good housing and efficient transport, especially for higher classes. Zamyatin, although not expressly, assumes that the basic needs of people are met, while Orwell envisages overall shortages and bleakness, from which only the members of the "inner party", the elite, are spared.

The darkest part of all these visions can be designated as the futility of rebellion. The system works because it creates full conformism, with or against one's will. Whilst Huxley dismisses rebellion, since it is faced with the challenge of ultimate indifference and is led by an accidentally displaced inhabitant of a native reservation, the other two anti-utopists have their lonely individuals, who attempt to at least find answers to their questions or to flee from the ever-present state surveillance, crushed by the powerful terror apparatus.

It is interesting to note the role awarded by both Zamyatin and Orwell to women as the inspirers of mutiny – they seem to consider women as beings who have a harder time coping with the prohibition of individuality, abolishment of intimacy and orders to devote their emotions not to specific people but to an abstract creation, like the state, or a symbolic figure, such as the Big brother or the Great benefactor.

Such ominous thoughts, particularly in the beginning of the XX century, seemed to be reserved for particularly sensitive individuals, whilst the predominant expectations were good and optimistic. It was for this reason that all the events that ensued seem more dire: the suffering was coupled with disappointment.

Unfortunately, this sombre impression cannot be explained by failed expectations alone. The inhumanity of the XX century was not just a simple regression to a more primitive age – it had

also shown features previously unknown in terms of quality or intensity. Probably the most prominent feature was the fact that evil was undertaken and carried out in a systematic manner, and had affected an enormous number of human beings. The systematic nature of dehumanisation of political and other relations was articulated in the form of physical and psychological duress most cruel; it was expressed also in the creation of standing institutions – some of which were cold-bloodedly established and regulated by law – whose task was to destroy, torture and humiliate in an efficient and refined manner. Some of those institutions, e.g. the concentration camps, were a novelty, whilst some, like torture and political police, had assumed new, worse traits, relying on that very progress in science and technology that had raised the expectations on the overall progress of humanity.

The victims of such carefully planned and meticulously administered procedures were not counted in hundreds and thousands, but in millions. If one were only to take into account the most notorious examples and to count in only those who had lost their lives – which, in this period, when “the living often envied the dead” was not always the worst case scenario – the most *modest estimations* show that the short-lived Hitler regime in Germany (1933-1945) had killed more than six million people only in concentration camps, that the Stalinist terror in the USSR, according to that country’s data, had taken at least eight million lives, which, coupled with the victims of forced collectivisation amounts to some fifteen million victims of Stalin.<sup>2</sup>

Looking outside Europe, one can establish that the radical measures of Pol Pot’s regime in Cambodia caused, over a brief period of time, an “auto-genocide” which affected close to two million inhabitants.<sup>3</sup> One quarter of Uruguay’s population had left the country during the military dictatorship, in order to escape the destiny of those who stayed – two in one thousand were either in prison or in a concentration camp, whilst every fiftieth inhabitant of Uruguay experienced at least police interrogation if not “short” investigative detention coupled with mandatory torture. The rule

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2 Data was provided by Nikita Khrushchev to an Italian communist party delegation. It is believed that the figures are much higher, ranging between twenty and thirty million. See R. Conquest, *The Great Terror*, Harmondsworth, Penguin, 1971, pp. 710, 713.

3 The estimates range between 400,000 and 3,000 000. See M. Vickery, *Cambodia 1975-1982*, Boston, South End Press, 1984, p. 185.

of Francisco Marcias Nguema in Equatorial Guinea resulted in some 125,000 out of 400,000 of its inhabitants seeking refuge abroad.

Stalin and his associates had arrested, at one point, a total of 5% of the people of that enormous country, over which he ruled without limits.

There will be more similar data in this book. For now, their purpose is just to show the scale of the occurrence that is being studied and to justify the astonishment, the loathing and the doubts it had raised, while at the same time craving for some rational explanation, lest reason subdue to general scepticism towards human nature and the chances of progress, a scepticism expressed by all those who search for salvation in irrational ideologies, and even – paradoxically – by those who are intent on fighting evil with evil and who seek for an exit from one terror in similar “things that make you happy”.

All of this is overarched by the threat of mass destruction coming from modern weapons. Even being as they are, seemingly calculated to make a psychological effect, they cause fear and anxiety (this being their strategic goal). However, the probability of them being actually used – gradually but persistently – increases: the inevitable spread of knowledge, the seemingly cunning but actually criminally witless “diplomatic” combinations and unexpected changes in seemingly stable countries may easily put such weapons in the hands of the type of people and regimes we have met in the recent past; people who – were they in the possession of such weapons – would not hesitate to use them.

## **POWER, COERCION AND INTIMIDATION**

In politics, as a rule, violence is not just simple coercion. Violence, on the other hand, is an inherent part of politics and understanding of the state.

Reduced to its very substance, coercion is the procedure which bypasses the will of the person being coerced and achieves the desired effect without his or her cooperation. Coercion means, therefore, that resistance must be overcome by a greater force or by the destruction of that who resists. An “ideal” political system, based on coercion alone, would become practically impossible as soon as it would set objectives that the majority of the population opposes. The efficiency of such a system presupposes the existence



of a voluntary, devoted, even fanatical majority, which is ready to target any and all individual opponents and overbear their unbroke-  
n will. Such situations do occur in international conflicts, but  
not internally within states, for a simple reason – coercion cannot  
give rise to the type of devotion soldiers are sometimes known to  
show in battle. If, on the other hand, the devotion of the majority  
was achieved through other means, then the system of governance  
is not based on violence, although such instances of mass coercion  
exerted by one part of the population over another cannot be said  
to constitute a stable political system (regardless of how it would be  
otherwise assessed), but rather constitute a condition commonly  
called the civil war.

In “normal” situations a state is governed by a certain, wider  
or smaller, group (the elite), the legitimacy of which stems from  
a more general will, whether that be the will of the majority, a  
class, of oligarchy or an invocation of an abstract principle, such  
as divine providence or secular determinism.

Since bare coercion is not economical and because it destroys  
its objects, violence is, as rule, only presented as a prospective  
final measure in more stable systems; the predominant tendency  
is to rule with the consent of, or at least be tolerated by, the vast  
majority of the population. This higher or lower degree of consent  
or tolerance is achieved in various ways, and not all of them are  
of interest to us. One of them, however, is of critical importance  
for the topic explored herein, given that it seems to explain the  
essence of the general phenomenon we are studying and also gives  
a characteristic “aroma” (or rather, “stench”) to our times. This  
method is threat or intimidation.

Threat is the menace of evil that will be inflicted on those who  
do not act in the way in which the one making the threat expects  
them to. Threat is the very essence of the so-called retributive sanc-  
tion in law. Provisions of criminal laws are commonly phrased as a  
hypothesis of such a sanction: whoever commits an act described  
in such a provision (hypothesis) shall be sanctioned by being de-  
prived of a good –property, freedom or even of life, and recently  
again, with growing frequency, of a body part.

It is not necessary for such sanctions to be executed frequently  
in order for the threat to be efficient. Quite to the contrary, at least  
in theory, sanctions need not be executed at all, but there must  
exist a conviction that they will certainly be enforced. This con-

viction intimidates potential felons, i.e. those likely to violate the established norms; they are expected to thereby be deterred from prohibited behaviour. Once the system of criminal-law threats is successfully put in place and maintained, the pronouncement and execution of sanctions shall be relatively rare. This, of course, is not only the result of the effectiveness of the intimidation alone, but also of a series of other reasons, which are presently not of interest to us.

## Critique of the Intimidation System

There was no society or a state known to men so far that did not resort to the threat of violence in order to ensure the type of behaviour it desired, or to discourage acts it deemed damaging or deviant. However, any such system of threats can be subjected to critique from various standpoints.

## Effectiveness of Threat

One type of critique starts only from the efficiency of such a system and, if considered in an isolated manner, can seem cynical. It takes the standpoint of the holders of power, who decide on norms and sanctions for their violation, and investigates how they can, in their own interest, best increase the effectiveness of the threat of violence, without making any value assessment of their desires and of reasons for which they seek social control. Such rational and Machiavellistic theory of threat would result in a conclusion that the threat should be serious, enforceable and convincing.

Although these three elements of an efficient threat are intertwined, we shall describe them separately, for analytical reasons.

A threat is *serious* if its fulfilment would inflict real damage and harm to the one being threatened. In that respect, there must be a visible difference between the gains in case of conformity, that is, in case that rules are observed, and the condition one can find oneself in when being sanctioned for violation. If such difference does not exist or is insignificant, the threat shall have no effect.

Simple examples that illustrate this are quite clear – e.g. it is cheaper to pay the fine for failure to install an air filter than to bear the costs of its installation. However, many examples in the fields where the material aspect is more difficult to express are not as easy to understand, since they rest on the difference of estimations, on the conflicts of value systems. For members of some religious

sects it is better and more dignified to spend several years in prison than to serve under arms for twelve months. In its extreme form, this phenomenon becomes more common in times of unpopular wars, such as the conflict in Vietnam was in the USA, where high penalties could not prevent desertion, which was sanctioned more strictly than common avoidance of military duty. In the political sphere, authoritarian government usually does not have any understanding for the humiliating elements of some of its requests, which then render the sanction – a strict sanction that allows one to keep one's honour – unimpressible in the eyes of men who hold their human dignity above some other goods.

The legislations of totalitarian states often include the obligation to denounce spouses and closest family members, not only with regards to real actions against the regime, but also in cases of verbal criticism of the regime. For highly ethical people, and even for a considerable number of those who foster traditional family ties, no sanction can be worse than a guilty conscience induced by the neglect of one of the most basic human ties. Fear of state sanction is there mixed with the fear from punishment that can be exercised by one's community, which one cannot live without.<sup>4</sup> In addition, the chance to settle private debts, which this type of behaviour provides, is utilized by dishonest men for their private intents and purposes: a rational entity making a threat, which takes care only of its own, that is, of state interest, does not actually want that. In Nazi Germany, the denouncement rules were amply used by women who wanted to get rid of their husbands, from whom they became estranged while they served at the front. It had sufficed for the wives to denounce their husbands for making defeatist statements during their leave.

Finally, the elite often cannot understand that even those goods that are considered most important and elementary, under given social circumstances, can mean very little to some people. The threat of being deprived of such goods then seems irrelevant. For instance, in XVIII century England, pickpockets faced drastic

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<sup>4</sup> A well-known example is that of the cult of fourteen year old Pavlik Morozov under Stalin. In 1932, this boy had denounced his father, who was until then the president of the village soviet in Gerasimovka. Pavlik had denounced him for conspiring with kulaks. As can be expected, the father was executed, while a group of villagers murdered Pavlik. The young denunciator became Komsomol's hero, and one pioneers' culture club in Moscow was named after him.

sanctions, including execution. In order to underpin the intimidation, executions were public. However, these petty thieves, who came from the very bottom of the society, and who were in a desperate position because of the initial accumulation of capital, had lived under such conditions that “honest” life, for them, was not possible, and therefore, not valued. Executions of the pickpockets who were caught, as the custom was at that time, had attracted numerous and wealthy audience, and had in fact presented a unique opportunity for other pickpockets, who were still free. These events had the highest rates of pocket thefts, to considerable surprise of both legislators and judges, who, for some reason, thought that life was equally beautiful and precious for all subjects of the British crown.

A threat is considered *enforceable* if the one making the threat can indeed execute it. In a modern state, which has at its disposal a developed apparatus to exert violence and execute sanction, the lack of enforceability of a threat is seldom assumed. However, it does happen even in the so-called well-organized states, if the prohibited behaviour becomes so frequent that the enforcement of sanctions becomes unfeasible or even impossible. In some countries, the prisons can no longer receive new inmates, and hence the policy is to mitigate sanctions for some criminal offences, or even to “de-criminalize” some offences by turning them into misdemeanours.

However, a model well-organized state is much less common than is generally thought, and hence the unenforceability of sanctions is difficult – due to the low probability of the perpetrator being discovered, corrupt investigative authorities, considerable caseload and lack of facilities in courts, and due to social and political connections, which impede the pronouncement of sanctions or render the sanction a farce. For all these reasons, for instance, the sanctions imposed on some of the most notorious American gangsters were a joke compared to the criminal acts that can, with a considerable degree of reliability, be attributed to them. Let us underline that such inability often causes parallel, non-state systems of violence and intimidation, where social groups that consider themselves affected, but insufficiently protected by the state and the measures it had taken, “take justice into their own hands”.<sup>5</sup>

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<sup>5</sup> See below.

Finally, a regime can be so weak that it is incapable of enforcing sanctions without a major risk. This usually happens in politically sensitive cases, such as the attacks against the very constitutional setup. As a rule, the prescribed sanctions for such criminal offences are the strictest, which thus renders them unenforceable, whilst the regime itself is not supported even by those who should be protecting it. The case of the Weimar Republic in Germany is instructive in that respect. Namely, even though envisaged as a modern bourgeois democracy, with an exemplary constitution, this state had inherited the management staff from the Wilhelmine Empire, which, in fact, deeply opposed the Weimar Republic. It soon became visible that any attack on the constitution coming from the political right shall be met with a mild sanction, which Hitler witnessed after the attempt of coup in Munich. To attack the very essence of the new state was to take quite a small risk: even before the Nazis took power, Germany had become a country in which uniformed members of different organizations, who openly advocated for the abolishment of the constitutional order, were free to roam, shout, beat up and kill.

A threat is *convincing* if it has such overall effect on the person being threatened. A threat may turn out to be unconvincing because it is not serious and enforceable, but it can also be unconvincing for other reasons. In other words, the quality of being convincing may falter despite the seriousness and enforceability of the threat. Simply, the threat does not affect the subject since the subject is not convinced that the one making the threat will enforce it. It is not, therefore, a question of whether the threat *can* be enforced, but rather a question of *will* the threat be enforced.

The convincingness dilemma is more common in international relations, where it is studied in more depth, particularly when it comes to intimidation by nuclear arms. A major nuclear force can impose a heavy blow to a small country that does not dispose of such weapons, but sometimes the small country will grant no concessions to the major force, or may even defy it. Other examples that are easy to understand come from a more intimate domain: it is claimed that “strict” parents quickly exhaust their threat potential towards the child, who gradually understands that, the stricter the threatened punishment is, the lesser the chance is it would indeed be imposed, since both father and mother depend on the child and cannot augment their scale

of threats to its logical consequence of grave bodily punishment or murder.

Within one state, situations are not so clear; however, it is beyond doubt that instances in which the threat of a sanction is not convincing exist. As a rule, this happens in cases when the sanction should be executed over a considerable number of people on whom the regime depends, whether due to counting on their allegiance or due to grounding its legitimacy on governing, truly or supposedly, on their behalf. Even in the most cruel authoritarian regimes one can find those who have good reason to believe that sanctions will bypass them, even though such immunity does not extend to all spheres. For example, the members of the SS troupes in Nazi Germany, particularly towards the end of Hitler's regime, became a state within the state and could rely on a series of regulations not being applied to them; still they had to take care not to cross the sometimes very elusive line of what the Fuehrer considered sufficiently significant for himself and his system, since such transgressions were punished in a very sudden – for them – and cruel fashion. Let us add here, just touching on an issue that will be discussed in more detail later, that grand terrorist rulers ensure, with particular care, that the impression of the unconvincingness of their threats is not widened. They do so by liquidating, from time to time, someone from the circle of the people closest to them, even without any real guilt, only to demonstrate that there is no immunity for anyone.

The convincingness of a threat, since it is in essence a psychological reaction, is very difficult to ascertain and it, in fact, represents a delicate game between the one making the threat and the one being threatened.

### **Conformity with higher values – natural law and positive law**

Another type of criticism regarding the threats used by the state to preserve a given order and react to social changes is of a more general character. This assessment does not take as its starting point the success of the system, but rather assesses whether the system complies with some higher, fundamental standards. These standards are then used to assess both the behaviour prescribed by the state (the regime), the sanctions that are threatened with and, in order for the threat to be successful, the sanctions that

are actually enforced in cases of non-compliance. Such criticism is inseparable from the study of the efficiency of sanctions; their inter-dependence was visible in some of the examples described above in order to show whether the threat is serious and convincing. It was evident that resistance towards acting in accordance with the rules may occur because the requested behaviour is contrary to some principles or beliefs, that is, that the prescribed sanction can disorient rather than guide a citizen.

There are numerous simple examples, real or construed, that can show this even more clearly. Let us stay on those that are not imaginary. In various countries there are rules that, for instance, mandate every child to say Grace at the beginning of every school day, that prescribe a same greeting to everyone with a mandatory mention of the name of the current director, that prevent people from freely leaving their place of residence, not only in cases of travel abroad but also in cases of visiting a different part of the same country, that impose intolerable inhibition on the sexual lives of men and women, that make people of different races use separate dwellings, public facilities and means of transport, etc.

All these real examples will be perfectly clear to our reader, and he will instinctively condemn them. However, it is not easy to find a reason for loathing the fact that people are forced to act like that and the fact that severe sanctions are prescribed for those who exercise their freedom in the area that has been “lawfully” taken from them.

The easiest answer is that the reason lies in the conflict of law and morality, where the law mandates a behaviour that is condemned by morality, whereas it prohibits actions approved or even recommended by morality. This answer would indeed be easy if there were a single, unchangeable worldwide morality, which would allow every legal system to be subjected to uniform and reliable criticism. This is not the case, since specific morality can even be such as to discard the liberalism of law, which does not punish that which is morally condemned. The relations between sexes were intentionally included in the examples given above, since in this sphere, the law is more likely to follow morality than the other way around. National cultures differ distinctly concerning the rules on whom are sexual relations allowed or not allowed with. It is therefore very difficult to say to what extent is the question of how close a kinship between two people who are allowed to have

sexual relations can be, or of whether homosexual relations should be tolerated and if so, under what conditions, are the questions of general morality. However, even in this, very intimate sphere, the law sometimes intervenes for reasons other than the prevailing moral considerations, reasons which are, in fact, political motives. In South Africa, sexual intercourse between people of different races is punished in order to protect the apartheid, on which the entire system is based, envisaged so as to secure forever the supremacy of the white minority.<sup>6</sup> In India there used to be a strict ban on the mixing of castes, since it would have jeopardized the entire social culture. This ban was supported by religion and has left such a deep mark that, despite liberal positive law in India, the ban is still observed.

The second ground for criticism is the so-called natural law. According to this doctrine, which has a long history and numerous outstanding representatives, there is an independent, objective, therefore “natural” system of rules superior to the positive law, that is, the law prescribed by the state and supported by relevant sanctions imposed by the state, and positive law must be in conformity with it.

Roughly speaking, all those arguing on behalf of the existence of natural law can be divided into two major groups. The first group relies on religion, and according to it, natural law is transcendental in nature, that is, it had originated from God. “The law of man” must be in conformity with the law of God: it may supplement it, but cannot contradict it. If the latter happens, the positive norm (the law of man) is not binding.

The extent to which such understanding of the origin of law can have practical, and not only theoretical implications, even today, is evident in the recent developments in some Muslim countries. Islam, unlike some other religions, is a set of rules that also concern everyday life, including clothing, nutrition and financial operations. These rules are included in the Koran or developed from it and from Mohammed’s original statements,

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<sup>6</sup> Sexual relations between a white woman and a black man are being punished since 1902. The so-called Immorality Act of 1927 had prohibited any extramarital relations between members of different races. In 1949 and 1950 racially mixed marriages were also prohibited. The sanction for the prohibited sexual intercourse was seven years in prison. Between 1974 and 1982, a total of 1530 persons were convicted on that ground. In recent times, the South African regime is trying to somewhat mitigate the severity of these provisions. See *Le Monde* (Paris), July 31, 1984.



which are nothing else than the Prophet's transmission of the commandments he had heard directly from God during divine revelation. Islam, therefore, inherently seeks to abolish the difference between positive and natural law, since – if led to its ultimate consequence – it does not allow the state to legislate. Naturally, this would be impossible in a society that is considerably different from that in which the Arabians have lived in the VII century; consequently, in modern times, some states with majority Muslim population became secular. However, even the states in which such secularization is most advanced, this process has, of recently, started to be reversed: provisions pursuant to which the legislator is under the obligation to observe the Sharia law are being included in constitutions; moreover, the Sharia law is directly applied in some territories. In a recent court decision in Egypt, where women were emancipated, the right of a wife to ask for a divorce had been denied. The statement of the judge, who was clearly raised in a different spirit, that the real reasons for such inequality were not clear to him, but were certainly clear to Allah in his infinite wisdom, is very indicative.

As underlined many times by the critics of the idea of natural law, such notion of the natural law stands and falls together with the conviction of the existence of God. If there is no God, there is no creator of the natural law, which then remains a creation of men, who use God as a cover. The very interpreters of divine natural law have contributed to this logic, by adjusting their instructions or explanations to the development of the society over time, or, in more simple terms, adjusted them to the interests of the elites they had served.

The other group of advocates of natural law starts from certain inherent characteristics of men, more specifically, from reason. Grounded in that understanding is the objective “True Reason” that can be used to understand the fundamental, true legal rules, which are more than just legislator's whims; these are, if contrary to natural law, an expression of utter autocracy. This position is most clearly expressed in the conviction that some freedoms and some rights are inherent and unalienable to man, as a part of his dignity. The reflections of this theory are visible in recently promulgated documents, such as the Final Act of the Conference on European Security and Cooperation in Europe, adopted on August 1, 1975 in Helsinki. Its signatories commit to promote and encourage

the exercise of civil, political, economic, social and cultural rights and freedom “all of which derive from the *inherent dignity of the human person* and are essential for his free and full development”.<sup>7</sup>

As could be expected, the grand declarations from the age of enlightenment are even more direct. For instance, the US Declaration of Independence of July 4, 1776:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness...<sup>8</sup>

Or, the Declaration on the Rights of Man and of the Citizen, adopted by the French constitutional assembly on August 26, 1789:

The representatives of the French people...have determined to set forth...the natural, unalienable, and sacred rights of man, in order that this declaration...remind them continually of their rights and duties.<sup>9</sup>

Such understanding of natural law takes as its starting point the notion that nature is not a collection of facts, a neutral reality, but that it has a deeper meaning associated with to values and that it has a concealed goal, which Aristotle called *entelechy*. This goal can be understood by “True Reason”. The natural law theory is based on the assumption that there are eternal “true” values, which intelligent people can reveal by intellectual effort. Any thinker worthy of that name (e.g. Plato’s philosopher) shall discover the same values, that is, the same norms of natural law. This should be a non-ideological understanding of the values, which classifies all other “unreasonable” values as “ideology” in a reproaching sense of a distorted consciousness, as a way of thinking influenced by selfishness, sensitivity and ignorance.

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7 Principle VII paragraph 2 of the *Conference on Security and Co-Operation in Europe Final Act*, Belgrade, Federal Information Committee, 1975, author’s italics.

8 *Ljudske slobode i prava (Human freedoms and rights)* Belgrade, Savez udruženja pravnik-a Jugoslavije, 1968, p. 28 (translated by D. Prodanović).

9 *Ibid.* (translated by P. Nikolić).

Even a superficial knowledge of the “values” and rules defended and advocated for on behalf of human nature and true reason suffices to show that the interpreters of inherent values in fact advocate for the accepted objectives and interests of their cultures and civilizations, and that they have always had an ideology, however adamantly they denied it. Thus, the feudal order and slavery were defended as “natural”.<sup>10</sup> The abundance and difference of cultures that concurrently exist in the world render it impossible and dangerous to assume that there is one exclusive system of true values. This becomes more evident when one realizes that, in most cases, the interpreter of natural law – be it a statesman, a judge or a teacher – claims that true and natural values are those contained in the religious learnings or ideological tradition that he did not choose rationally, but which became a part of his personality under the influence of the surroundings in which he was formed. As everyone knows, other societies are often criticized based on the standards of one’s own environment, where these standards are represented as universal. It seems that in the most selfish of cases, natural law is covert morality.

Such criticism of the existence of natural law does indeed seem convincing. However, as is usually the case, things become complex when they seem logically most simple. Are there any signposts for a value-driven criticism of the legal order? Before analysing this issue, let us show what another extreme understanding of law, the so-called pure positivism, can result in. According to positivists, the most noted of which in Europe is the Austrian lawyer Hans Kelsen – a man of vast intelligence and perceptiveness – legal norms cannot be examined with regards to their “truthfulness”, justness, reasonability, morality, and the like, but only in regards to their validity and *meaning/purpose*. Law originates from some-

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10 The attitude towards slavery, as provided by St. Thomas Aquinas also illustrates the complexity of the natural law theory, which is disregarded by many. It is therefore worth citing him: “A thing is said to belong to the natural law in two ways. First, because nature inclines thereto: e.g. that one should not do harm to another. Secondly, because nature did not bring in the contrary: thus we might say that for man to be naked is of the natural law, because nature did not give him clothes, but art invented them. In this sense, ‘the possession of all things in common and universal freedom’ are said to be of the natural law, because, to wit, the distinction of possessions and slavery were not brought in by nature, but devised by human reason for the benefit of human life. Accordingly the law of nature was not changed in this respect, except by addition.” *Summa theologiae*, I-II, 94, 5.3.

one's privileged will. If the will of the competent creator of law, a recognized legislator (who again is determined by a legal rule, most often embedded in the constitution) is behind a rule, such rule shall be valid: if not, it simply does not exist. The interpreter of law, first and foremost, the judge, is to examine whether the norm exists and to find its true meaning, if it is not evident at first sight.

Naturally, the positivist scholars, including Kelsen, who were consistently opposed to Nazism, are not morally indifferent. They just distinguish between their roles as lawyers from the other roles they have in the society. In these other roles, they are free to demand that the content of legal norms be different and thus express their outlooks on the world. However, this by no means implies that their way of thinking and their value assessments can affect the validity of the existing law. The explanation is simple: according to positivists, there is no reliable ground on which someone claiming that a given legal norm is not good and should not be applied, could stand. That person is not vested with such power and would replace the will of legislator, which was constituted in accordance with the law, with his own will, whereby he would impose himself on the entire society with far less right. Why would a rational insight or a moral sentiment of anyone, even a distinguished individual or a group, be more important than the position of the legislator? Such a criterion, simply, does not exist.

The negative consequences of the positivist line of thinking were best demonstrated in Hitler's Third Reich. As is generally known, Hitler obtained power "legally". Hindenburg, who was then the president of the republic, had appointed him chancellor based on the power vested with him by the then valid constitution. After the burning of the Reichstag, Hitler's cabinet was vested, again, in line with the constitution, with legislative powers, which enabled the manic dictator to rule until the very end. Therefore, everything that happened in Germany in the Nazi times was legal, based on law, including all the abominable things that the entire world despised: the racist Nuremberg laws, the right of the government to preventively deprive people of freedom without any proof of guilt, the existence and the regime of concentration camps, and the "final solution" of the Jewish question in the form of mass killing of millions of people, many of whom were German citizens, only because they had borne an inherent "objective" guilt of impure blood. Even though due to

his convictions and his racial origin, Kelsen could have emigrated in order to save his life, he still claimed that the laws of Hitler's Germany were valid laws, since they were adopted by the competent legislator.

Kelsen's example only shows the consequences of intellectual consistency, but one should not forget that Hitler's regime was enabled and helped by an army of high- and low-ranking civil servants who were raised in a strict positivist tradition. The Nazi coup did not destroy the institutions, did not cause extensive changes in terms of staffing, and had almost entirely relied on the existing civil and military bureaucracy, which often did not fully incline towards the Nazis, but was in essence conservative and anti-democratic. None of them, however, could question the validity of the inhumane norm they have applied, because it had originated from a "legal" source. Most officers, who realized, by the end of the Second World War, towards just what kind of disaster the "Austrian corporal" was leading the nation, had refused to take part in a plot against him, since they swore their allegiance to him as the head of state and supreme commander!

This is why a part of the indictment in one of the later Nuremberg trials, the one against judges and other members of the legal profession, was exceptionally sharp:

Indeed, the guilt of these ... defendants ... is, in many respects, deeper than that of many full-time officers of these (that, is, Nazi – *V.D.*) organizations. The defendants were highly educated, professional men, and they had attained full mental maturity long before Hitler's rise to power. Their minds were not warped at an early age by Nazi teachings; they embraced the ideology of the Third Reich as educated adults. They all had special training and successful careers in the service of the law. They, of all Germans, should have understood and valued justice.<sup>11</sup>

The final part of the cited opening statement starts with the assumption that a German lawyer was able to distinguish between law and justice, something that a pure positivist cannot do.

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<sup>11</sup> *Trials of War Criminals Before the Nuremberg Military Tribunals under Control Council Law No. 10*, Washington, Government Printing Office, 1951, III, p. 106

In defence of positivism, it must be noted that there are less stringent variants of positivism, such as the one advocated for by famous British lawyer Hart. It allows law to be interpreted so as to be more in line with justice, where justice is understood in the spirit of English utilitarian tradition, which considers ethical a position that brings the greatest sum of pleasure compared to the sum of pain. This inconsistent positivism, however, is possible only in such legal systems, like the Anglo-Saxon, where courts and judges have considerable freedom in interpreting the law, which is predominantly comprised of customs, and where they are, in part, creators of law through the creation of legal precedents in their judgments.

Let us go back to the situation in 1945 in order to demonstrate further the dilemmas resulting from positivism. As could have been expected, the defendants to whom the above-mentioned harsh words were directed, defended themselves by claiming they had only applied the positive law. At the main Nuremberg trial against the greatest criminals of Hitler's Germany, held before the International Military Tribunal in 1945-1946, the Nazi leaders have used a similar defence: they had, first and foremost, obeyed orders, which had to be obeyed since they came from a recognized authority; this authority, the leader of the Reich – Hitler – is dead, and any guilt is buried with him. Secondly, their actions were not prohibited – even if morally questionable, they did not constitute criminal offences under any law and no sanction had been prescribed for them.

Nevertheless, the court had sentenced them to strict punishments, using – roughly speaking – two fundamental arguments. The first one could be called “positivism against the positivists”. Namely, the International Military Tribunal was established by a Charter adopted by the winning great forces, a legal act describing the crimes for which the trials are initiated and the sanctions that can be applied. Consequently, such a tribunal could not have examined the validity of the law binding it. However, in order to avoid the objections that the law applicable to Nazi criminals is the law of the winners, the second argument was put forward, according to which many of the actions taken by the accused were contrary to international law, which was and had remained superior to any national law, including German law, and which was interpreted as directly imposing obligations on every individual.

For example, an officer who is ordered to commit a war crime, clearly described in international rules of warfare, shall be guilty of his actions if he had a moral choice, regardless of the authority of the one who gave the order and the iron laws of military discipline.

It was, however, clear that the motive for such actions lay in the strong need not to allow the worst Nazi criminals to remain unpunished. There was general consensus on that issue, which few dared disturb in the then existing atmosphere of abhorrence. When, however, more “petty” crimes were at stake, the dilemmas regarding the assessment of legal rules and human actions had resurfaced once more. In the process of the so-called “denazification” of Germany, which was, in fact, the only attempt known so far at democratic re-education of an entire nation using external influences, a number of persons who had borne considerable moral responsibility, and who acted pursuant to the positive and valid law, were to be subjected to measures exercised by the allies. These persons included the above-mentioned denouncers, who had denounced their spouses and close relatives, because that was their duty, even reinforced by the threat of sanction in case of failure to do so. Their example allowed for the full development of discourse on whether *post festum* punishment for actions that not only were not prohibited, but were also encouraged by law, is the ultimate violation of the principle of legality, pursuant to which no one can be punished for an act that had not been unambiguously legally designated as a criminal offence.

Naturalists, those who promote the concept of natural law, were able to provide more convincing answers in this case. Whilst pure positivists from Kelsen’s line of thinking were forced to admit that denouncers would have to remain unpunished (provided their denouncements were not false) and Anglo-Saxon positivists such as Hart replied that a new law, contrary to the first one, must be adopted in the interest of a greater good, since the first one is still in force even though it violates the rule of legality, modern naturalists, joined by some converted positivists, such as the famous German lawyer Radbruch, claimed that there exists some sort of “internal morality” of law, which controls its “validity”.

In order not to be accused, like the former advocates of natural law, of introducing religion into law or of replacing general values by individual ones, some of the new naturalists had attempted, instead of subjecting certain legal rules to moral criticism, to set

the criteria for assessing the legal system as a whole. In other words, if the entire legal system of a given state does not meet some critical conditions, it does not deserve to bear that name. In lack of its existence, human behaviour is necessarily measured against such rules that are beyond dispute, be it international law or justice and justness.

The example of characteristics that a legal system worthy of such a name must have can be the criteria suggested by American lawyer Lon Fuller. According to Fuller, such a system must be general, promulgated, prospective (not retroactive), understandable, non-contradictory, must not require conduct beyond the ability of those affected, be relatively constant through time and there should be a congruence between the laws as announced and their actual administration.<sup>12</sup> In more simple terms, a legal system does not exist and does not deserve to be observed if its rules are not applicable to all citizens in the same way, if there are norms that are secret, unpublished, if laws that have a retroactive effect are promulgated, if the rules are not clear to a man of average intelligence, if one of its parts is contradictory to another, if a man is requested to do something that is not humanly possible, if the rules change so often that the citizen cannot establish any permanent relations nor predict the consequences of his actions and – finally – if one thing is written in law whilst something else takes place in reality, that is, is applied as law.

The so-called legal system of the Nazi Germany, and, unfortunately, of many other countries in the twentieth century, was such that it did not conform to these principles. Some people were above the law, and some outside its reach: the law did not apply to the former and anything can be done towards the latter. There are regulations that are not published, such as the instructions on concentration camps, the rules of the final solution of the Jewish question, the famous Hitler's "Night and Fog" decree and a series of orders on the taking of hostages, which were also applied in occupied Yugoslavia during the Nazi occupation.<sup>13</sup> Laws are adopted that render people guilty of offences they committed thinking

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12 L. Fuller *The Morality of Law*, New Haven, Yale University Press, 1965, p. 33 et seq.

13 In Germany, such regulations were called "drawer decrees". The existence of secret laws in modern-day Chile is evident from the fact that, in Chile, each piece of legislation of a general character has an ordinal number, but some numbers are omitted in the official gazette.



that such behaviour was allowed – the same trait is shared by those regulations that order the court to pronounce punishment according to “healthy national feeling” or to apply analogy, that is, to consider as criminal offences the acts that were not described as such in the criminal law, but “resemble” them. The ambiguity and murky language of legal norms, unfortunately, are so widespread that there is almost not a single state the laws of which are clear to an average person: fortunately, in most states such laws do not affect the vital interests of men, but concern areas in which the help of professionals can be obtained. The number of systems that require limitless devotion to the leader, denying such devotion to a friend or a relative, is not small. To request the impossible is not only to request what physically cannot be done, but also to request that which is not attributable to men, such as to “show affection” by sacrificing children and one’s closest. The legal insecurity stemming from the fact that the law, instead of being a stable system, is only a way to issue orders, a legalization of the potentate’s wishes, prevents a man from basing his life on the indispensable extent of predictability, to take actions on the consequences of which a reasonable degree of certainty exists.

Finally, what is most demoralizing and what turns law into a mound of empty words is the fact that the written law and the law in reality do not resemble each other at all. For example, in modern-day Paraguay, which has been under the unlimited rule of the permanently “re-elected” dictator Alfredo Stroessner, the constitutions and laws are in place, but in fact, are not valid. It was in this country that the term for such a real situation was created in the form of a word taken from the local Indian Guarany language. This expression, *mbarete*, when translated, means “a power over others”. According to unwritten *mbarete*, it is known who can do what and in relation to whom, regardless of what is written in legal regulations, it is known who is allowed to do what and what is not permitted, despite the courts and the police.

Even though the mentioned criteria seem convincing, one can ask oneself what gives Fuller and those who share his beliefs the right to impose them. Why do we deny the legal system that has the deficiencies described above? It turns out to be on behalf of some higher morality, on behalf of the civilizational achievements, which are sometimes disputed for not being uniform and also because of the fact that it can be claimed that other traditions

and other situations exist, where such rules are no longer applicable. Such a position is, in addition, challenged as a product of the “western”, European civilization, whereas, allegedly, there are different traditions, inherent to other cultures. Still, when it comes to concrete situations, critics most frequently invoke exceptional historic circumstances, when there are higher interests at stake, and justify temporary deviations with regards to certain enemies, as being executed in the name of future general wellbeing. This brings us back to legal relativism and the circle is closed again – or rather, all the arguments are repeated.

The German Marxist Franz Neumann is less ambitious: in his opinion, the only “reasonable” request that can be set with regards to law is generality – that is, the request for the law to apply equally to all situations and all men in them.<sup>14</sup>

However, the “moderate” natural law line of thinking we have just described, spares consistent systems with hideous contents. For, it may well happen that a legal system has all the traits required of it, and yet, still contain inhumane provisions. For example, all citizens may be prohibited to move outside their place of residence by a duly promulgated regulation, which was made public in a timely and clear fashion. All children older than ten *may* be declared criminally liable and the death penalty can apply to them, fully in accordance with the law. These are not fictitious examples. The question is, actually, whether the racist apartheid system, being meticulously prescribed in South-African law and implemented in practice, could be challenged based on the above-mentioned, general argumentation. This means that the explanation as to why and based on what criteria are such norms unambiguously unacceptable needs to be sought further.

All that has been said on the contents of rules regarding the requested, that is, prohibited behaviour, can also apply to the threatened sentences, that is, to the fulfilment of threat, which is implicitly or expressly included in a legal norm. Some sanctions, inherently and regardless of the acts they are a result of, and regardless of the righteousness of the procedure in which their enforcement was decided on, conflict with the extended sense of humanity and contradict the inherent human dignity. Whilst the capital punishment, as a drastic measure of taking one’s life, is still

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14 F. Neumann, *Behemoth*, London, Gollancz, 1942, p. 360.

being debated on – a debate that is also affected by other concerns, such as its actual efficiency as an instrument of intimidation – the latest developments have led to a condemnation of all inhumane and demeaning punishments. These primarily include interferences with physical integrity, such as different types of mutilation and corporal punishment.

### **Consensus on general values**

Is there a way out of the dilemma we are facing due to the deficiencies of the natural law and the impotence of the positivistic criticism of the intimidation system, which is the base of any law? Intimidation is particularly underscored in the provisions aiming to directly preserve the constitutional order, the rule of a certain group of people, regardless of its legitimacy or justification: whether as democratic – ruling on behalf of the numeric majority, as oligarchy – ruling on behalf of the favoured elite, or as class – ruling on behalf of a social class. In order to avoid misunderstanding, the criticism in question is not related to the origin and grounds for power, but concerns actions that cannot be sustained even when they are prescribed by a democratically elected representative body, by the advanced class compared to the retrograde one, by majority against the minority.

Instead of resorting to speculation, the solution is probably best sought in a more modest manner, by trying to establish the extent, at a given historic period, of the universal perception on some fundamental values. Instead of pondering on the origin of such universal values, however important that question may be, one should rather wonder whether there are some leverage points to learn whether there is a wider consensus on what these values are.

The position taken in this study is that there exists a certain number of universal values, related both to man and the entire humanity, the recognition of which can be empirically proven. As is usually the case, one historical period (this is also valid for the past decades of this century) carries two opposing tendencies. On the one hand, there are the atrocities with the description of which we have started this study; on the other hand, a belief is developed that the world is an inter-dependant whole, the further development of which must not be chaotic, a belief that there are the common operations of which agreement must be made, and that world that cannot be indifferent towards distant people and events.

In other words, humanity will not survive if it does not take care of its own survival. Technological development, which seriously jeopardizes the survival of the world, has ensured that this is not just an empty claim. Nuclear and similar weapons threaten human kind with realistic suicide; no less serious, even though not as fast and dramatic, is the danger of having the life on the planet terminated due to irresponsible consumption of its non-renewable resources, pollution and over-population. These dangers would suffice to establish a notion of universal value, which did not exist in the nineteenth century, because every state had a sovereign right to wage a war, and every man and every business had the right to immoderately and limitlessly consume the nature's goods – as nature seemed infinitely rich.

In this century, or more precisely, after the experiences of the Second World War, the perception of human dignity, fundamental rights and freedoms, was transferred from national into international competence. Until then, mainly under the influence of bourgeois revolutions and subsequent development of the workers' movements, some of the main human attributes as a free and sacrosanct being were the objects of conflicts within states. The objective of such fight was the adoption of overarching doctrinaire documents, which would control all regulations and orders of the state, while preventing the legislative and the executive powers from breaching a man's autonomy, which is the most important attainment of the recent civilisational progress. This fight was enticed by various historical circumstances, and its protagonists advocated for various theoretical positions, the most prominent of which were described above; however, all successes and failures were limited to the territories of given sovereign states. Hence, for a relatively long time, societies in which the scope of fundamental rights of man differed considerably, including even those where an individual was nothing compared to the abstract state or a concrete autocrat, had existed concurrently. The states were sovereign and no one could interfere with the position their citizens had within the state. Ottoman Sultan, the Russian emperor and the members of the Swiss Confederation Federal Council were equally respectable members of the international community, just as Mussolini, Hitler, Stalin, Roosevelt and the king of Norway were somewhat later.

Unlike previous wars, the Second World War was also fought over some principles of organization of the world and societies in

it. The Alliance that was formed over time against the forces of the Axis – Germany, Italy, Japan – and its satellites, had differed from most former alliances in as much as all of its members had supported one – certainly not quite precise – programme for the world after the victory and also because this programme included even those areas that were not traditionally considered foreign policy. Regardless of all the differences between the members of the anti-Hitler coalition, both with regards to their proclaimed ideology and their real actions (in case of some countries just before the war these actions were rather problematic), the Second World War was, in essence, a conflict between those who supported (honestly or in exigency) some humanitarian principles, on the one side, and those who renounced them on behalf of various forms of biological supremacy, inequality and lack of freedom, on the other.

In this dramatic period, the membrane of state sovereignty had finally been broken. It became clear that the relations between those who rule and those who are being ruled concern the entire humanity. In that sense, the United Nations, as that war alliance was named, fought the war with a mission wider than a sheer “victory” – among others, the insistence on Germany’s unconditional capitulation was based on the intention to thoroughly change the society in that country (the mentioned denazification).

According to the Atlantic Charter of August, 14, 1941, the first, most concise and best known programmatic document of the allies, the war is not fought in order to defeat Germany, but “the Nazis’ tyranny”, and one of the consequences of victory should be the possibility for the people in all countries to live “free of fear and want”.<sup>15</sup> These negatively determined “freedoms” express those components of human rights that were subsequently named civil and political, and economic and social rights.

When the United Nations were transformed from a war alliance into an organisation for the preservation of peace under the same name, open to all states, a way had to be found to maintain the cherishing of human rights and freedoms at least on the level that was achieved during the war. This is why the Charter of the United Nations gives high priority to human rights among its tasks. Already the second introductory paragraph, immediately following the famous vow to save succeeding generations from the scourge of war,

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<sup>15</sup> *Ljudske slobode i prava*, cited above, p. 45.

underlines that the members of the UN want to reaffirm “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”.<sup>16</sup> One of the main objectives of the new world organization is “to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” (Article I, paragraph 3).

Particular attention should be given to Article 55 of the Charter, which, in our opinion, includes the principal “philosophy” of the United Nations concerning a man’s position in society. Namely, the United Nations should promote: “a. higher standards of living, full employment, and conditions of economic and social progress and development; b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

Therefore, already in 1945, the complexity and amplex of the human rights problematic were noted.

It is important to emphasise that this reasoning also hides yet another ground for criticising the legislation of any state – challenging the sovereign right of a government to treat the population of the state according to the rules the government itself determines or fails to determine. In addition to the moral and natural-law objections, which are, as we have seen, difficult to ground in a universal manner, or which can at least be challenged by invoking specific traditions and cultures, it is considered that actions towards human beings in one country indirectly affect the entire international community, since they have repercussions in other states. The legacy of the Second World War is the conviction that aggression is prepared in internal politics, that attacks on other nations start as soon as the freedom of the country’s own people, or at least its most conscious, humanistically oriented part, is dealt with.

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<sup>16</sup> All citations from the Charter of the United Nations in the Serbian version of the study are taken from the issue of the UN Information Bureau in Belgrade, as translated by M. Šahović and B. Babović. (The citations in the English translation are taken from the Charter of the United Nations as published on UN website at <http://www.un.org/en/charter-united-nations/index.html>.)

Concerning the provisions of the Charter, lawyers, naturally, first and foremost investigate whether they constitute an international obligation for the member states of the organization to observe and promote human rights and freedoms. We believe that the answer to this question is affirmative and have elaborated on the issue in detail in a different paper.<sup>17</sup> However, UN members – practically all existing states – are committed to observing human rights and freedoms not defined in the Charter.

It is quite understandable that the first international action, mandated by the Charter in favour of human rights, was understood as the need to determine these rights more closely. The Universal Declaration of Human Rights stemmed from it on December 10, 1948, as one of the most important documents of the twentieth century and the most cited decision of the United National General Assembly.

The Universal Declaration was adopted at the nick of time, so to speak, at the very end of a favourable political setting that had emerged during the Second World War. Not one UN member could abruptly disown one of the most important principles in the name of which the war was fought. The Cold War had already started to take effect, but was still not at its peak. Hence the differences in the notion of human rights were not greater than those that actually exist in theory and come down to either the defence of a person from unbearable supervision and autocracy of the state – which is the very foundation of the civic understanding of human rights – or to the request for a change in the social system in order for it to provide more opportunities for everyone to find a balance between their personal freedom and life in a community, a notion on which consensus was reached between the original Marxist thought and, at least verbally, those who sought to abuse that thought in order to fully negate human rights. These confrontations could have happened both in good faith or in bad, the latter being the case when insistence on defending one position was not motivated only by consistency in terms of ideas, but also by a covert desire to sabotage the entire endeavour. In any case, no one had the power or the audacity to stand up against the idea that there must be a uniform, universally valid core of fundamental

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<sup>17</sup> See V. Dimitrijević, "Ljudska prava u Ujedinjenim nacijama" (Human Rights in the United Nations), *Arhiv za pravne i društvene nauke*, 1983, p. 167. et seq.

human rights and freedoms: the Declaration was finally adopted without a single voice against. It is therefore an adequate interpretation of the UN Charter.

In over thirty five years, the Declaration constantly gained in strength and authority. This declaratory and programmatic act was to be supplemented by a real international treaty, signed and ratified by the contracting states, which would thus take on very specific obligations.

The drafting of that treaty was a lot more difficult and took more time than the formulation of the Declaration. This was, to an extent, due to the fact that the states were a lot more cautious when it came to an act that would impose unambiguous and direct obligations on them; but the main reason lay in the deteriorated situation on the international level, where human rights began to be utilized as political tools. True ideological differences, which played a major role in the previous period, became an illusion, which was hiding a tendency of aiming at every political system to gain a favourable position without having to change. The conditions in one's own environment were being declared an international standard, which also gives one system the opportunity to invoke the responsibility of others, without paying any price. In addition, in many environments the issue of human rights started to be perceived as a dangerous ground, which can be occupied both by real and imaginary enemies or foreign agents.

During the seventeen years of negotiations, the envisaged single treaty was replaced by two human rights' covenants, whereby "classical civic and political rights" were separated from the "new" economic, social and cultural rights. Both international covenants were adopted on December 16, 1966, and have entered into force some ten years later, when they were ratified by the necessary number of states.<sup>18</sup> Until the first half of 1984, only just over a half of the UN member states have ratified the covenants. Contrary to expectations, the states that are subject to the commitments included in the covenants are distributed rather evenly in geographic, ideological and political terms. Whilst the states of "real socialism" have, in time, abandoned their reservations and without an exception have all ratified what was, for them, a contentious

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<sup>18</sup> Translation into our languages can be found in the collection *Ljudske slobode i prava* (Human Freedoms and Rights) (see at 8 above) and also in specialized brochures issued by the UN information bureau in Belgrade.



International Covenant on Civil and Political Rights, the United States of America, whose statesmen used to be champions of human rights and whose politicians often find they need to be the “conscience” of the humanity, have failed to do so.

International covenants necessarily differ from the Universal Declaration. Whilst in the latter the rights are declared in a general and absolute manner, in the covenants, care is taken of the actual possibilities for the enjoyments of rights and freedoms envisaged therein. The differentiation between various categories of rights in the two covenants has enabled this adjustment to be carried out in a manner more suitable for the particular category of rights.

“Classical” civil and political rights are perceived in the relevant Covenant as subjective rights, inherent and unalienable, rights that every state must guarantee to all individuals subject to its jurisdiction by providing them effective remedies in cases of their violation. Having in mind the scope of the obligations, not all rights and freedoms are unlimited. States reserve the power to balance them with the needs of the community and the rights and freedoms of others, by means of laws (not arbitrarily). Thus, for instance, the freedom of expression may be restricted by law if this is necessary for the respect of the rights or reputations of others, for the protection of national security or of public order (*ordre public*), or of public health or morals (Article 19, paragraph 3). However, the Covenant includes a *core of the most fundamental* rights that cannot be denied in any case, not even when, pursuant to Article 4, all rights can be temporarily suspended “in time of public emergency which threatens the life of the nation”. These are: *right to life, prohibition of torture or cruel, inhuman or degrading treatment or punishment, prohibition of slavery and servitude, prohibition of imprisonment on the ground of inability to fulfil a contractual obligation, the principle of legality of criminal offence and sanction* (the mentioned *nullum crimen, nulla poena sine lege* principle), *the right of every man to recognition everywhere as a person before the law and the freedom of thought, conscience and religion*. These unconditional rights and freedoms are an attainment of civilisation that is independent of the Covenant as an international treaty and have the rank of the highest, absolutely mandatory norm of international law, a norm called a cogent norm in legal theory.

In this manner an international, and therefore, universal consensus was reached on the boundaries under which a man’s po-

sition in society cannot fall, and which no government cannot transgress. The intellectual, ideological and theoretical origin of a such a criterion can be subject to debate – and constantly is – but, given all that has been said before, we shall not go into such a debate, since our objective was to show that there are checklists to assess the state of play in every country, every society, which is empirically based and which reflects the attained level of social consciousness. In order to prove this, one can refer to the consensus on the issue reached through various surveys or analysis of legislation and political programmes, or the analyses of public opinion, that is, the positions of the majority of the general public in most countries.

However, the fact that the Universal Declaration on Human Rights was accepted by all United Nations' member states, whilst the International Covenant on Civil and political Rights has so far been ratified by over eighty states, seems a strong argument, for two reasons. The first one is more formal, and is more significant for lawyers than for non-lawyers. Namely, an international standard, a part of international law was created, which unconditionally imposes on every state the obligation to observe certain fundamental rights and freedoms, and from which stems the power for all other states and international organizations to interfere with such "internal" relations, that is, to react to the position in which men are in other communities. In such cases, the argument of absolute sovereignty, based on which the government is allegedly free to do whatever it wants, cannot be raised against such actions. Such argument must be accepted even by the strictest positivists, since they also recognize that international law supersedes the law of any individual state.

The second argument is political in nature, and is consequently more important. As is generally known, major declarations, such as the Universal Declaration of Human Rights, are adopted by authorized representatives of states in international organizations who are, as a rule, delegated by the executive power, that is, the government established pursuant to the constitution that is in force in the given country. International treaties, such as the International Covenant on Civil and Political Rights, are signed by the representatives of the executive power, and then ratified by the authorities so determined by the constitution, usually the national assembly. Thus, it turns out that the described criteria were not

imposed on the states in any manner. They were accepted by the elites, that is, the representatives of the ruling groups, and, given that these international treaties limit such power, one can reasonably assume that this is the minimum they considered they had to agree or should agree on, for any reason, since it is a part of their programme, which establishes their profile in terms of internal and international politics and in terms of ideology. Naturally, this was a result of pressures, since concessions of this type are not granted without pressure, but they had originated from the very surroundings represented by the ruling groups, whether expressed in a clear democratic process or in an indirect manner that at least partially entails the exercise of a collective will or expresses the general attitude. We therefore believe that all this gives us the right to consider the standard established in the mentioned international documents and reiterated in other similar acts of universal, regional or national nature, as proof of universal validity, at the present level of development, of certain criteria based on which a legal system of every state can be assessed and consequently, a on which critique of the system of the threat of violence can be based.

Such criticism, of course, cannot be as radical and comprehensive as it would be if it were based on morality, an understanding of natural law or an ideological concept of a perfect society, but, modest as it is, it still has an advantage of being based on solid grounds that can hardly be challenged. In our case, it will be even more modest for two main reasons. Firstly, in this paper we aim to establish which states can be marked as “worst” for man and his dignity, when situations described in the beginning take place – situations that we described, based on an overall impression, as the heavy burden of our era. On the other hand, we are fully aware of the fact that many rights and freedoms, proclaimed in international documents, are violated on a daily basis in many places that are otherwise not considered as examples of terror and the reign of terror. Accusations of such violations, regardless of who voices them, result in long-lasting disputes, misted by disagreement over facts and different interpretations of the words used, where cultural and ideological differences are of considerable significance.

In order to avoid this, we shall try to base the absolute minimum rule, the one that can be used to criticize the intimidation system, on those freedoms and rights that cannot be abolished or challenged under any conditions or due to any emergency.



# I VIOLATION OF FUNDAMENTAL HUMAN RIGHTS

## RIGHT TO LIFE

In the hierarchy of human rights, the inherent right of every man to live takes the highest position. Even though any deeper insight clearly shows that such life must be determined more closely as a dignified life, instead of being understood as pure subsistence under any conditions. This is a logical focal point for obvious reasons, which may even sound a bit banal: a man can stop being a man for many reasons, but is beyond any doubt not a man any longer if he ceases to exist.

The current understanding is that the right to life is not absolute. It can be better expressed as a right of a human being not to be arbitrarily deprived of life. In many societies it is considered that the interests of the society are more important than the lives of its individual members, and that the society can therefore eliminate undignified and dangerous individuals by means of capital punishment. Consequently, the right to life is, in fact, reduced to procedural guarantees, which render the taking of life complicated and the objective of which is that such a measure is to be taken only when necessary; such necessity is determined based on a general criterion that had been set in advance, in a decision delivered on the grounds of objective deliberations of an impartial authority. This, however, still does not any prevent any given legislator from prescribing the death sentence for, as stated in Article 6 of the Covenant on Civil and Political Rights, “most serious crimes”. Of course, the term “most serious” is also a standard that can be interpreted differently in different societies. For instance, there is a distinct difference between countries that protect primarily

political rights with the threat of death and those that utilize such threat for averting the attacks on some other values, such as the life of another human being.

In addition to the request that the death penalty must be prescribed by law, for criminal offences that are considered to be socially most dangerous pursuant to the society's criteria, there is an additional limitation, which is often overlooked. The statutory provision of that type cannot be contrary to the *entire* Covenant on Civil and political Rights, which at least means that the death penalty cannot be a threat to a person trying to exercise his or her fundamental human rights. For instance, if a person's act is an exercise of the freedom of movement, freedom of expression or the right to assembly, the punishment for such an act can by no means be a death sentence, which, unfortunately, is too often the case.

In order to explain this, let us recall two examples. According to the Covenant (Article 12), everyone is free to leave any country and return to his country. In the USSR and in the countries that consistently applied the criminal-law model of the Stalinist era, a simple crossing of the state border constituted "treason", which implied a death sentence. Pursuant to the interpretation of the Covenant we are advocating for, illegal crossing of borders can be punishable (in the SFRY it is only a misdemeanour), but may never entail a death sentence, nor other disproportionately severe sanctions, for reasons that will be elaborated later.

The second example is the Nazi Germany. There, any instance of listening to a foreign radio-station could have been punished by death, and this happened often. Moreover – and this is a good illustration of the mentality of German lawyers – pursuant to the learned interpretation of the Supreme Court, which was reduced to the interpretation of the linguistic meaning of a positive norm, and did not by any means include its internal criticism, it sufficed for the accused to have heard only music.<sup>1</sup> Again, according to the Covenant (Article 19), freedom of expression also includes the right of a man to seek and receive information. This freedom can be limited and its abuse (that is, what is considered its abuse in a given case) is punishable. However, it is quite clear that the punishment cannot be strict, and can by no means be the strictest one of all.

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1 Neumann, op. cit., p. 373.

Death penalty, furthermore, cannot constitute an act of genocide, that is, it cannot constitute the taking of lives as a part of a plan to destroy, in whole or in part, a national, ethnical, racial or religious group.<sup>2</sup> Consequently, there are no grounds, contrary to what happened in Nazi Germany, to consider as the most serious crime a crime that can only be committed by a Jew, nor, as the case is in present-day Iran, an act that can only be attributed to a “heretic” who is a member of the Baha’i sect.

A clear limitation of the state’s right to pronounce a death sentence is linked to age. Life of a person younger than eighteen cannot be taken under any conditions. More precisely, death penalty cannot be pronounced to a person who was younger than that age when the act he/she is charged with was committed, and such person remains protected even if his or her guilt is discovered much later. The second limitation is only a seeming limitation: death penalty can be pronounced against a pregnant woman but cannot be executed while the woman is pregnant. In this manner, it is actually the life of the unborn child that is being protected,<sup>3</sup> not the life of the convicted woman; however, the stay of execution until the child is born, a child who will immediately be left motherless, is a typical example of “humanitarian cruelty”, which inflicts additional and unbearable psychological pain to the woman.

If the considerations of the right to life in present times were to be reduced only to the examination of the conditions under which a death sentence can be pronounced, it would imply that one is closing one’s eyes before overpowering facts. Namely, a vast number of people lose their lives without any guilt, on the basis of political decisions executed by state authorities or their associated organisations, without any judgment or explanation.

If we leave aside international conflicts and interventions, in which civilian population also withstands mass victims, and for

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2 See Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of The United Nations on 9 December 1948. Translation to Serbian in *Arhiv za pravne i društvene nauke*, 1/1949.

3 We shall not explore the issue of when the right to life becomes effective. Let us just recall that this right is often used as an argument against the legalization of abortion, since it is claimed that the right to life is acquired by the very act of conception. Then, as is often the case, two rights oppose one another: the foetus’s right to life and the woman’s right to control her own body. As a rule, this dilemma is resolved by prohibiting abortion after a certain period of pregnancy, even in countries where abortion is allowed.

a minute forget that the main present-day terror threat is that imposed by the existence of weapons of mass destruction, the purpose of which is to intimidate by the sheer fact that they can destroy entire cities and millions of people, we should emphasise that some regimes, irrespective of any procedure, quite “informally” liquidate a vast number of their true or imaginary adversaries. More hypocrisy lies in the fact that this also happens in countries in which the death sentence is officially abolished. Over the last decade, a new term became generally known – that of “missing persons”, individuals who were abducted by state authorities or their ill-concealed accessory services and taken away in an unknown direction, never to return.

In a different manner, the right to life is endangered by absolute negligence of the authoritarian regimes towards the social functions of government, particularly of the regimes that fall in the category of “national security states”. Mass child mortality, endemic diseases affecting a considerable part of the population (particularly those considered racially and socially inferior), hunger which careless and incompetent bureaucracies do not even try to eliminate or which is a side-effect of voluntaristic social experiments, are all a permanent and incessant negation of the human right to life.

In addition to all mentioned above, this right must be considered as but one part of a set of other unalienable human rights and freedoms, which will be discussed below.

## TORTURE

The fundamental principles that set the minimum of a man’s dignified life also include the prohibition of torture and cruel, inhuman or degrading treatment or punishment.<sup>4</sup> As mentioned before, one of the traits of the general attitude that has developed lately concerning human unalienable goods, is the exceptional position given to physical integrity. It should be added that the same position is taken by human dignity, but, unfortunately, the notion of dignity is rather vague and hence more susceptible to arbitrary interpretation and abuse.

Whilst the right to life may still have some exceptions, prohibition of torture and similar actions is complete and unconditional.

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4 Article 7 of the International Covenant on Civil and Political Rights.



Torture can be determined in several ways. Its modern meaning is best reflected in the definition given by the UN General Assembly in 1975:

Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other person.<sup>5</sup>

We do not intend to criticize this definition, since the elaborations that will follow will show its deficiencies; therefore, it constitutes sound grounds for understanding. Torture is reduced to abuse of the fact that men know pain and sustain it with difficulty in order to achieve a rational or irrational goal. The basis of torture is the desire to master another human being by abusing this weakness of the human body.

Torture has existed since the dawn of time, and a cynical person could describe a human as a being capable of calculatedly and cold-bloodedly torturing members of the same species.

Asian despots largely relied on torture. Torture existed even in the most enlightened states in which slavery was common – Ancient Greek states and Rome – and, after some reservations, went to become the general practice of feudal states, which lasted as late as the XIX century. At the end of that century, it seemed to have become quite sporadic, at least in Europe, which gave rise to optimistic statements at the turn of the century. Today it is, triumphantly, at the top of agenda.

The first objective of torture, which was reliably established back in ancient Egypt, had remained pivotal ever since. That is the desire to obtain information that the tortured person is considered not to would have provided otherwise. From the standpoint of the torturer, the person being tortured is hiding something, whilst from other standpoints, including the objective one, the tortured person either cannot or dares not to provide a statement, since

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<sup>5</sup> Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by UN General Assembly resolution No. 3452 (XXX), on December 9, 1975.

he/she does not have the information, wants to say the truth, or cannot tell the truth for moral reasons. The endurance and permanence of this motive on the part of the torturer is at the same time understandable and mysterious. Any absolute power tends to ensure it is in full control and perfectly safe. The existence of a personal secret, the autonomy of human psyche, present a permanent and agonising challenge for such a power. When there are no other means for learning what hides in a person's spiritual interior, this power resorts to what it finds to be its own principal characteristic and its very cornerstone – physical violence.

Violence is, again, essentially limited by the fact that it only affects the person's corporal side and can never reach further. This impotence of power, this main obstacle to full control, does not discourage further attempts to disclose a person by inflicting pain. Quite to the contrary, in the torturer it induces a particular type of rage, which is increased by torture. The torturer is not certain that his or her goal is accomplished, even if the victim is crushed and says whatever the torturer wants it to say. There is always a doubt that the given statement is false, and that it was given only to stop the unbearable pain. That is the main paradox of torture and the main incentive for further inflicting wrath on a person's body, which remains but an illusion of his or her substance.

Torture for the purpose of revealing concealed information and thoughts can have a dual objective. The first, more common and universally widespread one, is to obtain useful information on the plans and activities that could jeopardize the government. The mentioned tendency towards ultimate security breeds the utmost possible measure of fear. A combination of such an ambition and such a fright warrants omniscient services, which hardly resist the possibility that the infliction of pain provides for easy access to necessary information.

Similar is the tendency to obtain a confession by means of torture, a confession that will then be used as evidence against the tortured person. This tendency is not as old as the first one, since it presupposes the need for someone to be sentenced based on reliable evidence, which does not exist in primitive societies or in the systems of tyrannical and absolute power. This type of torture is exceedingly hypocritical, since it is all about form: a person, who will inevitably be punished anyway, is forced into justifying that punishment by his own statement.

The need for a confession thus gave birth to a revival of tormenting and a wave of torture in medieval Europe. Unlike the “more civilized” Greeks and Romans, barbaric tribes that have settled in Europe during the period of migration were less prone to torture as a method in criminal proceedings. A simple reason for this lay in the fact that their procedure was less rational and more magical in nature. In order to prove innocence, it sufficed that the accused swears an oath himself or that other people swear an oath on his behalf, where the number of people who need to swear was determined in proportion to the gravity of the accusations (purification oath). In addition, the accused could subject himself to „divine judgment“, which, in fact, was a call to the deity to provide a given sign and thus show whether the person accused was guilty or not. The „divine judgment“ (ordeal), however, could have some painful forms, such as the gripping of hot objects, but it was not its purpose to inflict pain. The outcome of „evidence methods“ did not depend on how long the accused could sustain suffering, but rather on whether consequences did or did not take place, that is, on the extent of injuries caused to the accused. Furthermore, some modern researchers claim that certain forms of „divine judgment “are predecessors to the present-day „lie detectors“, since they registered corporal manifestations of psychological conditions, such as increased or decreased secretion of sweat or saliva. Naturally, this does not mean that such forms of investigation of guilt had any real sense and had succeeded in differentiating between the guilty and the innocent. The fact that some people did not sustain burns or that the accused maidens’ champion had won a duel did not mean that the accused was innocent. The „water trial“ was also an example of such practice, dating back to Assyria and Babylon. It was not painful at all, but was completely arbitrary: guilt or innocence depended on whether the accused, his limbs tied, when plunged in a river, sea or a lake, sank or floated.

Under the influence of Christianity, criminal procedure was rationalised in as much as reliable evidence was demanded. Unfortunately, the soundest of such evidence was the confession of the accused. The accused would, therefore, no longer depend on a set of supernatural circumstances, but on what he has to say. Humans’ natural propensity not to make their position more difficult without any need was to be overcome by torture, particularly in

cases when the sin was of such nature that no witnesses could be found. Hence torture for the purpose of obtaining a confession was mostly related to the investigation of crimes of thought, as the inquisition did with regards to heretics and „witches“.

The reader is well acquainted with „the Holy Inquisition“, an institution of the catholic church that became operational in XIII century in order to suppress heresy (and, in the words of St. Augustin, a heretic was anyone “*qui falsas vel novas opiniones gignit vel sequitur*”) and we shall not elaborate on it in detail. It should be said that its manifestations differed across various Catholic countries and that the time-span of its activity had also differed. It was probably active for a longest period and did the most in Spain, where Torquemada and Pedro de Arbues embodied its supreme votaries and most fervent of executors. Given that the actions described above were taken in the XV century, there is rather reliable data on the number of persons that the Spanish inquisition tortured and then “turned them over” to the civilian authorities to be executed, which had to be done by burning them on the stake, since the church could not demand any blood to be spilt. It is considered that over 97,000 persons were tortured over eighteen years at Torquemada’s orders. The preserved official records show that in Toledo only 6200 “heretics” were convicted between the years of 1483 and 1501; 297 of these were burnt alive.

In order to become better acquainted with the personality of the terror principal, which we will discuss in more detail later, it should be mentioned that the motives of Torquemada, who was not a sadist and was told to have been a mild and a pious man, were more genocidal than religious in nature. In Torquemada’s mind, the main heretics were the Jews and the Arabs, whom Spain at the time wanted to banish or extinguish.

Whilst Torquemada died of natural causes in 1498, the other main inquisitor, Pedro de Arbues, was killed by the cousins of one of his many victims, in 1485. This man, whose sadistic traits were far more prominent than Torquemada’s, was beatified by the Catholic Church in 1661, and Pope Pius IX declared him a saint in 1867. Unfortunately, just like any other morally correct terrorist act, the murder of Arbues failed to attain any useful purpose: it was a signal for and a justification of a new wave of persecution.

A small satisfaction for the victims of the Spanish inquisition came as late as 1809, when Napoleon’s army had taken Madrid.

The records of the French colonel Lumanusk were preserved; after a persistent search, Lumanusk's soldiers have found ghastly prisoners, hidden by the inquisitors, in the church of a Dominican monastery. The soldiers then "played" a game – torturing the Dominicans using the same old contraptions the Dominicans have applied on others until then.<sup>6</sup> However, this was not the end of inquisition in Spain. With the return of the Bourbon dynasty, the inquisition had also returned, to be finally abolished in 1820.

The practice of inquisition and similar institutions that persecuted heretics and witches in Catholic countries underlines some important traits of torture as an attempt to obtain evidence. Primarily, a person who is chosen as a victim is irrevocably lost. If the person confesses under torture, he or she is guilty. If the person does not confess (this seldom happened, as torture could be repeated endlessly), it is evidence of how obstinate and persistent a delinquent that person is. Doctor Fian, a learned XVI-century Scot, was one such unsubmitive accused: "despite the cruel torments, he would confess nothing, so deep did the devil penetrate his heart".<sup>7</sup> Such a man, clearly, deserved to die while being tortured. It was his own fault.

Secondly, torture can extort any statement. Countless examples show that humans confessed impossible acts in order to end their torments, even if the final outcome of their confession was a death sentence. Or, like poor Elvira del Campo, whose interrogation under torture in Toledo 1568 is fully recorded and preserved,<sup>8</sup> incessantly and desperately sought to hear what crimes they were accused of and cried that they accepted their guilt in advance.

It is clear that in such an environment a persons' destiny is decided on by denouncement. When coming to a place that needed to be "cleansed" of heretics and similar unsuitable individuals, the inquisitors would, as a rule, put information boxes on church doors, and use the information obtained in that way for their further actions. Naturally, this was an extraordinary chance for the evil, the envious, the ill and the foolish: those denounced could not be saved, unless there was someone powerful enough to protect them. Consequently, the victims of inquisition mainly came from the lower classes, and almost all dangerous witches were poor and

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6 F. Helbing – M. Bauer, *Die Tortur*, Berlin, Langenscheidt, 1926, p. 127.

7 D. Mannix, *The History of Torture*, New York, Dell, 1983, p. 122.

8 The entire record can be found in Helbing-Bauer, op. cit., p. 124 et seq.

illiterate women. Under torture, a new chain of accusation was formed. Thus, for instance, one woman had accused another woman, who advised her to give her ill child various teas, because these had cured the child *too quickly!* The son of the accused woman, a boy of eight, then “confessed” that his mother was “liaising” with the devil. Tortured and realising she was lost, “the witch” named as her accomplices all those with whom she had unsettled accounts, which resulted in fifteen death sentences.<sup>9</sup>

Finally, the years of use of torture started to rest on a peculiar logic, which can be expressed in the following manner: the more serious the accusation, the less likely it is that the accused will defend himself, since the usual legal guarantees cannot be granted to a potentially grave delinquent. Such reasoning still exists today, when many need to be convinced of the rightness of a completely opposite stance: the importance of objectivity of criminal proceedings grows in proportion to the gravity of the possible sanction.

Experiences from previous times are not used here only to describe the past. Many confessions, given in the twentieth century, are as pointless and impossible as those earlier ones were. Just like the existence of witches and devils’ incarnations in the form of incubi and succubae<sup>10</sup> was a reality even for the greatest minds in history – even the famous founder of the modern theory of sovereignty, Jean Bodin, had published in 1580 a tractate *On the Demon-mania of Witches* – so do the modern men believe the records from the Moscow trials of old Bolsheviks. Pyatakov, for instance, confessed to meeting Trotsky in Oslo, even though he was never there nor could have been there. Allegedly, during his stay in Berlin, he took a plane to the Norwegian capital and stayed there for two hours, even though the Oslo airport was closed at the time due to winter conditions and hence did not receive, nor could receive, any aircrafts. Another accused person allegedly met Trotsky’s son in one hotel in Copenhagen, which was demolished back in 1935. Probably the peak of Stalinists inquisition was the confession of a ten-year old that he was a member of the fascist organization from the age of seven.<sup>11</sup>

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9 See Mannix, op. cit., p. 120.

10 Incubus is the devil in male form, and succubus is the devil in female form. See. V. Bayer, *Ugovor sa đavolom* (A contract with the devil), Zagreb, Informator, 1982, 89.

11 This last information seems quite credible since it was published in the Soviet press while Stalin was still alive, and wanted to somewhat limit the interrogators who were

Pursuant to a lasting and important tradition, the objective of torture was to punish the accused. The punishment may consist of the infliction of physical pain or in the fact that it is added to another punishment, in order to aggravate it.

It does not take much effort to recall a series of well-known and once common punishments, which are, in fact, a temporary infliction of intensive pain. Their temporary nature is precisely what differentiates them from torture in order to obtain a statement; nothing is requested from the victim and, as in any punishment, it is believed that it had attained a purpose, whether that is retribution or intimidation of the accused so that they would not repeat their actions or dissuading others from following their example. It should, however, be noted that torture in this form is, as a rule, connected to humiliation: punishment is executed publicly and in a manner that induces both abhorrence and scorn. The simplest and most frequent example is the lashing of the gluteus, which was so common that it even remains a method used in official education and upbringing in some very developed countries.<sup>12</sup>

The transfer from torture to “pure” humiliation is difficult to establish. There are punishments the main objective of which is to degrade, whilst physical pain is ancillary. These include the classical tying to the post of shame, a contraption that keeps the sentenced person exposed in a public place in a forcedly unchangeable position whilst his or her guilt is constantly exclaimed, or a written description of the sin can be found on an attached plank. During the “cultural revolution” in modern China, the custom of parading such persons through the streets, tied up, dressed in ridiculous clothes and bearing marks such as “I am the people’s enemy” or “I sabotage revolution and I am a vermin”, and the like, was renewed. Such a punishment could have been set by a court, but it could also be administered without such a procedure. In

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over-zealous. “Sovietskaya Siberia” in its issues of February 17, 21, 22, 23 and 24, 1939, wrote of the members of the NKVD who have managed to extort confessions from 160 children aged between twelve and fourteen, who stated they had engaged in espionage and terrorism and maintained connections to the Gestapo.

12 Great Britain was declared guilty before the European Court of Human Rights for violating the European Convention on Human Rights because of corporal punishments in Scottish schools. The Court did not, however, conclude that these “lashes” constituted torture, but it did find that every parent had the right to demand that their child not be subjected to corporal punishment. European Court of Human Rights, *Case of Campbell and Cosans*, Strasbourg, 1982.

German “people’s court” (*Volksgericht*), presided by the infamous Roland Freisler, a man who had – alongside Andrey Vyshinsky – probably caused most embarrassment to the legal profession in the XX century – the accused were taken before the court in trousers that were too large for them, and which had no straps. Former generals, ministers, judges and municipal presidents were thus more consumed by holding their pants up than by answering questions, and were a source of amusement for the “people’s judges” and the attending high-profile national-socialist dignitaries. The famous Brazilian torturer Sergio Flery, one of the rare persons who stood up in defence of torture, even brought his family in to observe such processes.<sup>13</sup> He had many followers, who even harassed parents by forcing them to watch their under-age children being tortured.

However, the difference between torture and humiliation becomes complex because torture can also consist of infliction of psychological pain. The scorn to which the accused is exposed can affect him more than the physical pain. Psychological suffering of a different kind is caused as early as during the investigative procedure, in various physically “painless” manners, e.g. the repeated taking out of the accused to the execution site so that he would, supposedly, be executed. Women were exposed to special pressure in contact with brutal male examiners or prison officers; although rapes and physical contact were frequent, such humiliation sometimes consisted only of words or actions of others, which the woman was forced to watch or listen.

As an ancillary punishment, torture, physical or psychological, can also be linked to the deprivation of freedom. It is sometimes ordered (usually as an additional disciplinary measure towards disobedient inmates) or is a result of the inmate being at the mercy of his or her autocratic guards and “educators”. Even today, this remnant of medieval practice is still applied – as the case was in Mauritania, when the special military court, invoking sharia law, had convicted a group of political prisoners to long prison sentences where they were “to be subjected to a strict prison regime, which means they are never to see the light of day and their only contact is to be with persons who bring them food”. As far as it is known, for a while they were kept in underground cells, in which they could not lie down, which had no sanitary conditions and

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<sup>13</sup> See *International Herald Tribune* (Paris), March 29, 1984.



had poor ventilation. Their nutrition was scarce and they were also denied movement, visits and correspondence.<sup>14</sup> Solitary confinement is also a common disciplinary measure in prisons.

More refined actions of this type, which are used in more developed countries, include sensory deprivation, that is, depriving the prisoner of the minimal sensory stimuli necessary for a normal human being, in prison cells that are completely white and that are impenetrable for any sound. The accused leftist terrorists in the Federal Republic of Germany particularly complain of such procedures, but the authorities justify it with the need to isolate the convicts in order to prevent their new ventures.

The last example is fitting because it can also accentuate one more situation. Prison officers will be particularly active and innovative and show own initiative in abusing those inmates towards whom they feel personal hatred; as a rule, these are political inmates who have attacked a member of a law enforcement agency. Arrested and convicted terrorists whose victims included members of law enforcement agencies are harassed even when such behaviour is expressly prohibited and is against government policy. Generally, it should be borne in mind that certain cases of torture, if they are not systematic in character, need not warrant the condemnation of the entire regime. Quite to the contrary, in many countries spontaneous sadists are occasionally strictly condemned. The examples provided herein should be understood like that. Unfortunately, there is a tendency of the superiors to protect the torturers who are their subordinates, whether because they have understanding for their hurt emotions or because they otherwise consider them as good and keen officers.

Prohibition of torture, as we have seen, also implies the condemnation of cruel and inhuman punishment. The notions of what is cruel, and in particular, the notion of what is inhuman in actions towards people and in their sanctioning, permanently evolve and depend on culture and tradition. Whilst, on the one hand, under the influence of Islamic fundamentalism, amputation of body parts, if executed professionally (in some Islamic countries with the assistance of a doctor and with the administration of anaesthesia) is being re-affirmed as not being cruel, on

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<sup>14</sup> Following pressures from abroad, a year later this regime seemed to have been alleviated. *Torture in the Eighties*, London, Amnesty International, 1984, p. 121.

the other hand, it is believed that even long-term deprivation of freedom, which is a generally accepted method of sanctioning, is cruel and inhuman, particularly under certain conditions. The claim that life imprisonment is more cruel than a death sentence is well-known. This also applies to sensory deprivation and other procedures that can distort personality.

Even the death sentence itself is criticised on these (in addition to many other) grounds. Whatever the extent of humanization of the death sentence, which is essentially reduced to the infliction of least possible pain in the process of execution – that was also the motive of doctor Guillotin when he invented the contraption named after him, and of those who invented and introduced other manners of execution, such as the electric chair or death by injections – it cannot eliminate the agony of a human being who is awaiting certain death for days, months, or even years, all the time hoping it can be avoided. The USA Supreme Court took a similar position in 1972, and, as a consequence of its decision, death penalties were not executed in that country for a while. This body, however, did not invoke the Covenant on Civil and Political Rights (which the USA did not ratify), but the US Constitution, interpreted under the influence of modern tendencies. The court found that the capricious manner in which death penalty could be pronounced in some US federal states with a considerable measure of arbitrariness of both the jury and the judges, was unconstitutional.<sup>15</sup> This episode ended by many of these states changing their criminal legislations in order to adjust them to this decision, and executions had started again. The prospects that the Supreme Court, which became more conservative in the meantime, will renew its attack on the death sentence, are bleak.

As this example to an extent shows, it seems that the modern tendency is to perceive the cruelty and inhumanity of punishment in relative terms, not only in the mentioned context of difference between cultures and traditions, but also with regards to the relation between the punishment and the act committed.

As our previous analysis of the death sentence shows, capital punishment is still allowed for particularly grave criminal offences. If the act committed is not so grave, than a death sentence is too harsh and cruel. In order to demonstrate this, one does not

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<sup>15</sup> *Furman v. Georgia*, 408 U.S. 238 (1972).

need to seek for old examples and be reminded of the fact that back in 1833 one eight-year old child was hanged in England for breaking a window. Stoning adulterers to death is still a practice in some Muslim countries, whilst in other societies adultery does not even constitute a misdemeanour, and even, as the case is in our country, does not constitute absolute grounds for a divorce. However, death sentence is not the only one in question. An ordinary review of legislations applicable in modern states (not to mention practices that are not public) will show that some, under a common understanding, easier forms of crime are punishable by long-term sentences. The example of the South African Republic, where interracial sexual intercourse, as a rule, implies imprisonment, has already been mentioned. On October 19, 1984, the people's court in Afghanistan had sentenced Jacques Abouchar, a French television reporter, to eighteen years in prison under the charge of illegally crossing the border.<sup>16</sup>

Let us go back to the death sentence, since throughout history the main tendency was not to avoid pain in the course of its execution, but to make the suffering greater. The “philosophy” behind this was quite clear and simple. For grave offenders – in the eyes of the ruling elite, these were primarily the persons who had attacked that elite – the simple taking of life seemed like too small a penitence, even more so because the religious beliefs enticed the impression that departure from the earthly “valley of tears” is not a particular loss. In order to satisfy the need for vengeance, in order for the punishment to have an exemplary effect, death had to be slow, gradual and cruel.

This type of killing starts where intensive torture is executed in such a manner that the risk that the person being tortured will die is calmly accepted. In the Russian empire, passing under a whip was a corporal punishment that often ended in death. The accused were chased down a parallel row of soldiers, each of whom would beat him with the butt of the gun. The refinement of these and similar measures, still applied today, lays in the fact that the executor is collective and faceless, consequently the complicity, liability and guilty conscience are evenly distributed across a number of people.

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16 After protests and interventions of the most prominent political and public figures in France, Abouchar was released, but this does not diminish the intimidating effect the sentence has had on other journalists.

We will forsake the descriptions of all forms of slow and tortured deaths out of consideration for the reader, who has already learned of some of their forms. It suffices to mention that, for the execution of Robert Damiens, who attempted the assassination of the French king Luis XV, a sort of an international competition was open, seeking for the best idea for the most intimidating and cruel execution of the worst punishment.

The tortures sometimes try for their treatment to leave as few traces on the victim as possible. This happens when the legal system in which they operate prohibits torture, or, more often, because the regime does not want the use of torture to become public knowledge. This becomes increasingly important when the purpose of torture is obtaining a confession that will be repeated at a public trial, where the accused should seem lively and composed. However, from the ancient days to date, there is a desire for the torture to leave permanent scars and consequences. Moreover, it can be said that in such cases mutilation or scarring is the true goal of the procedure, where the pain inflicted along the way cannot be avoided. The actual purpose is the permanent intimidation of others. In times when means of mass communication did not exist, a person without a hand or without a nose, whose ears were cut off or who was marked in another manner, was a moving warning for everyone. This was also in Muhammad's mind when he was dictating the *Quran* in the seventh century. Today, such punishment is deprived of even that cruel sense it used to have before.

A review of the repertoire of torture and similar procedures would not be complete if we do not emphasise that medical and scientific experiments, performed on human beings without their free consent, are equal to them. Ever since the Russian emperor Nikolai I, in the beginning of the last century, concluded that his political opponents – intellectuals – must be crazy (weak as they are) to rise against the God-given autocrat, individuals deprived of freedom, particularly due to political reasons, are being subjected to forced psychiatric treatment and “bringing to reason”. The reasons for that may be the same ones that are most common in cases of torture, but two additional tendencies are present. The first one is the desire to change and crush one's personality through such therapy (of course, this can also be a consequence of “ordinary” torture). Such a “stuffed” person could lose his or her “unreasonable” ideas and become an apathic subject. In addition

to political prisoners, such experiments were also performed on common criminals. They fell into the hands of state psychiatrists, who were convinced that there was such a thing as a “born criminal” as a type of a psychiatric disease, and not as a product of social circumstances, and that such persons could be forcefully “treated”.

The second reason was much more frequent in this century. It comes from a traditional understanding that all inmates are people of a lower type, who can serve the society by having the results of various medicaments, biological and medical procedures, tested on them rather than on animals. This practice was particularly widespread in Nazi concentration camps, inhabited by people who were distinctly marked as racially and biologically inferior and who thus fell prey to the police doctors and other charlatans.

Today, torture is applied in many countries, whether as a part of official policy or as a frequent practice of police and supporting services, which the authorities tolerate or cannot always prevent (the difference is not always easy to establish). Even though the imagination of humans in inventing various types of torture that will be used on others has always been very rich, the types of torture used today are very diverse and perfected. Moreover, there is an entire horrid torturer’s jargon, whose authors are either masters of torture or their victims. The examples in the following overview should be read bearing in mind the fact that in some countries torture is performed systematically, in others without the approval from the highest ranking officials, whilst in some it is a thing of the close past, since terrorist regimes (e.g. in Argentina and Guinea) were recently overturned.

The most widely applied form of torture is still flogging. A wide array of means is used for it – from old-fashioned canes and birches to special rubber clubs and straps. The tortures focus on certain body parts, the most appealing of which are the soles of the feet. In Latin America, the latter is called *falanga* and is reliably known to be applied also in Saudi Arabia, Turkey, Pakistan, Libya, Cameroon and Iran. *Telephone* is the simultaneous striking of both victim’s ears and is a popular method in Latin America, Chile in particular.

Flogging is combined with a particular position in which the victim is placed. “The parrot’s perch” (*pau de arara*) means that the tortured person is hanging, the wrists on his hands and legs tied, from a stick driven through the space between the victim’s

knees and elbows. In addition to being used in Latin America, the “parrot’s perch” is also applied in South African Republic, Djibouti and Haiti. In Chile and South Korea, the victim’s mouth and nose are additionally filled with water and the victim is exposed to the effects of electric current. In the Philippines, a method called “the San Juanico bridge” after a real bridge between the islands of Samar and Leyte, is used. The victim lies between two beds with his or her head on one bed and his or her feet on the other. The remainder of the body, under the threat of being beaten, must not sag at any time. In Bolivia, this procedure is called “the pig” (*chancho*). “Piglet” is the positioning of the interrogated person in a small wooden casket having a metal rod in the middle: a moving hatch increases the pressure on the back.

*Plantón* in Uruguay, Haiti and Surinam means the forcing of the victim to stand still for hours, whilst “the flag” is the permanent hanging of victim by the hands, while the legs must not touch the floor.

Another frequent method is linked to the prevention of breathing. “The bathing” (*pilleta*) is the full submerging of the victim in water, which is often dirty and mixed with faeces. Holding of the victims head in such fluid is called “the submarine” (*submarino*) and is widely used. “Dry submarine” means that the head of the person being interrogated is placed in a plastic bag, while the “hood” (*capucho*) means that the head is wrapped with a cloth, which adheres to the nose and mouth and disables the flow of air even when the head is taken out of the water.

The victims are also forced to drink massive quantities of water and other liquids, even gasoline. Some interrogators in Asia find that carbonated drinks have the best effect (the so-called “7-Up technique” named after one such product).

Whilst these methods are variations to types of torture known for centuries, electric current has opened a wide field of inventive operation to modern-day torturers. Whilst in some places electricity is used in the basic, simple manner, by positioning electrodes on certain parts of the victim’s body, other societies use perfected and especially construed contraptions, which are produced and sold to police forces by renowned companies in the most developed countries. In addition, electric clubs used for herding cattle (*picana electrica*) are being used for the purpose of torture in Argentina, Bolivia, Paraguay and Uruguay for years.

Using the French parachutists in Algeria, who are considered to be the pioneers of electrical torture as the role-model, electric strikes are most often directed towards the genitals. The genitals are particularly attractive both because a considerable number of torturers show signs of sexual deviation and because these parts of the body are not only extremely sensitive to pain but also cause the feeling of extreme humiliation and the fear of becoming sterile. The threat of castration is also a method torturers are fond of.

Unbearable pains are caused in countless other ways, such as the driving of needles under the nails (e.g. Rwanda and Bolivia), the plucking of nails (particularly frequent in times of persecution of “Titoists” in East European countries, which is present today in Peru and Afghanistan), plucking of hair (e.g. Italy, Bangladesh), striking of matches inserted between fingers or crushing of fingers between which various objects are inserted (e.g. Zaire and the Philippines), pulling the head back and forth and hitting it (e.g. Israel and South Korea) and spraying of pepper spray directly into the face (e.g. in the USA). This is also accompanied by inflicting burns by cigarettes (which is a common practice so to speak), hot coal (e.g. in Mauritania) or sulphuric acid (e.g. in Salvador).

The resilience of the person being interrogated is reduced by systematic exhaustion, which most often consists of sleep deprivation, which is mentioned in modern reports from Pakistan, South Africa, Afghanistan, Guyana, Taiwan and Israel. Lack of sleep is linked to constant interrogation. According to the survivors’ records, this was a method regularly used by Stalinist interrogators; they would take turns in interrogating, for hours, the same prisoner who was occasionally woken up by cold water and forced to sit on a chair that consisted only of the frame (the so-called conveyer). This practice was accompanied by denial of food or by poor and polluted nourishment (the so-called “black diet” in prisons in Guiney), exposure to extreme cold (e.g. in South Africa and Uruguay) or heat (e.g. in Zaire and Israel).

Torturous attacks on the psyche are based on constant threats, uncertainty and humiliation. Primarily, in almost all cases where torture is applied, the major threat is death, culminating in fake executions or forced attendance of the executions of others, which is frequent practice in Iran. Another threat is that of amputation, particularly castration (e.g. in Israel and Bolivia). Threats can also



be addressed against family members, particularly women (e.g. South Africa and Libya).

Prisoners are kept without any connection with the outside world for years (*incommunicado*), which is anguishing both for them, since they do not know what is happening to their loved ones, and for their family members, who are not certain whether the prisoner is alive at all. The sentence of banishment without the right to communication in Stalinist times implied a somewhat delayed death sentence. In one of its conclusions, the Human Rights Committee had taken the position that the mother of an arrested girl was also a victim of torture, because she was unable to find out whether her daughter was dead or alive for a long time.

The imagination of the torturers is unflinching when it comes to inventing ways in which to humiliate the victim, in addition to the pain they inflict on him or her. This is mostly accomplished by taking off the victim's clothes during interrogation and adding comical actions the victim needs to perform before the interrogators and other "audiences", or even before family members. One of these is called "the duck walk": prisoners' hands are handcuffed below his legs and the prisoner is forced to walk under the threat of being beaten (e.g. South Africa and Peru). When the victim thinks that the session of torture is finally over, at least for the day, and returns into the cell, he or she can be kept in fear by occasional opening and closing of the cell lock, so that the prisoner is never certain whether or not he or she would have a calm night (so-called *cerrojos*). Intellectuals and, generally, persons who were respectable, were most often the victims of humiliation: they take such situations the hardest, and, on the other hand, they best satisfy the torturers' social envy and deprivation.

Modern torture also relies on forced administration of drugs. These are mostly substances that should affect the prisoner's psyche and which are, under controlled conditions and in specific doses, prescribed to psychiatric patients. One such drug is sulfazine, which was used in the treatment of schizophrenia; in addition to its psychological effects, this substance also causes high bodily temperature. Insulin shock therapy is used to drive the tortured person into a hypoglycaemic coma, whilst Pentothal, the so-called "truth serum" is aimed to weaken the prisoner's internal control. Morphine is also used, mostly after a great pain was inflicted: it is expected that the sudden pleasant feeling and



euphoria will lead the prisoners to say what the interrogators want them to say.

Listing other torture techniques and instruments would cause a feeling of repugnance.

Unfortunately, torture is so widespread that it must be singled out as one of the greatest evils of modern times and suppressed by special measures. The United Nations could not stop at the mentioned Declaration of the General Assembly. On December 10, 1984, the General Assembly had adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was drafted by a working group within the Commission on Human Rights. Once this convention enters into force, a special body will be created to monitor its implementation and perhaps have the right to visit states and establish the state of facts on site. However, it is very likely that those states, in which torture is a routine method of governance, will not accede to this convention and, that, even if they do so (signing of treaties on the protection of human rights today constitutes a particular type of hypocrisy), they shall by no means accept international monitoring. However, international pressure will have some effect in the communities where the public, and even parliamentary bodies, condemn torture, but where torture is still practiced because the executive bodies find it to be viable.

Given all that is known about torture, the definition of torture we supplied in the beginning is incomplete. This incompleteness may be illustrated by two examples from everyday practice, which would not be covered by it.

The first one is the tendency of many regimes to leave the most cruel operations of dealing with their opponents to actually or allegedly “non-state” groups and organisations – the so-called ancillary structures that are characteristic of many authoritarian regimes. These groups then act out of “conviction”, as voluntary defenders of the political system; the state cannot be found accountable for their actions, since they cannot formally be attributed to the state.

The second example would relate to torture as an act of abandon, which was and is practised by sadists who serve the government, without having any of the aims listed in the mentioned definition. Torturers of the Iranian secret police Savak took pride in their craftsmanship and were even presented to their victims

as “masters”. Torture is often pointless even from the standpoint of the regime, since the person tortured is not asked for information or a confession, nor is the person under suspicion of being a real or potential adversary. A system that rests on torture as a practice must lead to such a behaviour. In his eloquent letter to Argentinian military junta, which was not written in safety but in grave peril, the author Rodolfo Walsh addresses these words to the bosses of terror:

You have arrived at a form of absolute, metaphysical torture that is unbounded by time: the original goal of obtaining information has been lost in the disturbed minds of those inflicting the torture. Instead, they have ceded to the impulse to pommel human substance to the point of breaking it and making it lose its dignity, which the executioner has lost, and which you yourselves have lost.<sup>17</sup>

Unfortunately, torture as an act of abandon is also known in countries that largely differ from Argentina nowadays and Argentina until recently. It is hence considered that in many cases the first moments a person spends deprived of freedom are most dangerous: regular procedure is still not initiated and the person is left to the mercy of low-ranking police officers, whose sadistic tendencies may be inborn or nurtured through different forms of prejudice, envy and frustration.

## SLAVERY AND SERFDOM

According to the principles and norms we rely on in this text, the institutes of slavery and serfdom are unconditionally prohibited (Article 8 of the International Covenant on Civil and Political Rights).

Contrary to the rules applied in the early social formations, where full ownership of a human being was considered common (and even, as seen in the case of St. Thomas Aquinas, considered to be in conformity with natural law), after the great civic revolutions, a rule has been firmly set that no single person nor the state can dispose of human beings in the way they can dispose of objects and animals. This applies both to slavery, which implies

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<sup>17</sup> Translation of the letter was published in *Dissent* magazine, 1978, pp. 116-117.

direct ownership over another human being, and serfdom, where such control stems from the ownership of land on which the serf lives and to which he is tied.

It is clear for everyone that slavery and serfdom were not extinct due to the grand proclamations at the turn of the XIX century. In the USA, slavery was abolished at the price of a bloody civil war, as late as in the second half of the last century, as was the serfdom law in Russia.

In its classical form, however, slavery still exists today. Not only does it exist in countries the rulers of which do not even try to present themselves as being modern, but also in those where progressive tendencies are at least proclaimed. Sometimes this is a question of hypocrisy, and sometimes of the impotence of political leaders to extinguish, without considerable disturbances, a relation that has taken deep roots and that relies on customs and religion.

Instead of investigating many examples, let us focus on the case of the Islamic Republic of Mauritania. The government of that country, which had initially denied claims that a considerable number of slaves still existed in it, despite slavery being formally abolished, was later forced to pass a new Decree on the abolishment of this institute (July 5, 1980), to invite the representatives of international organizations to establish the state of facts on site and to help it resolve this issue. The findings of United Nations' observers are included in the document published on July 2, 1984.<sup>18</sup>

From this report it can be concluded that the government of Mauritania, despite its good will, does not have the capacity to abolish slavery. It is a consequence of population mixed both in terms of race and status, where, as a rule, the white population (Arabs and Berbers) has more slave-owners, and the black population more slaves, even though there are examples of black men owning men of the same race.

The caution with which Mauritanian authorities have had to approach the issue of abolishing slavery in their country is evident from the reasoning of the mentioned Decree:

After carefully considering various responses obtained on the basis of Quran, sunnah and the fundamental rules of Islamic law, the Military Committee of National Salvation

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<sup>18</sup> E/CN.4/Sub.2/1984/23.

has come to a firm conviction that the majority of our most respectable ulamas, recognizing the legality of slavery in the form it is set in Islam, has reservations with regards to the origin of slavery in Mauritania and the conditions under which it is applied in our country. Under such circumstances, our ulamas find that that the state is vested with the power to act on behalf of the masters in order to free (emancipate) the slaves, just like it is vested with the power to expropriate private property in the public interest.

From this position a second one had naturally followed, pursuant to which the state buys off and liberates only the existing slaves and is hence under the obligation to pay the damages to their masters (instead of, as it may seem logical, slaves obtaining some compensation for their free labour up to that point). Given that this issue is still not resolved, and that the Mauritanian state treasury does not dispose of sufficient funds, slaves still belong to their masters.

The examples of slavery resembling those from the memories of ancient societies, however, seem only as bizarre remnants when compared to the predominant form of ownership over humans, which resembles slavery as it was practiced in oriental autocracies, where slaves were not personally owned by their masters, but had belonged to the state, that is, to the ruler. As Marx points out, these were the conditions of “general slavery”.<sup>19</sup>

Contemporary slaves are the dwellers of concentration and similar camps, who were placed there without any, even imaginary, guilt, only on the grounds of being “suspicious” or inferior, on the basis of an objective circumstance which they were not liable for. One of the purposes of the existence of such camps is the use of free labour for the most difficult jobs, under conditions most cruel. The literature on such establishments is too comprehensive and the reader is well acquainted with it; hence we shall not describe this type of concentration camps in detail. What is questionable is whether Stalin’s camps, which hosted seven to eight million “convicts” from the Second World War to date, were economically rational – it is more likely that a moderate compensation given to free men would help build even more, even in the least hospitable parts of the Soviet Union. This is particularly true for Nazi camps

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19 K. Marx, *Grundrisse der Kritik der politischen Ökonomie*, Berlin, Dietz, 1953, pp. 371 and 375.

– in many of them, the destruction of people took precedence over their physical utilization.

No less striking in their soullessness are the examples from smaller countries, even though the figures there are lower. When Nigerian workers who worked at cocoa plantations on the Fernando Poo island had left Equatorial Guinea, in the beginning of 1976, president Macias Nguema issued a simple order for some 25000 random people to be arrested in other parts of the country and sent to forcefully labour on the plantations, which, by virtue of a change of name, were located on the Macias Nguema Island.

Conditions similar to classical serfdom exist to-date, for example, in some parts of Latin America, in which land, in the form of large estates, is owned by a small number of oligarchs. The owner of the land has full control over those who farm the land and also considerable possibilities for exploitation. Large private police forces ensure that the all the farmer owes to the owner is paid and prevent the farmer from feeling to the city, the only place in which he can “get lost” – a place to which farmers reluctantly go due to even more difficult conditions that await them there.

A “more modern” form of serfdom is tying people to a single, very limited place of residence or the impossibility to choose one’s job, on which one’s existence depends, without approval of the state. The Stalinist period in the USSR had such traits. For instance, members of the kolkhoz did not have identification cards, which means they did not have the necessary documents to even temporarily leave their village, let alone seek permanent residence outside it. At the same time, the choice of jobs was strictly regulated, and leaving one’s job was a punishable criminal offence.

## LEGALITY

Article 15, paragraph 1 of the International Covenant on Civil and Political Rights, one of those that cannot be derogated from under any conditions, reads:

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent

to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

This is an expression of one the most important attainments of criminal law and modern civilization, the implementation of which eliminates insecurity and unpredictability in the relations between the citizens and the government. In other words, a person has to have, at all times, an idea of what is allowed and what is prohibited, and also know what is the risk of possible illegal actions. The fact that the threat relates only to the actions that ensued after the threat was made, and the fact that such actions are clearly determined, renders the threat purposeful. In rational terms, from the standpoint of the one making threat, that is, of the state, the threat is thus more convincing, and in ethical terms, it is more humane – since it leaves the possibility of being innocent. In legal, if not in ethical terms, everything that is not expressly prohibited is allowed, and hence a legal sanction, unlike a moral sanction (which is at any rate not pronounced and enforced by state authorities) will, in principle, ensue, with a considerable degree of certainty. We use the term “in principle” since, even in the best organized states that cannot be negatively assessed in this regard, there is only but a high degree of probability that things will play out that way (the concordance of the proclaimed and the real is never full). We hereby refer to “regular” situations when, on the one hand, due to the caseload of the investigative authorities or for other reasons, the perpetrator cannot be found or the necessary evidence cannot be presented, and the perpetrator is not sanctioned, or, on the other hand, when similar mistakes result in so-called court misapprehensions, when the authority competent to pronounce sanctions imposes, in good faith, a sanction on a person who is not liable. Such errors are corrected by legal remedies, to which both the convicted person and the public prosecution service are entitled.

As already implied, the *nullum crimen, nulla poena sine lege* principle, which is also called the principle of legality, stays outside the framework of the provisions by which actions or failures to act are declared crimes or misdemeanours and sanctions for them are set. In other words, from that standpoint alone it is irrelevant what is written in the law, provided that the law was passed in a

clear and timely manner. This principle is a formal one, and hence, even the cases in which quite harmless actions are qualified as the gravest offence would be in accordance with this principle. However, one should bear in mind the fact that there are other criteria and that the principle of legality, although a very important one, does not stand alone. It has to be considered with a view to other fundamental criteria of humane organization of society.

Serious and systematic departure from this fundamental principle does not exist when a practice is not in full conformity with it. It exists in cases when, expressly or tacitly, conditions are put in place that enable anyone to be considered a felon or a criminal, based on an assessment he did not know of or which had ensued after that person took certain actions, believing such action allowed, or at least that when taking them, the limits imposed by the legal system were not crossed.

Such situations most often take place after sudden overturns, which may be revolutionary or superficial in nature. When it comes to fundamental changes in a society, which take place suddenly, any criticism must be accompanied by a dose of with caution – for, it may happen that the revolutionary change overturns a system that had negated the rights and dignity of humans, including the principle of legality. It would then be unjust if the accused ruler was not sanctioned due to the fact that during his own rule he had not imposed any limits on himself, and would leave him unpunished even for the most heinous of crimes.

However, despite such a general approach, this does not mean that there is never room for criticism, particularly in modern times. The acts committed by former authorities usually constitute common crimes, even pursuant to the laws that were in force before they were overturned. In addition, it should be noted that the principle of legality gives a prominent place to international law, the changes to which are not within the power of a single dictator or a given oligarchy. For example, international law expressly regulates how to treat even the rebels who have taken armed actions against a government and committed acts that are, as a rule, punished most strictly. If a person, even when fighting such rebels, violates the international rules that are similar to the rules applicable to armed conflicts between regular armies of states (the so called law of war), but less restrictive – if a person, for instance, orders summary executions without a trial or takes hostages – such person

will later not be able to justify these actions by claiming they were not designated as criminal offences pursuant to the valid internal laws of his or her country. Therefore, there are sufficient grounds for the conscientious tendency to observe the *nullum crimen, nulla poena sine lege* principle even in extraordinary revolutionary situations. An example of scrupulous observance of this principle was provided by the Sandinista revolution in Nicaragua. Even though it had overturned one of the most despicable regimes the world has ever known, a regime that presented a combination of cruelty and corruption, the associates of the dictator Somoza, and even the officers of his brutal national guard, were judged strictly based on the law that had bound them in times when they had taken their actions.

Another tendency, which has taken ground in the twentieth century, is more worrying. It consists of using courts to deal with political opponents who were deposed after state coups and similar “court revolutions”. These coups differ from fundamental changes in as much as they do not penetrate the social and political weaving, or do so very lightly, and actually present only a shift at the top. In such coups, the legal system remains largely unchanged – the coups are, actually, only a violation of a constitutional provisions or are an attempt to obtain control over the adoption and change of the constitution. Such changes are frequent in some parts of the world, and are almost endemic to Latin America. In the tendency to eliminate the overturned the ruler – whereas the new one is not much different – and to diminish the appearance of that action as being politically or personally motivated – it becomes more “in vogue” to initiate a procedure against such an opponent before a regular or an extraordinary “peoples” court. The court, as a rule, convicts the former ruler of a crime bearing a striking denomination and no contents, usually some form of “treason” or “damaging” policy or “policy against the nation”. The fact that the former criminal law is not changed in that process or that extraordinary decrees are passed in haste for that purpose, uncovers the hypocrisy of such a procedure, compared to which a simple execution of the defeated side, as practiced before, seems fairer. The court, therefore, ceases to be a court, and the law is no longer law.

Whilst all of this, however, is related to extraordinary and dramatic situations and affects a proportionally small number of



people (unless, of course, as the case was when the communists in Indonesia were dealt with in 1966, a chain of liquidation gets started on a lower, and even “private” level), there are also the situations of “lawful lawlessness”, when criminal law prescribes that anyone can be affected by the most severe punishments, for actions someone else will subsequently assess as socially dangerous. In that respect, analogy and retroactivity are most often used.

*Analogy*, the application of which is allowed only in cases when it cannot violate fundamental human rights, is to apply one rule to a situation *similar* to the situation to which the rule, in fact, is to be applied, according to the law. Analogy is commonly used when a court faces a new situation, like, for instance, in the past, the rules related to maritime navigation applied to air navigation, a form of transport that was not formerly known. However, in the field of criminal law, analogy is strictly prohibited. Despite that, criminal laws, particularly in the areas regulating actions considered dangerous for a political system or the ruling group, have been and in many cases still are, quite unspecific. Instead of precisely describing the punishable action, the laws list examples, followed by abbreviations such as “etc” or words “and the like”. These fatal abbreviations have taken numerous lives and have caused indescribable suffering. Offences have stopped resembling their usual designations. A traitor was no longer only a person who served the enemy, but also a person who, once in his or her lifetime, had met the regime’s political opponent, or was related to that opponent. A spy was not only a person who illegally collected confidential information on behalf of another state, everyone who had talked to a foreigner was a spy

It should be borne in mind that, despite these gravest violations of the principle of legality by use of analogy, similar results come from the application of such regulations that do not expressly allow for the use of analogy, but are so unspecific or described in such flexible terms that a common person, or even an expert, cannot quite understand their meaning and then act accordingly, and is left to fear the court’s interpretation of the rule, should he or she be tried. In some countries, for instance, the collecting of confidential data, if it can damage the interests of the state and if there is an intent to forward such data to a foreign or an international organizations, is punishable. A person whose calling may be to collect some type of data, for instance, a person working in

the sphere of social sciences, is never certain whether such data, which that person considers harmless or even apolitical – such as the statistics on divorces or the attitudes of the young towards certain types of music – will, at one point, be assessed as detrimental to the interests of the state. If one publishes such data or presents them at a conference attended by foreigners, or a conference organized by an international scientific association, again, one does not know whether that implies showing the intent to hand the data over to a foreign or international organisation. In other words, such a description of a criminal offence leaves so much for *posterior* interpretation, which the suspect or the accused cannot influence, that it cannot be considered that there is certainty with regards to what is allowed and what is prohibited. Uncertainty is, at any rate, the objective of the terror system, which we will focus on in the second part of this book.

The grave consequences of its use and abuse have rendered the Article 58 of the Criminal Code of the RSFSR, which was abolished in 1959, notorious.<sup>20</sup> This massive norm, whose fourteen paragraphs take up some five pages of small type text, was a true pile of words that, for the most part, have lost their original meaning, but could result in serious consequences. These consequences, which were referred to as “the highest measure of criminal punishment”, in some parts of Article 58, or as “the highest measure of social protection” in others, have always implied execution by shooting. As can be expected in any state, in Article 58 (I, a), treason constituted a crime, and it was defined only through examples, including, in addition to espionage, “flight abroad by surface or air”. Moreover, the following paragraph (1, c) literally reads:

In case of flight (by surface or air) across the border by a member of military personnel, the adult members of his family, if they in any way aided the preparation or carrying-out of treason, or only knew about it and failed to report it to authorities, shall be punishable by deprivation of liberty for a term of 5 to 10 years, with confiscation of all property. Remaining adult members of the family of the

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<sup>20</sup> The new Criminal Code has entered into force in 1960, and it does not differentiate between ordinary and counter-revolutionary crime, and proclaims the principle of legality.

traitor, living together with him or as his dependents at the moment of the perpetration of the crime, shall be deprived of voting rights and exiled to remote areas of Siberia for 5 years.

In order to understand the reach of this legislative text one should go beyond the obvious – which is that treason also includes the crossing of the border and that the punishment is not enforced only on the perpetrator, but also on the members of his family and household who *did not have any part in the escape and did not even know about it*. No. Given that treason is unspecified, and the flight is only an example, in practice it could happen, and it did happen, that treason constituted of as unexpected things as the crossing of a state border, and that simple actions resulted in such grave consequences.

Paragraph IV had similar consequences:

The offering of whatever kind of aid to that part of the international bourgeoisie, which, not recognizing the equal rights of a Communist system replacing a Capitalist system, exerts itself for its overthrow, and likewise to public groups and organizations, being under the influence of or directly organized by that bourgeoisie, in the carrying out of hostile activities toward the USSR, shall be punishable by: deprivation of liberty for a term not less than three years with confiscation of all or part of one's property, with an increase, in especially aggravating circumstances, up to the supreme measure of social defence – shooting...

A similar threat was attached to the “maintaining of relations with individual representatives of foreign states for counterrevolutionary purposes” (paragraph III). In practice, any conversation with a foreign diplomat was dangerous, since it was very difficult to prove that it did not have a counterrevolutionary purpose; contact with other foreigners was disabled since they, even when they were communists living in the USSR, could easily transform into members of a group that is under the influence of the bourgeoisie. The fact that the Code referred only to “one part” of the bourgeoisie did not constitute a limit of the norm's reach, since only a handful of members of the middle class were prepared to agree

that communism will inevitably replace capitalism. Human life, therefore, depended on the interpretation of terms used in scientific papers, philosophical debates and political pamphlets, not in legislative texts.

In addition to other criminal offences defined in this omnibus article, death sentence was also to be pronounced for sabotage, which was defined as

intentional failure to perform some defined duties or intentionally negligent fulfilment of such duties, with the purpose of weakening the authority of the government and functioning of the state apparatus.

What are “defined duties”? What does “intentional negligence” mean in everyday language, let alone in law? How does one prove that the purpose is to weaken the government? These are the questions on which those lucky ones, who were not affected by the “highest measure of social protection” pondered – whether they were rescued from capital punishment through a mere sentence of imprisonment or confiscation of property, or were still in the position to fulfil the “defined duties”.

What this looked like in practice can be illustrated by a “confession” of a high Ministry of Agriculture official: “my criminal activity primarily consisted in errors in planning the planting of vegetables ...and then, in slowing down the development of nurseries, which led to farmers not being able to apply the correct crop sequence and being forced to plough meadows in order to plant wheat”. The main prosecutor, Vyshinsky, did not put in much effort when interrogating the former Minister of Agriculture, Michail Chernov: “Tell us all the details of the mortality of cattle, where did you get the bacteria, what type of bacteria and *so forth*”.<sup>21</sup>

Retroactivity of laws is a form of violation of the principle of legality in terms of time. The law exists, and the criminal offence and the punishment in it can be described precisely and clearly, but the law is applied “in reverse” and relates to actions taken even before it had entered into force, even before it had been adopted, or before its adoption was discussed.

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<sup>21</sup> Report of the Court Proceedings in the Case of the Anti-Soviet “Bloc of Rights and Trotskyites”, Moscow, 1938, pp. 103, 672. Italics added by the author.

A combination of retroactivity and vagueness is well exemplified in the criminal legislation of the authoritarian Uruguay after the abolishment of democratic institutions, which differentiated this country from the majority of other states in Latin America for so long. A more moderate example is the Organic Act No. 4 of September 1, 1976, which we are partially quoting:

The executive power, by exercising the powers vested in it by the institutionalisation of the revolutionary<sup>22</sup> process

DECLARES THE FOLLOWING:

Article 1. All the persons mentioned below shall be prohibited, in the following fifteen years, to engage in any activity of political nature approved by the Constitution, including voting at the elections:

A) All candidates for elective offices at the 1966 and 1971 elections whose names were on the lists of Marxist and pro-Marxist political parties or groups, which were declared illegal by Executive power resolutions No. 1788/67 of December 12, 1967 and No. 1023/73 of November 26, 1973...

Therefore, all those who were candidates at the elections, in accordance with the law and the constitution, nominated by parties that were prohibited later, were generally punished.

Given the very elastic term of “political activity” (what is “pro-Marxist” as opposed to Marxist?), former candidates were not only affected by a moderate punishment of a limitation of a certain field of activity and being deposed of the right to vote – they would also easily fall into a new trap: the sanctions for failure to observe the Decree are much stricter, and any one of their gestures can be interpreted as “political activity”.

In addition, the Martial Criminal Code was in force in Uruguay, and its article 60/V declared that any “subversive activity” was strictly punishable –subversive activity being a term understood only by military judges, who were most often officers without any legal education, yet who tried even civilians for these offences.

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<sup>22</sup> One must emphasize that, in addition to the term “democracy” the term “revolution” also became a term en vogue. Nowadays everyone is a revolutionary, even Uruguay generals, colonels and majors.

Joint effects of these two regulations will be illustrated by the faith of Ismael Weinberger, in the dry language of the Human Rights Committee communication, the credibility of which is greater in as much as it is a result of a long process, in which the Uruguay government was given the opportunity to declare itself.

The Committee therefore decides to base its views on the following facts which have either been essentially confirmed by the State party (Uruguay – *noted by V. D.*) or are uncontested except for denials of a general character offering no particular information or explanation: Ismael Weinberger Weisz was arrested at his home in Montevideo, Uruguay, on 25 February 1976 without any warrant of arrest. He was held incommunicado at the prison of “La Paloma” in Montevideo for more than 100 days and could be visited by family members only 10 months after his arrest. During this period, he was most of the time kept blindfolded with his hands tied together. As a result of the treatment received during detention, he suffered serious physical injuries (one arm paralysed, leg injuries and infected eyes) and substantial loss of weight.

Ismael Weinberger was first brought before a judge and charged on 16 December 1976, almost 10 months after his arrest. On 14 August 1979, three and a half years after his arrest, he was sentenced to eight years of imprisonment by the Military judge of the Court of First Instance for “subversive association” ... with aggravating circumstances of conspiracy against the Constitution. The concrete factual basis of this offence has not been explained by the Government of Uruguay, although the author of the communication claims that the true reasons were that his brother had contributed information on trade-union activities to a newspaper opposed to the Government and his membership in a political party which had lawfully existed while the membership lasted...

Ismael Weinberger was not granted the assistance of counsel during the first 10 months of his detention. Neither the alleged victim nor his counsel had the right to be present at the trial, the proceedings being conducted in writing. The judgement handed down against him was not made public.

Pursuant to Acta Institucional No. 4 of 1 September 1976, Ismael Weinberger is deprived of the right to engage in political activities for 15 years.<sup>23</sup>

There are situations worse than those caused by laws that allow analogy, which are passed retroactively or are not sufficiently clear. “The law” can sometimes allow or even order the enforcement of sanctions even with regards to actions that are in no way envisaged, described or named, but are assessed as being damaging and worthy of sanctioning, after having been committed, by a court, another state authority or the ruling political organization. The best such example can be found in Hitler’s Third Reich, where the Criminal Code of June 28, 1935, prescribed that a criminal offence was any such offence “for which the statute prescribes a sanction or which *deserves to be sanctioned according to the healthy racial feeling*”.<sup>24</sup>

Declaring entire ethnic groups as suspicious is also a form of collective punishment. After the Japanese attack to Pearl Harbour, the USA have detained all of their citizens of Japanese origin. They remained isolated until the end of the war: younger men, capable of military service, could “redeem” themselves by volunteering for military service, but in such cases, care was taken to send them to Europe.

After Germany attacked the USSR, a large group of Volga Germans was relocated to remote parts of the country. The same happened to Tatars from Crimea, who sustained mass exodus due to their alleged propensity to collaborate with the enemy. These two groups were officially rehabilitated by Supreme Soviet decrees in 1964 and 1967. Life, however, took its toll and they did not repatriate in large numbers.

Unlike the cruel cynicism, which openly prescribes insecurity, and even takes pride in it, the most recent period, the time after the Second World War, is more marked by *factual* lawlessness. Since all regimes try to keep at least an outward appearance of democracy and cannot openly defy the international consensus on human rights, their constitutions and legislations are seemingly correct, even immaculate: some such governments were among the first

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<sup>23</sup> Communication R. 28/1978 of 29 October 1980, Doc. UN GAOR, 36 Sess. Supl. 40, Annex IX.

<sup>24</sup> Italics by the author.

to sign international treaties on the protection of human rights and freedoms, or to vote in favour of corresponding declarations in international organizations. All these documents and norms, internal and international alike, are not applied in practice and only serve as a hypocritical embellishment, which conceals even the most notorious terror regimes. When it comes to the guarantee of legality, this, in fact, means that the criminal law exists, that it meticulously lists criminal offences and punishments, and that in this regard there are no apparent departures from tolerant democracies, , moreover, that legal remedies are envisaged and elaborated in detail, which, in return, means that the government, using its political police or more covert “death squads” that are formally not related to it, can kill, torture or keep imprisoned for years, in a hidden place, virtually anyone it considers liable for an action it does not approve of, all at a whim.

Such cases are difficult to ascertain and prove. To put it more precisely, they are generally known, but the government in question can always cast a shadow of doubt over the source of data and to invoke its nice regulations. Information on such atrocities is successfully suppressed in the country itself, since those who collect and distribute information are punished most severely.

In many “national security states”, which are ruled by military dictatorships determined to deal with those they consider as “subversive elements” or “communists”, the most common victims are journalists, scientists and even clergymen, who, in the name of Christian mercy, direct attention to mass murders and other cruel actions. When such news are received by international organisations, they are contested, since they allegedly originate from the enemy, malicious foreign powers and non-governmental organisations that serve such powers. For some Latin-American regimes, all those who speak ill of them serve the Soviet Union or “international communism”, just like for South African Republic every reasonable man who opposes the apartheid system is a “communist terrorist”.

When it comes to inter-governmental international organisations, the members of which are states, the penetration of truth and appropriate liability are suppressed by invoking state sovereignty: how can it be possible that more trust is given to some suspicious organisations, scribblers, emigrants and journalist than to the reports of the governments? The mentioned reports how-



ever mainly consist of enumeration of constitutional, statutory and secondary acts prescribing that no one can be sentenced without his or her guilt being determined by a court, for a criminal offence that was designated as a criminal offence in a law in due time. In a world divided into blocs, such government will immediately find a powerful protector, who will support it for strategic or ideological reasons, and whose influence will prevent further clarification of facts.

Latin-American regimes of this type are particularly safe in this respect, ever since the administration of president Reagan came into power in the USA. The USA permanent representative in the United Nations, Jean Kirkpatrick, a former political sciences professor, has publicly proclaimed a division of authoritarian regimes into totalitarian regimes (including those that lean towards the left, socialism and communism) and simple autocracies. The latter do not act in a way that would suit the habits that US Citizens have on the basis of its constitution, but take rigorous measures to defend tradition and oppose the communist danger, and are therefore much better than “totalitarian” regimes, and deserve USA support and alliance.<sup>25</sup> This thesis, which at the same times conceals profound contempt for the peoples of the “third world” who – according to it – are not used to living better and have always lived like this (this is the “tradition” that is being kept), hides the explanation for the failure of many international attempts to expose and convict such regimes. Moreover, as some American authors show, an average American, if he were only to rely on mass communication media and would not read bulletins issued by humanitarian organisations at their own cost, would learn only of the atrocities that take place in countries that are not governed by reliable allies – primarily of atrocities committed in countries ruled by those who are declared as socialists or otherwise distance themselves from the USA.

Economic interests play no small role in this, as shown by Edward Herman in the case of dictatorship of the Guatemala general Garcia, whose victims are counted in thousands, but on which the American press did not report, while at the same time reporting with almost voluptuous pleasure on human losses and

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25 J. Kirkpatrick, “Dictatorship and Double Standards”, *Commentary*, November 1979, p. 34 et seq.

tribulations in Democratic Kampuchea – the losses which should not be denied, but which were at least partially caused by the US intervention aimed at removing president Sihanouk.<sup>26</sup>

The example of Democratic Kampuchea can also illustrate the actions of the other bloc well. Whilst terrible excesses took place in that country, it seemed to be in close relations with Vietnam and its allies: however, when it turned out that the conflict between Vietnam and the “Khmer Rouge” was inevitable – for reasons that are too complex and of no relevance to our topic – the position has fundamentally changed, and claims that such atrocities were in fact the main reasons for Vietnamese intervention were voiced. Those who, until yesterday, defended the Democratic Kampuchea, turned into the fiercest attackers of terror in that country.

Unfortunately, the governments that find themselves in an extremely difficult internal situations, to which they find they need to react in accordance with the principle of legality and therefore openly pass regulations that limit some rights, prohibit some actions and make some sanctions more stringent, due to such openness, find themselves in a more difficult position than those that shamelessly maintain a legalistic façade in front of lawlessness. An example of such openness is Sri Lanka, in which the differences between the Sinhalese majority, and the minority, Tamil population have led to bloody riots and a wave of terrorism. The attempts at their prevention include the adoption of a series of extraordinary legislative measures, which limit some rights, and vest some powers, which can easily be abused, with lower police officials. The government of this country does not hide its actions, even admits the abuses, which its courts learn of and attempt to punish the culprits, but due to its honesty, it is criticised, examined and judged more than some formally “correct” bloody regimes.

Real systems of lawlessness are still well and reliably known, since there are always sufficient sources that cannot be accused of any political or ideological bias. Such news were always confirmed when the regimes finally fell and were replaced by democratic governments that conduct subsequent investigations. As a rule, the investigation would show that the news coming from that country at the time the overturned regime was in force, or at least the news that were widely considered as reliable and not exaggerated, were

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26 E. Herman, *The Real Terror Network*, Boston, South End Press, 1982, p. 139 et seq., 149.

a pale and moderated image of the abominable reality. This was the case with Greece after the “colonel’s” regime was overturned, with Guinea after the death of Sekou Toure, with Argentina after the downfall of the military governors of that country. The highest figures of the so-called “missing persons” in Argentina, that is, of those people who were taken in an unknown direction by the police or para-police forces, and of whom no one had heard ever since, and of whom the state authorities allegedly knew nothing, were estimated at 15,000 while the junta was still in power. Nowadays, as new mass graves are discovered almost every day, the estimates are much higher.<sup>27</sup>

There are no reasons to assume that the state of affairs in countries the regimes of which resemble the former Greek regime, the regime of Sekou Toure or that of Argentina’s generals departs much from the rule and that information coming from there is exaggerated and unreliable. The news that came from German death camps during the Second World War seemed so monstrously unbelievable that even the war propaganda of the opposite side refused to use them, in fear that the public will think they were invented, even ineptly invented. The first witnesses of Stalin’s terror, who managed to walk over Siberia – with enormous efforts and a lot of luck- and to arrive abroad, were at best greeted with courteous disbelief and in worst cases, those bearing the news were declared abominable agents of the darkest forces.

The principle of legality, in addition to the mentioned formality and imperfection, is the cornerstone of every system aspiring to be designated as legal or humanistic. Its denial or abolishment, express or factual, leads the society into a condition of irrational fear. The threat incorporated in the designation of certain action as criminal offences actually stops to be that, since the sanction is sudden, without a warning and possibility to be foreseen, and is not as a consequence of failure to observe an express order to which the threat is attached. From the standpoint of the subject, there is no life orientation: a person cannot remain innocent, since everything is prohibited or possibly prohibited and it is not known what may or may not give rise to one becoming “suspicious,”

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<sup>27</sup> The first official reports of the competent government commission have reliably established the names and deaths of 8961 missing persons. Judging by all, once the entire task is completed, the number will rise above 30,000. See *Politika*, September 23, 1984.

which is reason enough for at least imprisonment and torture. One is not safe even when one has no ambition, particularly political – there is no “mouse hole” in which to hide.

It is difficult to ascertain all the things that can politically bother the regime. These need not, as minimal rationality would imply, include actions resembling political actions aimed at influencing in any, even the most direct manner, the change of government and the political system. People can instinctively know to stay away from such activity, and even to stay away from any conversation regarding officials, both high- and low-ranking ones. This is not sufficient. An example that stands out may irritate, gaining any reputation in any area can become a bother. As mentioned, the victims of repressive measures in many Latin-American countries are those priests who, quite naturally, find that their main duty is to take care of the poor. Those in power, who allegedly stand on the watch of Christian civilization in combat with the communist subversion, are bothered by this attitude, since it “smells” of seeking social justice and abolishment of poverty, which are a part of the socialist programme.

All the things one can be found guilty of are perhaps best illustrated by the case of Doctor Joel Filartiga.<sup>28</sup> Deeply devoted to his calling, this doctor has established, in Paraguayan province, where expert medical help is virtually non-existent, since the scarce medical professionals are centred in the capital, a hospital for treating the Indian poor free of charge, daring to call it “The Clinic of Hope”. The funds for the operation of this institution, which employed his family members and other volunteers, came from the sale of his paintings and drawings, and from other donations from the country and abroad. The behaviour of this philanthropist strikingly differed from that of the people surrounding president Stroessner – which mainly included people who acquired wealth by protecting various forms of smuggling, prostitution and black market. Simply put, doctor Filartiga had to be somehow marked and punished.

In order to confirm the assumptions that he is allegedly connected to “subversive” elements, since a renowned doctor who works free of charge was considered deviant in such a society, and his aid to the poor rendered him suspicious, his son, seventeen

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<sup>28</sup> See R. Claude, “The Case of Joelito Filartiga and the Clinic of Hope”, *Human Rights Quarterly*, 1983, p. 275 et seq.

years old Joelito was captured and tortured in order to provide the desired deposition against his father. Exclaiming incessantly that he did not know what was asked of him, Joelito had died in front of the police inspector Pena Irala in Asuncion. Doctor Filartiga and his daughter required the crime to be resolved and Pena Irala to be punished (since, naturally, torture is prohibited by law in Paraguay!). However, the regime covered up the case, going to such lengths as to transfer the disfigured Joelito's corpse to a bed of one young woman whose husband was forced to admit of killing him because of having caught him in an act of adultery (according to the laws of Paraguay and, until recently, the laws of some catholic countries in Europe, this constitutes a circumstance which excludes liability).

Doctor Filartiga was successfully frightened and had left Paraguay demoralized, whilst all other circumstances of this case were established in detail thanks to the fact that Pena Irala had boldly arrived to the USA, where Filartiga had fled, to check, on site, the functioning of his gambling and prostitution network. Following an action filed by the Filartiga family, an American court had adopted a judgment which is considered very important both in America and on the global scale. Namely, the USA authorities did not have the jurisdiction to criminally prosecute Pena Irala, but the court had found there was a possibility of awarding damages in this case. The court invoked a USA federal law, which prescribed that damages can be awarded in cases of violations of international law, even when these took place abroad. The importance of this judgment lies in the fact that one American court, despite of USA not having ratified the Covenant on Civil and Political Rights and similar treaties, had found that torture was prohibited by international customary law, which becomes internal law under the USA Constitution.

Of course, it can be said that doctor Filartiga and victims similar to him were still renowned men in their own way. It can also be assumed that someone, like young Joelito, was guilty for being a son of such a father and that therefore there is hope for those who are insignificant and quiet. However, since there is no person on this Earth who had never bothered anyone, the illegal system will catch up on any person in the form of a personal vendetta or reckless violence, coated in a higher cause. Such systems have to rely on countless informants, whose reward lies in the possibility of

harming everyone they hate, envy or dislike, for whatever reason. It is known, for instance, that in Uruguay every thirtieth citizen had worked for the security service. It was therefore no wonder that one in five hundred citizens of Uruguay was in prison or a concentration camp, and that one in four had emigrated.<sup>29</sup>

Even from the standpoint of the authorities, which we tried to describe in the beginning, such an unspecified and dubious manner of general intimidation, of passing sanctions without prior, is not rational. The order it protects and prescribes no longer has any form, other than to preserve the position, the privileges and the omnipotence, since it does not provide the majority with the opportunity to be loyal, loyal at least for fear of the consequence. It does not provide the majority with ways to influence their own destiny, even in the most limited, intimate form. Instead of being streamlined, albeit in a drastic manner, the population is left without any waymarks. This state of affairs, coupled with the impossibility to effect social and political changes in a legal manner, results in very radical, and likewise irrational, but contrasting reactions of the suppressed. Such a system constantly produces extreme opponents in the form of terrorists. To become a person who takes desperate measures is not difficult at all under such conditions, since a bomb, an explosive or an assassination of a member of the ruling elite can at least release the pressure and satiate the desire for revenge, without risking more than would be at stake if one was to remain a peaceful citizen. The latter, namely, can always become “suspicious” and suffer ultimate pains, since interrogation and sanctioning in such environments only start at the very end of human endurance. This, of course, creates a vicious circle, since it is in the very existence of terrorists and in combat against them that such regimes often seek the main reason for their subsistence.<sup>30</sup>

However, as we will see more clearly when analysing in more detail the terror of authorities in general, terror regimes most often do not care whether fear is applied rationally in the described sense; their goal is to reduce the society to a mass of lonely, extremely passive and discouraged individuals, who live – not in fear of the foreseeable consequences of their actions – but in an

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<sup>29</sup> Herman, *op. cit.*, p. 111.

<sup>30</sup> More on to what extent did the terrorist organizations in some democratic societies contribute to these regimes taking power see V. Dimitrijević, *Terorizam* (Terrorism), Belgrade, Radnička štampa, 1982, p. 75.

unspecific, unusual type of fright, which constantly gnaws, gapes and never leaves one alone.

## RIGHT TO PERSONALITY

The minimum of fundamental human rights also includes the right of every human being to be recognized as a separate person. States cannot treat individuals as if they were not entitled to fundamental rights and obligations. As is generally said, although this expression is not all-encompassing, no one can be outside the realm of law.

Unlike primitive communities, where a person exists solely due to his physical existence, in modern societies such existence must be legally recognized. Without that, a person does exist, but it is a form of pure luck and tolerance, where true participation in social life and acquiring a position that most people find self-explanatory, is impossible. One cannot act on one's own behalf, nor can one be protected by someone else; one is not, as may usually be expected, endangered by the authorities and the state, but anyone else on whose way one may find oneself. All of persons' other rights are thus compromised. One is a type of an unregistered person, which is particularly painful in encounters with increasingly bureaucratized government services of the present day.

Fortunately, it is difficult to list an abundance of actual examples of failure to recognize one's legal personality in recent times, but there are situations that are dangerously close to it. Most often they are linked to an uncertain status of a person. Two major groups stand out in this respect: apatrids and refugees.

*Apatrides* (stateless) are persons who, due to series of various circumstances, did not manage to acquire citizenship of any state, whether because they did not have it from birth, or because they had lost it afterwards. It is still considered that the citizenship bond is the right of the state, which it grants or divests of pursuant to its own regulations and the will of its authorities, where there is no right of a person to seek and obtain citizenship. Most states have regulations based on which new-borns immediately acquire their citizenship, but it may happen, and it happens, that a new-born "falls" into legal lacunae and is left without this important bond. Some states recognize citizenship to children whose both parents, or at least one parent (as the case is in SFRY) are their citizens (the so-called *ius sanguinis*). Others, on the other hand, recognize this

status to each child born on their territory (the so-called *ius soli*). If, in a state of the first group, a child whose parents are citizens of the other group is born or a baby is found, such baby shall not have any citizenship, unless the local legislation, as the case is in Yugoslavia, envisages secondary corrective criteria, based on which domestic citizenship is recognized in case there is a danger of the child not having any citizenship otherwise.

As it is its prerogative, subsequently the state can, pursuant to its regulations – which can be associated to specific conditions but can also be a simple power vested with certain authorities to act on their discretion – divest any of its citizens of their citizenship. If such a person does not succeed in obtaining the citizenship of another state (the capacity which is not easily obtained in modern states and to which a foreigner is never entitled, regardless of how strict the conditions set by the law are), such person will become an apatriote again.

A person without citizenship is a foreigner wherever he finds himself or herself. Such a person does not have any protection, since many rights can be effected, and even the simplest circumstances of everyday life can be organized only based on documents that are issued solely by the authority of one's state, whilst its active support is often also required (so-called diplomatic protection). The position of apatriotes is not equally difficult in all states, particularly not in those where relevant international treaties were ratified. The objective of these treaties is not only to prevent the occurrence of persons without citizenship, but also to make their lives easier. However, in some societies, the position of an apatriote is appalling. Even though such a person formally has all the rights otherwise granted to foreigners – and these are the rights that “everyone” is entitled to, as opposed to the rights of the “citizen” – the status of such a person is equal to that of a person without legal personality.

*A refugee* is a person who has formally kept his citizenship but is fleeing abroad or is not returning from abroad in order to stay outside the reach of the authorities of his state, which offer no protection, but a deadly embrace instead. Even when one is in a foreign country, where one seeks refuge, this person's country does not renounce him or her – not in order to help but in order to seize such person, in order to prosecute or punish such a person, to finish off what it had started at home. Naturally, not all of those who flee to another country are noble victims – they include fugitives



from what is objective justice under any criteria and simulators who wish to present themselves well in order to acquire the right to live in a country that has a higher standard of living and offers a better social package. Therefore, the term refugee now applies only to those who are in a foreign country owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinions.<sup>31</sup>

Formally, refugees have citizenship, but in reality, they do not. What is worse, whilst states are indifferent when it comes to apartheid, it is precisely the state that can help refugees that makes things difficult for them. If, quite naturally, a person seeks refuge in a country whose government is in bad relations with the government that person is running away from, such person's life can be bearable or even, in cases of more prominent refugees, quite good. If, however, for the government of the country to which one fled, such person is an additional political complication, one cannot hope for such a beneficial outcome. In the jaws of bureaucracy, the refugee will always draw the shorter straw. In the beginning of the Second World War, British authorities had internalized refugees from Germany, and even Jews, and had sequestered their goods, because they were still citizens of the enemy state. Whilst Stalin was alive, a law was in force in the USSR whereby Soviet citizens were not allowed to marry foreigners. As the conditions for marriage are generally determined pursuant to the law of the state of which the relevant person is a national, the authorities in the FR of Germany did not approve marriages between refugees from the USSR and Germans, who they were mainly surrounded with, or even their marriages with other non-Soviet refugees!

Worst off are the refugees who cannot settle on a foreign territory, even temporarily. Once, a ship packed full of Jews from Germany who fled from the Nazi persecution had cruised from one port to another for months, since no one wanted to take on its unfortunate human cargo. Its passengers finally returned to Germany, to their certain death. Today the same happens to *boat people*, mainly refugees from Indochina, who try to reach a safe haven in overcrowded fragile boats, in order to be returned from every port and to wander the seas as the victims of storms, pirates and human traffickers.

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31 Article 1 of the Convention Relating to the Status of Refugees of July 28, 1951.

Whilst in cases of both apatrides and refugees there is some kind of international element and whilst they represent an unusual type of foreigners, the worst that happens in this respect is the consequence of the conscious decision of a government to degrade *a part of its own population* and declare them inhuman. History offers numerous examples, but the actions taken against “non-Arians” in Nazi Germany were most prominent, since they were taken gradually, formally and completely legally. All those who had a certain percentage of Jewish blood, set by the law, had lost one civil right after another and finally, from being second-rate citizens in their own country, in which their families had resided for centuries and for which many of them had bled in World War One, had ended up becoming non-persons, who were sent to death camps for the purpose of “the final solution”. And even before that happened, each pure-blooded German could do whatever he wanted to them, without the fear of being punished.

Some authors find that the liquidation of Nazi Jews is the consequence of their loss of all rights. They were killed only after the German authorities have seen that no one would take them as their own.<sup>32</sup>

German lawyers justified such actions by a “new” theory of law, which differentiates between friends and foes. According to them, it may well happen that a foe lives in a geographic space that belongs to the state, but, allegedly, such a person is always a foreigner in spirit. Such a person is not entitled to the protection provided by the legal system, the purpose of which is to defend loyal citizens. The most prominent, and, unfortunately, the most talented Nazi lawyer, Carl Schmitt, had therefore concluded that the criminal acts committed by the “deviant” members of the “friendly” group differ from any activity of the “enemy”. The first ones, who do not jeopardize the social fabric, can be under the care of the legal system – the other group remained outside it, that is, outside the law.<sup>33</sup>

Whilst Nazi actions were a fruit of an ill obsession with racial purity, which, however, did not constitute the only element of the confused national-socialist program and views, the things that happened in Democratic Kampuchea when the group surround-

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32 For example, H. Arendt, *The Origins of Totalitarianism*, San Diego, HBJ-Harvest, 1973, p. 296.

33 See P. Bookbinder, *The Crime of Being*, presented at the Conference on Holocaust, Brookline, 1973.

ing Pol Pot had decisive influence on internal politics, were a result of a conviction that they were rooted in Marxist learning, which was strangely biologized there.

In an attempt to adjust the Marxist learning to the taste of the backward Cambodian peasant, and also due to the accumulated sense of hatred, which existed within the rural population because of the long-lasting civil war and terror during the rule of the American protégée Lon Nol, the entire population of Democratic Kampuchea was divided into three categories. The first group of inhabitants (in this case it is really difficult to use the common term “citizen”) included the poor peasants, lower and mid-level peasants and workers. They had “full rights”. The second group of “candidates for full rights”, therefore constituting some form of socialist purgatory, included the upper middle peasants, rich peasants and small bourgeoisie. The third, lowest group, which was called “the sludge” included “capitalists” and members of foreign minorities. Since Pol Pot’s programme also envisaged the destruction of cities as the nest of everything evil, their inhabitants were forcefully evacuated and were members of the third group, regardless of their social origin and other traits.

In addition to this categorization in groups, one could also become a part of “the sludge” individually. In order for someone who is a member of the first group with full rights to be demoted to the third group with no rights, it sufficed for his or her close relative to be convicted of a criminal offence. The members of the last group had no rights, and according to the reports, which are difficult to verify and which do not relate to all regions of Kampuchea, even the smallest of local activists was free to eliminate them.<sup>34</sup>

Pol Pot’s version of socialism tried to legalise all the prejudices of the Cambodian peasants, particularly those towards the city and towards foreigners (these were primarily Vietnamese), just like Hitler’s ideology, which also dared to utilize the term “socialism” had legalized the darkest phobias and envies of German citizens. Interestingly, the previous, Lon Nol’s regime, which came into power

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<sup>34</sup> This is an account provided according to M. Vickery (op. cit.) who has full understanding for the actions of the “Khmer Rouge” and energetically refuses numerous reports on terror in the Democratic Republic of Kampuchea as biased and malevolent (see page 81 et seq.). Other sources paint a much bleaker picture. See e.g. F. Ponchaud, *Cambodia Year Zero*, Harmondsworth, Penguin, 1977 and J. Barron – A. Paul, *Murder of a Gentle Land*, New York, Reader Digest Press, 1977.

with the help of the USA and had devotedly served their interests, wanted to ingratiate itself to peasants. Out of some 450,000 members of the Vietnamese national minority, some 5,000 were killed, and over 30,000 were banished or had fled.<sup>35</sup>

De facto outlawing was common in all colonial territories, and particularly prominent in those that were attractive for mass immigration from metropolises. A “native” had no personality before the law, unless the law was used as a trick, like in cases when the Spanish conquistadors, before conquering an Indian village, burning it down and killing the villagers, would, at the entrance, read an ultimatum on behalf of the king, which the Indians could not understand. Unfortunately, the position of Indians in many states, in which they are not extinguished, is not much different today.

### FREEDOM OF CONSCIENCE AND THOUGHT

A man’s internal autonomy is an undisputable attainment of the new century civilization. Regardless of the extent to which the society denies or regulates a man’s outside activity in the interest of the community or other persons, a man preserves an undisputable right to the contents of his spiritual sphere. One can think whatever one wants, believe in whatever one wants, take positions of one’s own liking. Whilst actions rooted in such contents of conscience can be discouraged, judged or even punished, that which happens in one’s consciousness cannot entail any consequences. The government cannot forbid people to think, order them how to think nor can it prosecute or punish them for not thinking “right” or “correctly”, or because their thoughts are damaging and antagonistic.

Given that all actions start in someone’s head, a century-long dream of authoritarian rulers is to penetrate this last human fortress and to prevent, even there, that which may turn out to be dangerous for the regime in the future. For tyranny, which always feels insecure, it is too late to sanction a deed already committed: therefore, one should be punished for his opinions. Free thought was and remains the most fiercely prosecuted phenomenon in history, even more so since it is elusive, secret and ethereal. On the other hand, humans have always shown, despite their ability to adjust, their cowardice and defeatism, an enduring tendency to

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<sup>35</sup> See N. Chomsky – E. Herman, *The Washington Connection and Third World Fascism*, Boston, South End Press, 1979, p. 96.

think independently, to doubt and, finally, regardless of the risk, to communicate their thoughts to others.

The century-old dream of controlling thoughts is almost achieved by totalitarian regimes. Despite the vagueness of the term *totalitarianism*, and the tendency of its abuse, we find that this name is deserved at least by those systems that strive to control without any limitations and to subject every man completely, not to leave even one's most intimate sphere, one's internal side, one's "soul" without supervision and outside guidance.<sup>36</sup> Even though this is not entirely possible, since a person, at least when one is all alone and when one relinquishes the desire to communicate one's thoughts to others, can still hide, the development of technology makes this prospect more probable. All relevant dystopias of the XX century note the imminence of full control of thought. In Orwell's *1984* there is, on the one hand, the most dangerous branch of the "Ministry of Love" in the form of "Thought Police", and Oceania's population lives under the permanent supervision of the government's eyes. The same is true for Zamyatin's novel *We*. On the other hand, all possible measures are taken for people to be dissuaded from thinking: for that purpose, a new language is created in Orwell's work, which prevents true thought, whilst in Zamyatin's work the persons who "develop a soul" are operated on, to remove it as if were the most dangerous disease.

Not even such pessimistic visions of the future, or intentionally exaggerated descriptions of reality – however we choose to understand these and similar book-warnings – do not presume the true "reading of thoughts", procedures that would provide the police and similar services the opportunity to learn the exact contents of one's consciousness.<sup>37</sup> What is primarily referred to is the fact that it is actually impossible to think something, have an attitude or a conviction, and to express them in any way.

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<sup>36</sup> Even more so since the Resolution of the United Nations' General Assembly 38/99, adopted without a vote (by consensus) on December 16, 1983, in its operative paragraph 1, "condemns all totalitarian or other ideologies and practices" and links them to "systematic denial of human rights". This means that all UN member states, regardless of ideology, have agreed to condemn the phenomenon they call "totalitarianism". Also, see T. Kuljić, *Teorije o totalitarizmu (Theories on Totalitarianism)*, Beograd, Istraživačko-izdavački centar SSO Srbije, 1983.

<sup>37</sup> "The lie detector" is an example of an apparatus that is yet to achieve that goal. Presently, it can only register emotional conditions of persons who are not sufficiently cold-blooded.

There are a few of those who have mastered the skill of pretence to such an extent. Such persons are in question when we refer, as the famous Polish author Czeslav Milosz did in one of his books, to “ketman” – a practice known in Persia. The art of “ketman” which some intellectuals prided in like in some special mastery, consisted of publicly speaking and acting as contrary as possible to one’s deep beliefs. A similar purpose is pursued by the “doublethink” in Orwell’s novel, the ability to simultaneously accept two mutually contradictory things as correct. In one of his works, Nikola Milošević, based on memoir literature, gives several examples of the exercise of “ketman” in recent times, where the case of Oto Kuusinen – a Finnish communist, one of rare old revolutionaries and Stalin’s associates who managed to maintain a high position in the Soviet hierarchy and to die in his bed – stands out. Kuusinen almost did not confess his own thoughts to himself, and perhaps had become unable to ascertain what was going on in his brain, which was ruled only by the instinct to survive.<sup>38</sup>

Masters of full “ketman” are rare, whilst others do not take pride in this skill. Despite the fear and caution, they share the public and the private sphere and, when they are alone or in the company of persons they consider close, they relax and at least through their actions, if not words, uttered or written for themselves, they reveal what they think. Modern thought polices, secret services of various names, abbreviated into notorious and frightening acronyms, are constantly on their track. Totalitarian systems do not allow for different and free thought, and since they are not limited by any procedural rules or duty to provide evidence, the regime disposes of safe methods for spotting that someone shows symptoms of prohibited opinion. Just like, in times of major inquisition persecutions in Spain, someone, as a “covert” Jew, could be tortured for changing linen on a Saturday, so could a person be placed in a similar position in the XX century, for “slipping” a wrong word, a word that per se does not have any political or ideological meaning. In Fascist Italy it sufficed to use the courteous address of “lei” instead of the officially prescribed “voi”. Gestapo held that everyone who repeated the word “concretely” during the interrogation was a communist.

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38 “Socijalna psihologija staljinizma” (The Social Psychology of Stalinism), *Filozofske studije*, XV, 1983, p. 160 et seq.

As already pointed out, in such systems a person is surrounded by spies, who monitor one's every move, one's every word; the personal sphere is disbanded through attacks on family relations and friendship. High Nazi official Robert Ley had proudly stated that "in the Reich, a private person is only a person who is sleeping". Family members are ordered to denounce and are rewarded for such "accomplishments". When Orwell named the children's organisation in Oceania "Junior spies" and envisaged that its main goal is to denounce parents, he did not resort to imagination, as shown by the example of the above-mentioned Pavlik Morozov and other similar "heroes". One of the most zealous "regime supporters" in 1984 is afflicted when his daughter, at whom he was extremely proud, informs the "Thought police" that her father had let out an "enemy" cry during sleep. We feel that Orwell thus exposes the totalitarian tendency to control the subconscious, before which Ley stopped when he recognized that at least a sleeping human being had privacy and solitude. This, unfortunately, is not a novelty. Dionysius the Elder (V – IV century B.C.) had executed Marsyas, his former political patron and loyal courtier, only because Marsyas dreamed he had killed the Syracuse tyrant. As Plutarch records, Dionysius "had punished him because he could dream such a dream only if he had these same thoughts during the day".<sup>39</sup>

Totalitarian systems make their jobs easier and make it difficult for their subjects to hide their thoughts, by not being satisfied by sheer obedience, but requiring permanent enthusiasm. This is actually a true request for "ketchman" – not only to conceal one's true thoughts, but to enthusiastically express contrary ones. Whoever falls behind in this genre, whoever expresses indifference, soon becomes suspicious. Vladimir Voinovich is not making up too much when quoting a typical unfavourable part of a Stalinist "characterization"

...the petitioner was not sufficiently prominent in social life, that is, he did not visit amateur sections, did not produce wall newspaper, did not go to meetings, and when he attended meetings he did not talk, *he only passively participated in the joint applause.*<sup>40</sup>

<sup>39</sup> According to M. Sperber, *Zur Analyse der Tyrannis*, Wien, Europa Verlag, 1975, p. 87.

<sup>40</sup> *Pretendent na presto (Pretender to the Throne)*, Beograd, Nolit, 1983, p. 66 (translated into Serbian by Lola Vlatković). Italics added by V. Dimitrijević.





It does not suffice to applaud, one has to applaud fanatically, even though even meek applauding is not sufficient in the long run.

Many examples given with regards to the principle of legality can also be used in this field. Namely, even the most totalitarian of regimes seldom dares to declare thought itself punishable. In order to achieve that, everything resembling the usual court procedure, with strict rules of evidence, should be avoided and let a person be punished because someone in charge finds that person suspicious. This is then interpreted as some form of prevention of offences not yet committed, as a combat against potential, still unexpressed enemy of the system. However, upon taking a closer look, the indications based on which one becomes suspicious are in fact assumptions made based on some, often quite arbitrarily established external signals, or assumptions on what the suspect thinks. The suspect is not punished for having these thoughts, but because the good authorities estimate that dangerous deeds may arise from such evil thoughts. The fact that this is actually a sanction for thought, a limitation of the freedom of conscience, is not diminished by the fact that deprivation of freedom, often associated with torture, in order to expose the hidden thought, is not designated as a sanction, but is given a euphemistic name.

Official names for such deprivation of freedom with grave consequences most often include “protective prison” or “preventive deprivation of freedom”. The first one is a translation of the German term *Schutzhaft*, and, expectedly, is an invention of the national-socialism. Protective prison was used in order to bypass the courts, in which, as shown in the Leipzig process against Georgi Dimitrov and others, there were still judges, regardless of how conservative their personal convictions were, did not consent to pronouncing condemning judgements without having the accused’s guilt proven. “Protective prison” was therefore a measure that was at the disposal of the political police, the complicated structure of which was soon ruled by the Reichführer-SS, Heinrich Himmler. This measure could be applied against any potential anti-Nazi, in addition to being used against persons who were considered, for other reasons, as socially undesirable and harmful in the “new” system (non-Arians, “degenerated” persons, homosexuals, and the like). The inmates of concentration camps were, in fact, in “protective prison”, which was worse than the ordinary penitentiary institutions in as much as the conditions in it were more difficult



and it could last for an unlimited period of time – since one could come out of the camp, if one was to ever come out of it, in the same way as one got inside: according to the discretion of police authorities, the decision of which was not subject to appeal. The essence of the “protective prison” is best seen in the fact that it often ensued after a regular court passed an acquitting judgment. The logic of the Gestapo was simple: if the court finds that the accused did not commit a criminal offence, this does not mean that the accused will not commit it in the future: prison exists precisely in order to protect the system from that type of people.

A series of modern examples, the most noticeable of which are those from Chile and Uruguay, show the same tendency: those arrested are detained in prisons or collective camps long after the subservient, brutal and incompetent court martials have cleared them of guilt. Such prolongation is often linked to practice of waiting to trials for a long a time, and may result in permanent detention without any grounds, which is, as a rule, associated with torture.

A proportionally mild, but reliably established example is that of Uruguay citizen Luis Maria Bazzano Ambrosini which, according to the conclusions of the Human Rights Committee, consists of the following basic facts.

Bazzano was detained on 3 April 1975 and immediately thereafter subjected to various forms of torture such as plantón (he was forced to remain standing) which lasted up to 14 hours, and bastinado (blows). He was accused of complicity in “assistance to subversive association” on the basis of a statement of single witness, who never appeared before the court. After one year’s detention, the judge granted him conditional release, but this decision could not be put into effect since, shortly before, the prisoner had been taken to a place unknown to the judge. Another year later, Bazzano was tried on the charge of “subversive association”, an offence punishable by three to eight years’ imprisonment, but the outcome of this new trial remained unknown to Bazzano until late summer of 1979, therefore, four and half years after his arrest. Bazzano was still in prison at that time.<sup>41</sup>

Sometimes it all ends with a paradox that in the entire country freedom of thought exists only in concentration camps! According

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41 Communication R/15 of August 15, 1979, GAOR, 34 Sess, Suppl 40, Annex VII.

to the memories of those detained in camps, that was the case in Nazi Germany. Once a person found himself or herself in a concentration camp, his or her destiny no longer depended on their behaviour. In front of other inmates one could say whatever one wanted, a luxury no German could afford. On the other hand, no one in such persons' surroundings could hope for any benefit should he or she denounce that person. Even the camp guards were little interested in what the "degenerate half-men" talked about in the barracks. In this respect, it seems that the inhabitants of Stalin's Gulag were in a worse position, since, on top of their all suffering, they were expected to still be zealous in glorifying the great leader; moreover, many of them permanently believed they were upright communists and citizens, victims of mistakes and misunderstandings, who will, by denouncing their fellow-inmates, manage to attract the kind attention of higher instances.

Another method for discovering those who have sinful thoughts, or even for artificially creating such sinners is – provocation. In this case, these are not simple informants at play, informants who will passively follow and inform on what someone has said or done, but provocateurs who set out to cause the intended adverse reactions. Whether directly serving the political police or still trying to recommend themselves to it, they base their success on developing false closeness, which leads into carelessness. The other person is thus led into expressing his or her opinion or even to courteously or tolerantly agreeing with the provocateurs' "anti-state" statements.

Provoking people who think differently than the regime wants them to does not seem rational, but this practice takes place all the time, for reasons mentioned above. Yet, one more reason for this practice should be added to that list. In politics in general, and in authoritarian systems in particular, processes and institutions gain their own dynamics, become detached from their initial or supposed objective. What is most important is that an institution, once established, is preserved. Secret police, with its expensive apparatus of informants, needs to create work for itself. This was irrefutably established to be true for all such polices in the past. It is considered that all "conspiracies" discovered in France in the times of Napoleon III were a political creation. The czarist Okhrana has helped, even sustained some conspirator's associations – the example of Yevno Azef, its agent who was at the same

also the chief of the terrorist section of the Socialist-revolutionary Party – is one highlight of such activity.<sup>42</sup> Even the British political police had financed leftist magazines at universities before the Second World War, in order to enable potentially “dangerous” elements to reveal themselves in this way. The paroxysm of such police *l’art pur l’art* was definitely reached in the USSR after 1933: real culprits are no longer sought there, not even the ones who are “suspicious” according to some, even the most perverse, criteria. The process had gained such extreme momentum, to the extent that it was simply necessary to apprehend as many enemies, objective or subjective, as possible. The interrogators know they are not dealing even with people who have had occasional “wrong” thoughts – in the beginning, they had a pre-prepared version of the confession for them; later, tired and overwhelmed with work, they leave it to the arrested to invent their own guilt, however unlikely it may be. The arrested do so, hoping that it will make things easier for them. In certain cases this “mass” approach had become so widespread that even the Stalinist bureaucracy had to restrict it.

Perhaps there is some “logic” in it. Everyone is suspicious since everyone has the capacity to think. As Hannah Arendt points out, the government is afraid of them changing their minds.<sup>43</sup>

In addition to *spitze* informing, provocation and other types of knowledge and behaviour which reveal proscribed thoughts, attitudes and convictions, such assumptions are also obtained in other manner. As a rule, there is no rehabilitation in totalitarian systems, save for perhaps post-mortem, and therefore a person can never clear his past. If a person has shown wrong thoughts once, such person can never be expected to improve his way of thinking. It may well happen that, due to the “sins” of puberty, even those who later sincerely support the government, suffer for life. In addition, the assumption that someone is a dangerous adversary can also extend to entire categories of people. The beginnings of modern concentration camps can be traced back to the Boer wars, when the British authorities detained the entire population of Dutch origin in camps in some parts of South Africa. All Boers, as Dutch settlers and their descendants called themselves, were

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42 See V. Dimitrijević, *Terorizam (Terrorism)*, op. cit., p. 44

43 Op. cit., p. 430.

dangerous since it was assumed they, in their souls, supported the rebels who were ethnically close to them.

In the times when the class fight in the USSR became more intense – which Stalin noted after the victory of the October revolution – all those of noble origin became concentration camp candidates, along with all the kulaks and their children. For, strange conclusions based on utter vulgarization of famous Marx's famous attitude that one's opinion is conditional on one's economic position was distorted into its police version, according to which, class equals biology and therefore a person of certain origin cannot help oneself but have an opinion contrary to that of Soviet authorities. In order not to blame everything on Stalin, it must be admitted that this biologization of class conflict had existed even before, among those who claimed they were communists or anarchists. While this opinion was expressed by intellectuals or fervent article-writers, it could well have seemed harmless (although such abstract killers are underestimated all too often). However, this type of "persona", despite occasional warnings by some Lenin's associates, rather quickly became engaged by the Emergency Commission for Combating Counter-Revolution and Sabotage (the Cheka). Martin Latsis, who was the chairman of the Cheka for the Eastern front, wrote in 1918:

We do not wage war against individuals. We are exterminating the bourgeoisie as a class. Do not look during an investigation for evidence that the accused acted, by word or deed, against the Soviet power, but ask these three questions: To what class does he belong? What are his origins? What is his upbringing, education or profession? Only the answers to these three questions should decide the fate of the accused.<sup>44</sup>

Stalin's special contribution was that he felt that, even twenty years later, extreme conditions of intense class conflict and counter-revolution existed in the USSR, just like they did back in 1918. This rendered Latsis's despise towards law and logic being perceived as a reflexive act of self-defence and nervousness, an expression of revolutionary fortitude.

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44 *Pravda*, December 25, 1918. Lenin's reaction to these statements are provided further in the text.

Success in hiding animosity and subversive thoughts, in the eyes of prosecution authorities, is perceived as major hypocrisy on the part of the convict, and preventive action against such a person therefore constitutes a major success of the security services in exposing the craftiest of opponents. Interestingly, the apprehended “enemies” are, as a rule, accused of hypocrisy, which is true in some distorted way, since all of them were forced to pretend in order to survive.

The Covenant on Civil and Political Rights (Article 18) singles out, among all forms of freedom of conscience, the freedom of religion. It implies a person’s “freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” Insistence on religion is understandable given the lasting historical experience of persecution and destruction of members of other religions and of “heretics”. In addition, even the essentially religiously unconvinced regimes are ready to use the human’s regrettable trait of being intolerant to difference, in order to obtain fanatical mass support and direct the social rage, they had most often caused themselves, towards traditional and easily-identifiable “foes”.

Unlike other fundamental rights and freedoms, which are absolute and undividable, freedom of thought and religion is not. Precisely because it cannot be reduced only to one’s internal life, its manifestation may be detrimental for the society for perfectly valid reasons. Pursuant to the Covenant on Civil and Political Rights, this freedom can be limited by law if it is necessary “to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”

The line is clear in theory, but it does provide room for abuse. A person can have even the most absurd, most blood-thirsty thoughts, provided he keeps them to himself, in the sense described above. The wider manifestation of such can be so detrimental to the society in which one lives, or to cause such grave reactions in one’s community, that such manifestation must be prevented, even in the interest of the thinker himself. Such thoughts may consist of energetic opposition to all the freedoms described above and the conviction that radically inhuman solutions should be used, like, for instance, the reuse of the Nazi and Fascist practice of

genocide. The freedom to express thoughts at one point becomes the freedom of expression, an important, but not a fundamental human right, which is subject to even more limitations. Moreover, pursuant to the same Covenant (Article 20), states *are under the obligation* to prohibit propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Such limitations are necessary beyond doubt, since tolerance towards the enemies of freedom has too often proven to be an introduction to ultimate intolerance. However, it is also evident that such limitations can be abused by discretionary assessments of the characteristics of such thoughts by the authorities, which are not independent and which do not observe any decent rules of procedure. This is why it is required that the limitations must be envisaged by law, and hence both the legislative act and its implementation must be assessed from the standpoint of all fundamental human rights and freedoms.

### DEBTOR'S PRISON

At a first glance, it seems that the right of a human not to be deprived of freedom solely on the grounds of failure to fulfil a contractual obligations should be mentioned here only for the sake of completeness, since it is also one of the rights that cannot be abolished under any circumstances (Article 11 of the Covenant on Civil and Political Rights). However, such practice still exists in some states, which do not hide it, and even put reservations to the Covenant, refusing to accept such an obligation or to amend their laws and customs.

Debtor's prison, which was so touchingly portrayed by Charles Dickens in his novels, was at its worst in early capitalism. The Roman law tradition, which did not recognize the relation between the state and the accused even in criminal matters, and which instead recognised only the conflict between the private plaintiff and the opposing side in a dispute, became associated to the interests of the usurers and investors who did not want to sustain any risks. The liberal state, although it supposedly ought to have refrained from interfering with private relations and only should have guaranteed public order, in fact served those who were socially and economically more powerful. If someone was unable to repay his or her debt, this was not, as the rule is now,

considered to be the risk of the creditor, which is already calculated in the interest rate. At the creditor's request, the debtor was to pay his or her "frivolity" by deprivation of freedom, which, in drastic cases, could last until one somehow managed to redeem oneself.

There is no need to emphasize that the state and its apparatus must not serve private interests in this manner, and that failure to fulfil a civil-law obligation must not result in criminal sanctions, such as deprivation of freedom.

When one evil is discovered, denominated and condemned, it continues to exist in a less recognizable, atypical form. Just like work camps are a modern form of slavery, the modern mass form of debtor's prison is some form of serfdom, which stems from the debtor's infinite obligation to "work off" his debt.

For instance, in Russia, serfdom was formally abolished by an imperial decree in 1861, but actual connection between farmers and the land lasted for much longer. Namely, the state had bought the serfs from the landowners, and the serfs had to repay that debt to the state for forty-nine years. All of the villagers, that is, their traditional municipality (*mir*) were accountable for each individual farmer.

A similar relation exist primarily in societies that have not managed to fully transition from feudalism to capitalism, that is, in societies where the new system is not strong enough to tie the workforce solely by economic means – where the work would be exploited while at the same time the worker would formally be a free man, who can chose and change jobs at his own free will. The economically more powerful side then permanently tries to enslave the worker and uses various means for doing so. One such method is the employees' obligation to work and not change his residence until he repays the loan obtained from the employer. Usually this indebtedness starts even before the job is obtained, in the form of a loan for relocation and settling, which the worker never manages to pay, since he or she keeps taking new loans from the employer – the lender. Particularly drastic forms of debtor's serfdom exist in rural areas, affecting farm labourers, where the employers are often helped by the state, whose authorities apply laws against idleness and vagrancy (vagabonding) and forcefully return all labourers who try to escape to work.

Even in cases where, like in India, the state energetically opposes such practice, it still persists as a custom, affecting the un-

touchables and members of some minority tribes. It is considered that there are still over two million serf-debtors in India.

The same situation is present, in a more limited form, in many other countries, but it is usually not publicly recognized. Working for a low wage and purchasing only in the shop owned by the employer, the employee finds himself in a vicious circle, where he actually lives in debt and every first of the month, instead of cash, receives a notification on how much he owes for past purchases of goods that are already spent. This “recipe” was first applied by former slave owners in the USA, in an attempt to legally detain those who were suddenly declared free men by law. Although such practice (peonage) is now expressly prohibited in the USA, ten thousand such cases are discovered each year, mainly involving illegal immigrants from neighbouring states, who can be easily intimidated or blackmailed. According to one report of the British Miners’ Association on sugarcane cutters in Bolivia “ninety percent of workers are victims of the system of peonage: debts that are not worked off during their lifetime are passed on to their children”.<sup>45</sup>

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45 *The Observer* (London), March 5, 1978.



## II TERROR

### WHAT IS TERROR?

Hopefully, the analysis so far has managed to show that it is possible, based on a series of generally accepted minimal criteria, to criticize the part of the legal system consisting of intimidation by sanction, i.e. by a prospect of loss of a fundamental personal good to everyone who violates certain set rules of behaviour. Systems which do not guarantee minimal respect of human personality and dignity— and examples show how numerous they are or were in the recent past – deserve to be condemned, and cannot even be called legal. Moreover, their existence today is an international concern, and the attempts to remedy them, or even encourage and assist political and social forces that strive to do so, even by violent means, are justified and quite legal.

The question, however, is whether all systems that do not meet some of the above-mentioned criteria, where some minimal human rights are not respected, should also be labelled as systems of terror.

The etymology of the word “terror” does not provide much assistance in establishing its precise meaning. In Latin (*terror, terroris*) it only designates intense fear. Causing fear of being punished, as we have seen, is an inherent part of every known legal system and will continue to be so until the state itself exists – the main attribute of the state being the monopoly to use violence in order to achieve desired behaviour through coercion. This is why terror potentially exists everywhere, and every legal system can show some terror-related traits; hence, the opinions that explain terror by national culture or tradition, or the stage of economic development, are mistaken. In this respect, the “ideally” legally organized Weimar Republic in Germany, remains a permanent

warning, whilst the events of Stalin's times in the USSR have shown that terror can happen even after the victory of the socialist revolution, and even when a seemingly perfect constitution, like the 1936 Soviet constitution, is promulgated.<sup>1</sup>

Not even the historic episode that, through French, spread the use of the word "terror" in its modern sense, into other languages, provides more than several general indications.

It is generally known and often repeated that the Jacobins, at a point of crisis in the French Revolution, believed that in order to preserve the revolution's endangered achievements from the attacks of internal and external counter-revolutionaries, they should induce strong fear in their adversaries through the widespread use of the most drastic measures, primarily of the death sentence. According to Robespierre:

If the attribute of popular government in peace is virtue, the attribute of popular government in revolution is at one and the same time *virtue and terror*, virtue without which terror is fatal; terror without which virtue is impotent. The terror is nothing but justice, prompt, severe, inflexible; it is thus an emanation of virtue.<sup>2</sup>

Relevant legislative grounds were created for terror in regulations that empowered the revolutionary authorities to arrest "suspicious" persons; the same norms simplified the procedure before the revolutionary courts – defence counsel were abolished, witnesses were no longer needed, the freedom of judicial conviction became limitless, and legal remedies were excluded. On top of it all, the only sanction was execution.

Whilst in Paris, even in such conditions, under the influence of the "incorruptible" Robespierre and similar revolutionaries, the total arbitrariness of people's courts and prosecutors and the frolicking of denouncers could still be prevented, some types of "punitive expeditions", taken by the government's special envoys in "unreliable" parts of France were different. There, terror became completely non-discriminatory, victims were selected arbitrarily,

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1 Incidentally, all the authors of this constitution, except for Andrey Vysinsky, were soon killed.

2 "Discours et Rapports de Robespierre", op. cit., in E. Carr, *The Bolshevik Revolution*, Harmondsworth, Penguin, 1966, p. 163.

and “revolutionary justice” was used for resolving personal conflicts and satisfying envy. One of the cruellest envoys was Fouché, who was later Napoleon’s minister of interior, and a royal diplomat after the restoration of the Bourbon monarchy. This adaptable man, considered to be the father of the modern political police, gave a characteristic statement during the times of terror, saying that “everything is allowed to those who act in the spirit of the revolution”.<sup>3</sup>

In the first fifty days of its activity, the revolutionary court had pronounced 1380 death sentences; the numbers show that during the relatively short (almost two years) period of terror some 40,000 people were killed, and some 300,000 were arrested (it is estimated that the population of France at the time amounted to 27 million). The terror mechanism had finally turned against those who had (in good faith and with the best of intentions) devised it. Robespierre and his closest associates were also guillotined in summary proceedings. Subsequent analysis of the terror victims had once more confirmed its practical arbitrariness and inefficiency (from the standpoint of the interests of revolution). Instead of affecting the enemies of the revolutionary bourgeoisie, terror struck down common citizens and peasants: the gentry accounted for only 8.5% of those punished, the clergy for 6.5%.<sup>4</sup>

What traits of terror, except for the tendency to cause serious fear, could be identified using this historic example? The first feature of terror is the limitation of legality in substantive and procedural terms. A man can be harmed solely because he is suspicious. He is assumed to be guilty, not innocent. In the mildest of cases, the evidence against the accused need not be immaculate. The system of sanctions is inflexible and strict and consists of physical liquidation only. Mistakes cannot be amended, literally: not only is there no legal remedy, but a death sentence is final in the cruellest sense of the term. The second trait of terror is its inevitable arbitrariness: it has to transmute into unmotivated violence; it ceases affecting only those it is meant to affect (notwithstanding for a moment that even the latter can be innocent in the conventional sense of the term). Consequently, terror is irrational even from the

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3 As quoted by K. Čavoški, “Revolucionarni makijavelizam” (*Revolutionary Machiavellism*), *Filozofske studije*, XV, 1993, p. 115.

4 See B. Singh, “An Overview” in Y. Alexander – S. Finger (ed.), *Terrorism: Interdisciplinary Perspectives*, New York, John Jay Press, 1977, p. 6 et seq.

standpoint of those who purport to use it to achieve a generally beneficial cause (even at high human cost, which the revolutionary circumstances, that is the interest of the majority, could justify). On the other hand, it causes widespread fear and disorientation, since it is not only the opponents of the regime who fear – everyone starts to be afraid. Finally, the example of Fouché and his ilk shows that the conditions of terror are suitable for a specific type of personality, whether sadistic in nature, or, as the case probably was with Fouché, quite cynical, a person who sees terror as an interesting process of controlling people as opposed to having a higher goal which the terror supposedly serves.

We analysed Jacobin terror only because it was used to single out and terminologically designate a certain type of governance by the use of fear. Henceforth we shall not reflect on it much, primarily because the French revolution did not establish a *system* of terror, as many later systems did. In addition, the number of human victims it had caused pales before what humanity had suffered later through the use of terror in “regular” circumstances of stabilized government and lack of external and internal danger.

It is quite clear that the determination of terror cannot be accomplished, as we have mainly done above, by identifying some principal traits of terror in the French revolution and then applying the term to all those situations, that is, to means of political activity or combat, which demonstrate such traits. No one serious does that anyway.

However, all those who try to determine what terror is face a common terminological dilemma. Simply put, the dilemma is as follows: should one first describe and study in detail any occurrence that has been named, from any point of view (or at least several points of view), in a certain manner (in this case classified as terror) and based on everything they have in common determine the meaning of the term (specifically, say “terror”), or should one study all attempts at defining it, analyse the common meaning of the term, when it is used for scientific purposes, and only then compare the phenomenon with the term, starting from the notion and then working one’s way towards its manifestation? Some form of arbitrariness will always exist, since terminology, after all, is a matter of convention or agreement.

We shall use the deductive method, which, therefore, more resembles the second line of research. There are two main reasons

for doing so. The first, more linked to the substance, lies in the fact that any considerable departure from the common, long-standing use of the term could result in misunderstanding, since it may well happen that the notion of terror we reach departs from the usual understanding of this term, however more correct and better our notion may be. Our definition would then be only operational, it would mean that this is our understanding of the term “terror” and we would have to always or often reiterate that.

The second reason, equally important, even though it is not strictly scientific in nature, lies in the fact that the term “terror” is not a neutral, but a pejorative word. Many who use it, particularly open or covert propagandists, link their political preferences and dislikes to it, and use the term terror to denominate a form of governance, not referring to the means used, but employ it only in cases when they disapprove of the origin of government and its political objectives, whereas the same methods, when used by a better government in order to attain approved goals, are denominated by various euphemisms. The times in which the participants in the described Jacobin actions proudly called themselves “true terrorists” (*vrais hommes de terreur*), or when Bolsheviks openly called what they did to their enemies as terror, have passed.

The fact that the term become more and more loathed and was frequently used to defame those one detests, whatever they did, the terminology became confused with an ethical or political assessment. This is also done when one is not analysing the current state of affairs, but situations that took place in the past. If it is believed that terror was justified, necessary, imposed, inevitable etc., as often is the case, and as Lenin had described the “red terror” – at the same time incessantly speaking of terror – it is considered that this ugly label should be avoided.

If an inductive method is used, therefore, if one seeks for the traits of terror in all occurrences anyone had ever denominated as terror, one will easily fall into the trap of propaganda and apologetics, since biased people would dictate our behaviour. We would then consider as terror even what it is not, and we would omit those situations of terror that are not named as such only because they did not bother anyone, except for the unfortunate victims. This happens even today, when the terror system exists in a country that is strategically equally important for both military-political blocs, where the government that uses terror cannot be classified

in a recognizable political category, and the population lives in economically and socially undeveloped conditions, which renders their sufferings culturally uninteresting for most researchers, since those mainly live in developed countries. Even academics, who should present a model of impartiality, have such prejudices: they are most sensitive towards repression that affects intellectuals. On their value scale, for example, the freedom of expression is often higher than the right to life of insignificant people, particularly when it is jeopardized by elementary poverty, poor living conditions and backwardness.

Therefore, this procedure should be revised and examples that are unjustifiably designated as terror should be disregarded. How to do this without reliable grounds, and where can such grounds be found? Someone else's a priori opinions and prejudices would then be replaced by ones' own, someone else's value positions by one's own. It is hence necessary to determine, in the most objective manner, what terror is in abstract terms, to determine the notion, and only then so qualify any given situation.

Naturally, this cannot divest terror of negative connotations, since it is, according to the criteria we have established so far, a deprivation of fundamental rights and freedoms. These assessments, however, are valid when it comes to the present, when such criteria have been reliably set, but does not apply to all the acts committed in the distant past, when the criteria were not so clear. It seems that this characterizes the historical approach to observation of this occurrence, as opposed to accepting that each occurrence can be observed only individually, as a unique historical event.

Things become complex due to the fact that the term "terror" is used both for the methods of governance and the methods of combat against government. The derived word "terrorism" is used in the same manner. Hence, governmental terror is called "terror from above", "the process of terror", "terror regime" or "state terrorism", whilst the terror against government is said to be "individual terror", "terror from below", "agitation terror" or, simply, "terrorism". Of course, the vertical direction of terrorism cannot show all the courses which terror takes in political combat: individual terrorists can "help" the government, regardless of whether the government does not want such help it or accepts it wholeheartedly. Terrorist methods can be used in confrontations between rival movements, none of which are in power, or which comprise some form of a

governing coalition; in such cases, terror is quite “horizontal”. Finally, terrorist actions can be a tool of international politics, when two governments are confronted through proxies which are real or apparent “individual” or “private” terrorists.<sup>5</sup>

As explained before,<sup>6</sup> we find that the simplest solution, and also the one closest to the general understanding, is to designate as terror a certain type of the use of fear for the purpose of governance, and to label similar methods, used in the opposite direction, as terrorism. This study is primarily dedicated to terror.

However, this does not mean that terror and terrorism do not have some common traits, and they will be used as the starting point for our analysis. Primarily, causing fear is their most important weapon, as is evident from the etymology itself. Next, this fear is created with a political goal in mind, and is, therefore, linked to preserving or obtaining power. In order for intimidation to be successful, physical violence is used against selected victims – a violence that would not be terrorist if it did not at the same time communicate the threat of future violence to potential victims, that is, to all those who can identify themselves with the victims. Hence both terror and terrorism have a dual target, a dual addressee: the victim of the violence and the recipient of the threat. Finally, both terror and terrorism are incompatible with certain norms of political behaviour, which are, however, determined differently with respect to terror, since, as a rule, terror is the action of those who also have legislative power, whilst individual terrorists are not sovereign persons, they are private persons, who are otherwise subjected to a particular legal system. It is this last element that Nikola Milošević has in mind when he writes:

Not every coercion is necessarily terrorist nor is every regime that resorts to coercion measures necessarily terrorist. It is only when coercion becomes the main instrument for eliminating social and political predicaments and *only when its use is no longer restricted in any legal, moral or human terms*, that we can speak of terror.<sup>7</sup>

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<sup>5</sup> See V. Dimitrijević, op. cit., p. 222 et seq.

<sup>6</sup> Ibid., p. 23 et seq.

<sup>7</sup> N. Milošević, op. cit., p. 142, italics added by the author. There is no need to emphasize that we do not find this determination complete without fear being mentioned, which Milošević most likely presupposes.

It seems that the benchmark used for the final trait of terror should be the most fundamental human rights and freedoms, as established in the previous section, and that any regime that uses violence in order to cause fear among the entire population or parts of the population, while violating some of these rights, can be called terrorist. We fear, however, that this position is a departure from the general practice, which we would be the only ones to support, thus adversely affecting our ability to communicate and reach an understanding with others. It seems that the most important among such guarantees is the legality of intimidation, the observance of which secures the minimum predictability of behaviour and *enables innocence*. In other words, *whenever the use of violence is not a pre-determined sanction for undesirable behaviour that has been precisely described in advance and therefore the violence in the form of sanction is not only used to avert potential felons, which does not relate to anyone else, terror begins*. When it comes to terrorism, individual terrorists or a terrorist group are not the legislator, and hence arbitrariness and lack of discrimination are frequent accompanying phenomena to the above-mentioned traits, and perhaps are even its inevitable *consequence*; vagueness and uncertainty of threat are an important trait of terror, since the one responsible for terror, the state terrorist, sets the rules and enforces them.

Eugene Walter, one of the most prominent and most frequently cited terror researchers (who, unlike a multitude of authors who study terrorism, are quite rare), has reached similar conclusions:

Punishment defined sociologically...is a penalty imposed for the transgression of a recognized norm established either by coercion or consent in the course of a social relationship. The features that distinguish violent legal punishment from other kinds of violence, including the terror process, are the fundamental conditions of legality. For violence to qualify as legal punishment, it must be imposed by duly constituted public authority for an act within its jurisdiction that is publicly judged to violate a legal rule promulgated before the act took place. ... These conditions of legality are limits to violence, and if they are indeed observed, no matter how harsh the punishment – although, certainly, severe punishment may be condemned on other



grounds – it is excluded from the category of terrorism. Violence, in these conditions, would follow deviation from the rule, and no matter how destructive punishment might be, the individual who chooses to conform remains reasonably secure from official harm. In contrast, the terror process begins with violence itself, which is followed by intense fear and irrational, reactive behavior patterns. In contrast to terrorism, deterrence implies the anticipation of a probable evil and the ability to avoid. *The fear of punishment is different from the fear generated in the terror process.*<sup>8</sup>

Sometimes it is difficult to recognize terror, or, rather, it is difficult to reliably prove it, particularly in fora where there are those who sympathize with the terror government because of concurrent interests or ideological similarity. Terror is more often practical than proclaimed and regulated by law. In recent times, non-hypocritical terror systems which openly negate the principle of legality are quite exceptional, virtually non-existent. Resorting to Guarani language once again, we can say that all men, or the vast majority of men, live in constant fear, not because the law is strict and unjust and because it allows punishment on the grounds of analogy, “class justice” or “healthy feeling”, but because “mberete” applies instead of law – arbitrariness and autocracy of the elite and the police executors of its volatile will.

The seeming observance of legality also exists in situations in which innocent men are condemned for actions that were indeed described and designated as transgressions or crimes in advance, but were not committed by these people. However flexible the famous Article 58 of the former RSFRS Criminal Code may have been, an attempt to violently overthrow the constitutional order and acts of terrorism are criminal offences in most criminal laws in the world. The point is that the accused in the Moscow processes were convicted and executed without having committed such actions, which was the main terror message of such exemplary trials: the great leader and his government are so powerful that they can punish anyone they chose for any criminal offence, not only punish the acts that person did not commit, but also the acts

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<sup>8</sup> E. Walter, *Terror and Resistance*, Oxford University Press 1969, p. 25. Italics added by the author.

that person could not have committed. This was to be pondered upon by all those who had heard of the fate of one of the “minor” victims of Stalinist terror, a tram driver in Kiev, who was declared to be a Japanese agent because he allegedly planned to crash his wagon into vehicles in which high officials were seated. If one is familiar with the manoeuvring capacity of a tram, it is clear that the chances for the unfortunate tram driver to realize his devious plan were rather minute.<sup>9</sup>

Today, terror usually lives behind a quite decent legal façade. True lawlessness, i.e. the violation of the principle of legality, happens because there are no legal guarantees, not only that a man shall not be punished for an offence he did not know was punishable, but also that an innocent man shall not be convicted. The threat to the innocent is enhanced by the absence of an objective determination of guilt, which is possible despite formal guarantees awarded by the (unobserved) law. Actually, the procedure itself constitutes a punishment in the form of long-lasting deprivation of freedom without contact with the outside world, or is complemented by torture. It is the procedure that reveals hypocrisy, which has the form of perverted distortion of legality. In order for someone to be convicted, evidence is necessary. The best proof is a confession, and it is obtained by pressure, or, more certainly, by torture. The trial, which can also be public, is then only a final, formally correct, act of a diabolical play.

Therefore it seems that the determination of terror should be supplemented by the *de facto absence of guarantees for an impartial establishment of guilt*. Knowing that the determination of this element is very difficult in practice one can, more modestly, claim that such conditions exist everywhere where torture is systematically applied and where it is permitted to use measures that can be considered as criminal sanctions under the usual criteria only because a person is *suspected* of having committed a criminal offence. Torture stands out, since it is such a measure *par excellence*: under the usual criteria, it is prohibited even as a sanction. However, it is also joined by other procedures, such as the long-term deprivation of freedom (“preventive prison”) or the taking of hostages. The taking of hostages is conspicuous also because the government admits through that very procedure that these are

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<sup>9</sup> R. Conquest, *op. cit.*, p. 405.

innocent persons: namely, it does not threaten their execution if the real culprit does not come forward or if someone else, even in the future, after hostages are taken, does something or fails to do something.

Strictly speaking, in such a determination, differentiation should be made between torture as a method of investigation or intimidation outside of the procedure for investigating criminal offences from torture as a cruel, inhuman and degrading punishment. In the spirit of Walter's considerations cited above, the existence of such punishments would entail a different type of condemnation, but would not testify of terror. In practice, as we have seen, it is very difficult to differentiate between these two occurrences. Moreover, even if it were possible to completely single out torture as a form of punishment and if the likelihood of such a punishment would not per se affect the interrogation methods, the threat of cruel punishment tends to cause an excessive measure of fear, if for no other reason, then because there is always a possibility that an innocent person will be condemned, and a corporal punishment cannot be remedied.

Emphasizing the need for the use of torture and cruel, inhuman and degrading punishment to be systematic is understandable since, unfortunately, occasional excesses of this type may happen even in systems that are not terrorist, or are even quite far from being that. Moreover, it is possible for the terror system not to be complete, that is, it is possible that the use of terror is limited. This does not refer to some limits in the method, but primarily to the fact that terror measures are used only on one part of the territory or against some categories of people.

The first type of limitation is well known in colonialism.

The things that were done in colonial territories of democratic states were things that could never have happened in the metropolis. French army and police used the cruellest terror measures in an attempt to prevent the independence of Algeria, but this was done only in Algeria and only towards those who were not inhabitants of French origin ("colons"). Great Britain did not refrain from any methods when suppressing native movements in Kenya, and has recently been condemned by the international community for its actions in Northern Ireland, which is not even a colonial territory. A similar case was that of the USA in South Vietnam, where US forces exercised the most brutal terror, either directly

or using the services of the local regime, while, at the same time, every US citizen could rely on a considerable level of protection from arbitrary and cruel procedures.

Naturally, the “terror zone” in an otherwise non-terror system cannot remain completely isolated: in the USA, for instance, the Federal Bureau of Investigation (FBI) and other similar institutions made sure that the local opponents to the war in Vietnam were unable to exercise their constitutional rights to influence the government without risking being maltreated, which should intimidate all those who shared their opinion.

## SUBJECTS OF TERROR

There are three main subjects in the terror system. The first one is the person effecting terror (we would call him a “terrorist” if the designation of “terrorism” was not reserved for the methods of combat against the government), the second one is the victim of violence, and the third one is the object of intimidation.

### Terror services

Unlike the case in terrorism, in the case of terror, all three main subjects are collective. The one effecting terror or the “state terrorist” is, actually, the government itself. The main decision to resort to terror is always passed by the highest state authorities, the main decision-makers in the state, who are either so designated by the constitution or who *de facto* exercise such power. The accounts according to which these authorities “were unaware” of terror always turn out to be untrue. It is interesting, however, that such accounts are invented not only after the dissolution of the terror system, in order to avoid liability, but are also spread at the very peak of terror, in order to complement fear with the channelling of hate towards the lower parts of the hierarchy. This is characteristic of personal tyranny, when the “great leader” often wants to inspire both love and fear, both worship and terror and to – more prosaically – reserve the option of making a sudden turn and, should the level of terror become too strong, respond to people’s wrath by presenting them with a less important figure as being accountable. Indeed, a victim of terror does find some comfort in that and does not contest the entire system, but only some of its “deviations”. Just like the poor of Baghdad once wished for Harun al-Rashid to appear among them, to mercifully listen to

their accounts of the actions of his officials and then punish them severely, so did countless honest and conscientious Soviet citizens cry out “If only comrade Stalin learned of this!” Indeed, the most rage-filled period of Stalin’s terror is still persistently called “Yezhov times”, according to the name of the Stalin’s’ secret police chief.

Such a main decision is implemented by administrative bodies, working together with parallel or ancillary organizations, which are frequent in authoritarian systems. There are considerable differences in that respect. Sometimes terror is left to the services that fight any form of crime – to everyday police and to the regular judiciary. However, these are often considered not to be sufficiently reliable and efficient, and terror is hence more often linked with special formations, which are established virtually only for terror purposes or are adjusted to this goal.

By its very definition, the so-called political or “secret” police is best suited for such adjustments. This institution, which draws its origins from absolutism, and was taken over and modernized in bourgeois states, has all the necessary preconditions, since it is far less susceptible to oversight by the public or representative bodies. Its budget is unknown, its officers do not wear uniforms and many of them pretend they have other jobs; most of its actions are confidential, while its files are confidential pursuant to applicable legislation governing the state secret. Most importantly, the offences the secret police deals with are most dangerous one from the standpoint of the political system, since success in committing them would cause irreparable damage – the overthrowing or a fundamental change of the system. Therefore, the discovery of such offences just after they were committed and the punishing the offenders, even by the strictest of sanctions, appear to come too late: preventive action is almost the sole task of the secret police. In order for the secret police to be fully successful, not all inhabitants, as the case is with regular crime, can be considered equally dangerous or benevolent – one part of the population is more suspicious per se, or rather, this service considers it more prone to committing political offences.

All these reasons for suspicion are obtained through own assessment of a persons’ behaviour, which is otherwise not prohibited. Let us remember that this is, in fact, a pursuit for behaviour that reveals one’s opinion, and, in that respect, every political police is Orwell’s “thought police”. Under the management of the enduring

and austere Edgar Hoover, an individual not even the strongest American presidents dared touch, the mentioned FBI (which is not only a political police force) had pursued a far right general course, supported by its boss, a course which had also reflected the position of the true social elite in the USA. The list of groups and organizations the FBI had infiltrated via its agents-provocateurs would seem ridiculous if it were not sinister. In addition to militant (but always leftist) radical movements, like the Black Panthers or Students for a Democratic Society, the list also included the distinctly pacifist and non-violent black human rights movement led by Martin Luther King, and also white organizations and volunteers that supported that movement. The list also included rather harmless groups of “hippies”, charities and scientific associations.<sup>10</sup>

The contrast is even greater in cases where the suspects are members of political parties whose representatives are members of parliament, and often even members of government, which is usually the case with communists. Political police is, therefore, used to classify people not according to their loyalty to the formal constitutional order, but according to its own estimate on their proximity to the essence of the social and economic system – it is therefore easier to become a member of parliament than to be in its mercy. Political police has to become cynical towards formal constitutional and statutory powers; it is accustomed to perceiving citizens as unequal. All these elements of specialized political police can easily turn it into the core of the terror apparatus. In addition, since various criminal offences the secret police had committed in the “pre-terror” times were forgiven – burglary, forgery, breach of secrecy of communication and the like – the members of these formations can expect that, once they are entrusted with even more “tough” tasks, one eye will be closed at even the gravest criminal offences they commit.

Police forces that will primarily take care of protecting the constitutional order are necessary in any state, as long as the social and political conditions, as we know them, are in place, or at least until international relations also include the tendency to undermine the political stability of other states. Consequently, political police, especially when it is efficiently supervised by democratically constituted high-level state bodies, is not bad in itself. However,

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<sup>10</sup> See C. Perkus, *CONTELPRO: The FBI Secret War on Political Freedom*, New York, Monad Press 1975, D. Wise, *The American Police State*, New York, Random House, 1976.

it is an institution that can be easily abused by a mere change at the political top. It remains a tool.

It is characteristic of extreme minority and elitist terror systems to either create the political police, not as an adaptation of the “classical” police but as a force that is established, from the very beginning, as a terror tool, or to use some parallel organizations, which are even kept apart from the state apparatus, for that purpose. The task of discovering the true opponents of the constitutional regime (whatever that regime may be like) in these cases fades before the main purpose of causing fear.

One such example are the Tonton-Macoutes in Haiti, created by the father of the current dictator, “Papa-Doc” Duvalier, who turned his private thugs into a state institution, causing fear in both the people and the regular armed and police forces, which helped him take power.

SAVAK (National Organization for Information and Security) in imperial Iran was also such an organization. The regulations that established this institution in 1957 make for an enlightening read. Among other things, SAVAK was to persecute all the groups and the members of groups the activity of which had been declared or *shall be declared* illegal. Most important and most sinister was the fact that SAVAK was vested with the powers of a court-martial; this meant that it did not only exercise the police functions of discovering felons, but had also had the power to punish them as it deemed fit. The organization was associated to the government, as its head was appointed by the shah. SAVAK therefore remained outside the judicial system and even outside the military hierarchy, and had exclusively enforced the will of the ruler.

Another similar organization is the notorious Chilean DIN, which later changed the name into ANI (National Intelligence Agency). It was created after the bloody overthrow of president Allende by the chief of the junta, general Pinochet, using his “reliable” men, avoiding to include in it even Allende’s sworn enemies from the existing intelligence services. Those who are well acquainted with the situation in Chile claim, however, that a total of seven secret services are active in this country, which causes even more dismay for the victims of terror, potential victims and those who are close to them.

Such institutions in fact strive to become notorious and to cause doubt rather than confidence in the stability of the regime.

Secretive yet old recipes of creating general anxiety include the tendency for the terror units to be given mild, harmless and “humanitarian” names, which sometimes sound like the names of scientific institutions or charities. The name that first comes to mind is that of Idi Amin’s service in Uganda, which was named, according to the circumstances, either the State Research Bureau or the “research cabinet”. This “institute” had clear distinguishing marks: its “researchers” would arrive in the cars of the same type, take the victim’s shoes off, put the victim in the trunk of the car and drive away in an unknown direction. Nothing was ever to be heard of the victim again: only the shoes would remain.

As we have seen, the name of the current main secret service in Chile is similar. One of the worst prisons in Uruguay is called Liberty (*Libertad*). During the times of Stalin’s terror, Soviet citizens would realize that a NKVD dignitary had died if the official necrology stated that the deceased was “a great humanist”.

In Equatorial Guinea, the main terror tool of the president Macias Ngueme was the organization called “The young march with Macias” (*Juventud en marcha con Macias*).

Orwell had summarized such experiences and foresaw the future developments when he named the main terror institution of his invented totalitarian state “The Ministry of Love”.

Terror chief’s distrust in the existing state apparatus may exist even if terror was not preceded by a democratic regime. In addition to the dictator’s entourage comprising former criminals, parallel and, as a rule, party organizations, are used for that purpose. The Nazi police apparatus had represented a conglomerate of state and party services that remains difficult to disentangle to-date; after all, it was spearheaded by a non-state institution in the form of a National-socialist party armed formation – the Protective Squad, better known under the abbreviation SS (*Schutzstaffel*). Even the more narrow political police, which was formed only after the Nazis took power, under the name of the Secret State Police (*Gestapo* – *Geheime staatspolizei*) was in part a state institution, which was, after all, in accordance with the national-socialist notion of the leader, who combined the state and the party at the very top.

The situation was similar in Italy, where it was just terminologically reverse. A state institution bore a distinctly “party” name – Voluntary Institution for Countering Anti-Fascism (OVRA – *Opera volontaria per la Repressione Antifascista*). However, OVRA was



mostly a classical secret police and was considered to be “milder” than true fascist institutions, which remained notorious for their free use of rampant fascist bashi-bazouk organized in so-called “squads”, which had developed a new demeaning form of torture – forcing victims to drink castor oil.

Mussolini’s example is also followed by modern fascistic regimes and national security states. Since, unlike the original fascism, they do not have actual political parties that support them, they therefore mix their essentially praetorian character with corporative features taken from fascism, and their terror tools constitute an adequate combination of the two. Formations that traditionally did not serve such a purpose take an important position. This primarily refers to the army, which should first and foremost take care of national security by preventing and fighting off attacks from abroad. In such a system, in Latin America in particular, the army has long lost that function, and due to the fact that a fiction of “internal aggression” has been created there – all opponents of the terror regime were considered foreign agents – it seems quite logical for the army to take on the activities that would otherwise be carried out by the secret police. After all, the army is higher on the hierarchy scale and is the backbone of the social and economic system that is being preserved; the army is the supreme political arbiter, a fact that provides praetorian features to all these systems. In contemporary Uruguay and Chile, for example, and in Argentina until recently, investigative actions related to political crime are conducted by military authorities, and the “culprits” are tried, if it ever comes to the trial, by court-martials, in the manner described before. During the colonels’ regime in Greece, the army had assumed the same function.

These tasks are entrusted to the army even when its influence is not decisive in the entire country. This happens in the mentioned “terror zones”, to which army units are deployed after the failure of the civilian authorities to maintain order in the face of challenges imposed by the local population. In essence, this was done by France in Algeria, the Netherlands in Indonesia, Great Britain in Northern Ireland and, to a certain extent, the USA in South Vietnam.

The army is then, in fact, given a political task, a task for which it is not prepared not only due to its own nature, but also a task in which a more suitable civilian authority and police have failed. Abram de Swaan rightly perceives that army units, when faced

with such a problem, inevitably start to use terrorist methods, torture in particular.<sup>11</sup> The “suppression of an uprising” or “pacification” are perceived as a tactical operation, which, in the eyes of the commander, needs to be carried out efficiently by use of violence. Even when it is not ordered from above, torture starts to be used spontaneously in smaller units, since the commander’s temptation to spare or avenge his men or to obtain important information with “a little” beating is too strong. If the method proves to be successful once, it will be repeated, and, as a rule, higher-ranking officials shall not oppose efficient methods. Moreover, the desire to introduce as many accomplices as possible to torture comes into play. And thus, gradually, the traditionally chivalrous military conduct is crushed; demoralization and deformation take place. The army starts to create its own specialized terror services and becomes unrecognizable.

In addition, terror systems, for various reasons, including the possibility of activities being covered up and fear of criticism from abroad as major but not exclusive reasons, involve the seemingly non-institutional political parties, formations and groups that are not associated to the state in the terror process – these are most often called “death squads” in Latin America.

The conspiracy between the regime or some strong official circles and the groups of spontaneous and unofficial thugs, torturers and bullies is by no means a novel invention. It was, for example, studied in detail in France during the Dreyfus affair, where the top of the army wanted to prevent the disclosure of its anti-Semitic action and prevent the rehabilitation of this innocent, convicted officer, at any cost. The terror of anti-Semitic crowd, impassioned by the tirades of the nationalistic right politicians, financed from unknown sources, was directed against all those who could have affected the outcome of the process, including the judges of the Court of Cassation.<sup>12</sup>

This method was perfected by fascists and National Socialists, before they came to power. The gangs of their uniformed and armed supporters, recruited mostly from among lumpenproletariat and those who constituted the criminal underground roamed the streets and squares of Italy and Germany and gradually dis-

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11 “Terror as a Government Service” in M. Hoefnagles (ed.), *Repression and Repressive Violence*, Amsterdam, Sweets and Zeitlinger, 1977, p. 43.

12 See H. Arendt, *op. cit.*, p. 110, note 74.

abled normal political life. After coming to power, such crowds were regularly let on rampages when this suited the government, thus complementing the general atmosphere of terror. At the same time, the regime claimed it could not restrain the “people’s rage”, but had not tried to conceal that it also did not wish to restrain it. This kind of ambiguity does not minimize, but instead intensifies fear, since general uncertainty and insecurity are even greater, just as the names of secret services sound more sinister if they are euphemistic.

Edward Herman, a fierce critic of the USA support to terror regimes in Latin America, proves that the “death squads” exist in the following countries and Central and South America (or that they existed until the dictatorship was overthrown): Argentina (from 1973), Bolivia (from the second half of the eight decade), Brazil (from 1964), Chile (from 1973), Dominican Republic (from 1965), El Salvador (1963 – 1965), Guatemala (from 1966), Nicaragua (immediately after 1970), and Uruguay (1968-1970).<sup>13</sup>

Just like the members of the “black hundred”, an organization that attempted to “help” the “too lenient” Russian autocracy by liquidating reformists and revolutionaries, in certain cases the “death squads” comprised extremists who support dictatorship by even more severe means, both as a matter of principle, but also as a desire to satisfy some of their own interests and urges. In return, official authorities express their gratitude to these death squads for killing and torturing those who are persecuted by the government by forgiving them all the killings, tortures and rapes that are not officially part of the government programme, to which people towards whom the regime is indifferent fell victim. It is considered that such groups are most numerous in Central America, e.g. in Salvador, the Dominican Republic and Guatemala. In the beginning of the last decade, in the Dominican Republic, the activities of such squads resulted in one person missing daily on average; in Guatemala, in the same period, this number amounted to almost ten. In this country, over twenty groups for liquidating the enemies of the state have operated or are operating – groups with names such as “The White Hand”, “Purple Rose” and “New Anti-Communist Organization”. Compared to the total population of Guatemala, this is an overwhelming proportion. One

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<sup>13</sup> *The Real Terror Network*, op. cit., p. 116.

Latin American author had tried to present the scale of official and semi-official violence in Guatemala to the citizens of the USA, whose government has contributed to such a situation by assisting in the overthrowing of the moderately progressive president Arbenz in 1954 in the following manner; Guatemala is, by the way, considered a faithful ally of the USA and, using the Gene Kirkpatrick's' classification, could be classified as a "benevolent" authoritarian regime. Taking as the base only twelve weeks in 1971, this would be, he claimed, as if, over the same period, the USA government agencies, assisted by groups such as the Ku Klux Klan and the likes of them, killed 41,000 people, including the most prominent citizens.<sup>14</sup>

In Chile, the Chilean Anti-communist Action (ACHA) "specializes" in persecuting the members of the native Mapuche tribe, who are somehow all communists, particularly if they are prominent citizens and seek some fundamental rights for their ethnic group.<sup>15</sup>

All objective observers claim that police forces openly tolerate the crimes committed by "death squads" even when, as the case is in Paraguay, these squads are "comprised of mentally ill and sexually distorted persons".<sup>16</sup> The investigations conducted in such cases are not serious at all: out of 123 murders committed between November 1968 and June 1970 in the Brazilian town of Sao Paolo that can be attributed to the "death squads", investigative judges dealt with only five, without any results.<sup>17</sup> Such benevolence can also be established indirectly: Latin-American terror regimes have cruelly and successfully eradicated all leftist and progressive movements that have shown even the smallest propensity towards using violence. The fact that "death squads" exist and operate without any obstacle proves that no actions are taken against them, and that the statements that governments make when defending themselves in international forums – that such extremist supporters and helpers are "out of their control" – are untrue.

Judging by all, even in cases where it is considered that death squads comprise only fanatics and criminals, which the regime

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14 V. Perera, "Guatemala: Always la Violencia", *The New York Times Magazine*, June 30, 1971, p. 71.

15 Report of the International Council for Indian Treaties, Geneva, October 22, 1984.

16 E. Herman, op. cit., p. 119.

17 *Veja*, March 3, 1971.

only “makes good use of”, official control over the death squads exceeds ordinary lenience. The activity of such squads is at least coordinated with the work of official terror agencies. This assumption is corroborated by the fact that “death squads” in South America are, as a rule, groups predominantly comprised of members of regular armed forces, police and other security formations and of their retired members, who operate in civilian attire and drive stolen vehicles.<sup>18</sup> Their members often assign themselves an additional compensation for “working overtime”, which they receive by blackmailing the families of certain abducted persons. This is when they, again, pretend to be common criminals.

An additional motive for such an activity and the increased sense of hatred invested in it sometimes is rooted in the impression that the members of official terror services are endangered and insufficiently protected, particularly when one of them is recognized by the families and friends of his victims and adequate vengeance is carried out against him.

In the beginning, the Argentinian “death squad”, the AAA (Argentine Anti-Communist Alliance) was indeed such a police “self-help” organization, whereby the requirement to treat those suspected of attacking police officers, either regular or covert, with respect towards the at least minimal guarantees, was abolished. During 1974 alone, this organization was attributed with some three hundred murders. Its “contribution” to the overall number of the “missing” in that country, which, as we said before, is just being established, as new graves are being discovered, is enormous.

In order to get an impression on the detachment of “death squads” from official authorities, even the newspapers that are published illegally are occasionally allowed to publish relevant reports, just as the “Jornal do Brasil” did on April 20, 1970:

Only in Guanabara and the state of Rio, the number of killings attributed to Death Squad exceeds 1.000, which amounts to almost 400 per year. Victims show signs of unnecessary cruelty. For example, between January 11 and July 1, 1969, 40 dead bodies were found in the waters of the Macacu river, buried in the mud close to the bridge

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18 Doc. UN E/CN.4/1984/7.

between Mage and Itaborai. All the bodies, in an advanced state of decomposition, still showed scars made by handcuffs, burns caused by cigarettes and other scars; some of them still had their hands tied. According to the autopsy findings, it was noted that many were tortured, shot and only then tossed into the water.

The abduction and killing of the priest Jerzi Popieluszko in Poland, in October 1984, has shown that the security services of different states can hold groups that find that the government is too “mild” towards the “enemies of the system”, in this case, of socialism.<sup>19</sup>

### Personalities

It is quite human to wonder, as many of those who had learned of the entire spectrum of atrocities committed as a part of the terror intimidation do, what kind of people do such executive terror services consist of. Having in mind the imaginativeness of criminals and the constant development of new “inventions” related to the infliction of pain, humiliation and destruction, and also having in mind the reports on the feelings of pleasure and joy many interrogators, torturers and executors have in doing their job, one starts to believe that they include a considerable number of sadists and other pathological personalities. As is often the case, psychopaths and neurasthenics look for ways to legalize their twisted inclinations; to put their urges at the disposal of the “law” in the service of a higher “idea” is one of the most attractive, least dangerous and best rewarded ways to do that. Even among terrorists, who enrich their personal inclinations with the combat *against* their own country or a foreign one, the number of such individuals is not small, although, at the same time, they are at more risk and their material prize is far lower. However, whilst disturbed persons among such terrorists are under close scrutiny, and books the main premise of which is that all terrorists are mentally ill are written, psychopaths who serve political regimes are not discussed

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<sup>19</sup> Three officials of the Ministry of Interior were convicted for the assassination. In addition, disciplinary proceedings were instituted against some of their superiors. Popieluszko was killed in the vicinity of Torun; it is considered that he was not the first victim of the “Anti-solidarity” organization, which seemed to be most active in that part of the country and which, as was shown, included members of the police forces. See *Politika*, October 20, 27, 28 and 29, 1984, *Neue Zürcher Zeitung*, October 29, 1984, *International Herald Tribune*, October 27-28, 1984.

that much. They are certainly more numerous among “terrorists en gross” than in “small-time terrorists”. However, it seems that this percentage varies from case to case and that to claim that all of them were recruited among persons who had shown sadistic inclinations before, would be erroneous.

We dare to set a hypothesis that this type of executioners of terror are relied on more by regimes that cannot base their terror on a wider support or on a coherent ideological programme, which – albeit irrational – could attract someone. This claim should perhaps be moderated, given that the available data mostly comes from societies in which the terror regime is no longer in place and is hence analysed in historic terms.

Judging by all, the members of the Shah’s SAVAK were largely sadists. The Athens trials (in 1974 and 1975), after the downfall of the military junta in Greece, have shown a somewhat different image. Members of the Athens Military Police (*Asfalia*) and the Special Interrogation Section of the Military Police (EAT-ESA) were young men who came from families of farmers or workers, which had a reputation of being traditional and anti-communist. Ideological and psychological preparation strived to implant in these young men the conviction that they were members of an elite formation vested with a solemn mission to protect the nation. Their personalities were “softened” by making them beat up and humiliate each other. They were made to pledge their allegiance, on their knees, before the portraits of military commanders. Once the training was completed, they would first work as prison guards; then they would make arrests and were finally promoted to torturers. Concurrently, they were promoted to higher ranks and their privileges and incomes grew, which was very appealing for people of their origin. Those who had second thoughts or showed contempt were scorned for lack of “manhood”, were punished and sustained threats of being fired. Their guilty conscience was reduced by distributing the responsibility to all of them and their superiors, and by guaranteeing them that they did not violate any law and had full immunity. Finally, there were gradually put in the position where they could not abandon the torturer’s profession: their remuneration was calculated based on the number of enemies and information discovered; to refrain from cruel methods would imply the loss of position and income, and abandoning the service they have joined would result in repercussions both towards them and their families.



The members of the SS in the Third Reich, particularly members of units that dealt with investigation or that provided guard services in concentration camps, had had their percentage of sadists. However, for the most part, these were “normal men and women”, who pursued their careers in the SS squads, gained material benefits or “fulfilled their debt” towards the Fuehrer and the nation, as they were thought in schools and in permanent additional courses, and as they read in a series of books and brochures Himmler had flooded them with. The study of personality at the middle and higher ranks of Nazi terror hierarchy is more a testament to the “banality” of their evil since those, quite ordinary, colourless and insignificant persons most frequently were not even above average in terms of their perversions, but had behaved like German clerks. Torture and killings, massive as they were, for them had constituted a mainly administrative and technological problem, which needed to be resolved to the satisfaction of their superiors. Eichmann was one such “writing desk killer” (*Schreibtischmörder*), who was in charge of the “final solution” of the Jewish issue, as was Rudolf Hoess, the manager of the Oswiecim (Auschwitz) camp. Hoess prided in his skills, pedantry and the inventiveness he had shown by introducing, in his camp, gas chambers disguised as shower cabins, whereby he had achieved an unprecedented efficiency in killing, amounting to up to ten thousand people per day.

Both in Oswiecim and in other camps, the managers and the guards inhabited idyllic villas, built especially for them on camp grounds, living a model family life of German provincials. The camp inmates who were unfortunate enough to live in German concentration camps from the very beginning, and who were fortunate enough to live to see the liberation, agree that more individual sadism was exhibited at the beginning, when the camps were in the competence of the original, wider Hitler’s party army, the SA (*Sturmabteilung*). The members of the SA were recruited primarily from among declassed elements and fanatics, who entered into personal relations of hatred towards the political enemy with the camp inmates. In 1934, as it is known, Hitler was forced to divest the SA of its powers, in an attempt to reach a compromise with the German bourgeoisie and the army. In the “night of the long knives” he had personally ran the venture in which the entire SA elite was killed, an elite that, just like its commander, Ernst



Roehm, was not average, at least when it comes to the number of homosexuals comprising it.<sup>20</sup>

When it comes to the lowest staff of the Hitler's terror apparatus, those with whom prisoners or hostages were in daily contact and who directly committed torture or executions, the memories of the survivors testify of the common difference in their character – even among the “worst” and the “better” ones, their predominant trait is the clerical attitude of a person who considers himself or herself to be in contact with a “lower” being, of which they were reminded every day by the official ideology. The number of such persons was probably higher than the number of sadists, such as Ilse Koch. She left her mark in history by inventing a new form of torture, consisting in tight binding of pregnant women's legs directly before childbirth.

However, the fact that clerks were more numerous than pathological personalities among Nazi terror executioners (unlike at the very top), makes this system even more unnerving. It implies that the worst of crimes were committed in a cold, organized, indifferent and neutral manner, without any sense of liability, which the person who only executes the orders well always manages to transfer to his or her superiors. Unlike many notorious sadists, not one Nazi killer had lost his psychological balance on account of his or her actions, nor has spent a sleepless night, only if they managed to avoid criminal prosecution. Those who were in hiding for a long time, and who even today manage to avoid justice, kept on leading an orderly and peaceful life, without any guilt.

Since, in the Nazi case, the primary motive of action was racist and nationalist, and thus even the pure-blooded Germans who opposed the regime were treated like foreigners and “degenerates”, psychological research which shows that sanctioned killings do not require their executors to have a hostile relation towards the victims or be sadistic personalities, is of interest. A renowned psychologist, Herbert Kelman, adds:

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20 A testament to Hitler's understanding of “legality” is the fact that the Reichstag had *subsequently* promulgated a law that had legalized this mass murder in which, in addition to the top of the SA, some politicians and officers, mostly Hitler's allies, were also harmed. Such allies, who became disagreeable to Hitler in his new company, included General Schleicher, whose intrigues and machinations indicated the beginning of the end of the Weimar republic and had traced Hitler's “legal” entry into power.

...sanctioned massacres certainly involve a considerable amount of hostility toward the victims, traceable both to historical relationships and to situation dynamics. Hostility toward the target, however, does not seem to be the instigator of the violent actions. Historical relationships provide a reservoir of hostility that can be drawn upon to mobilize, feed and justify the violent actions, but they do not cause these actions in the immediate case... The expressions of anger... serve to provide the perpetrators with an explanation and rationalization for their violent actions and appropriate labels for their emotional state. They also help to reinforce, maintain and intensify the violence.... rather than by creating powerful forces that motivate violence against these victims.<sup>21</sup>

Such explanations are also in place with regards to the genocidal terror in the so-called “Independent State of Croatia”, which, if it were not so cruel and had it not taken so many victims, would be no more than a caricature of the Nazi system, where the role of Jews was played by the Serbs. Units made strictly out of Ustasas could be compared to the SA and “squads”, there were many “normal” bureaucratic helpers, and the higher echelon comprised a disproportionate number of sadists, even compared to its role model – as the case was with the commander of the Jasenovac camp, Maks Luburić and his deputy, Ljubo Miloš, of whom one eyewitness tells the following:

After he finishes the inspection, he commands: All those who are ill and are incapable of work, step forward!

No one answered. Then, a minute later, he says indifferently, but convincingly:

– Nothing will happen to them...

Two brothers, young men of my age, of weakly disposition from early childhood, pale from fear and illness, stepped in front of the line... Miloš points his finger towards the barbed wire and orders them to stand next to it. No one else steps forward.

Then Miloš goes towards the brothers.

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21 H. Kelman, “Violence without Moral Restraint: Reflections on the Dehumanization of Victims and Victimiziers”, *Journal of Social Issues*, 1973, pp. 37-38.

Miloš hangs the younger brother off a hook on the beam and splits his guts with a knife, cutting him down to his legs; he cuts the elder brother's throat and tosses him at his brother's feet.<sup>22</sup>

Ustashas, however, were able to utilize to the maximum the historical “reservoir of hostility”, which existed in the part of the population of Croatia and the creation of which was contributed to even by those who may not have contemplated the final bloody consequences of their teachings and sermons.

Even the fiercest critics of Stalin's reign of fear agree that the guards in camps in the USSR were not sadists (even though they were often prone to corruption), and that even the NKVD interrogators were sadistic, until the arrival of their “third generation” under Yezhov, who particularly revelled in torture and humiliation of former party chiefs and their former superiors from the very political apparatus.<sup>23</sup>

Even though data is not sufficiently available, this is most likely true. The reasons may be the following. Primarily, Stalinist terror was based on a mass and successful propaganda effort, which rested on the theory of capitalist surroundings and intensification of class struggle in the only socialist country. The great staged processes were aimed, among other things, at showing that the country and socialism were in grave peril, since the USSR was completely corroded from the inside by the activities of numerous, vile and covert enemies. The logics of exemplary trials was the following: if enemies can be found even at the very Central Committee of the SKP, within the government and among generals, how numerous must enemies be among lower and seemingly less reliable people? The discovery of such criminals and potential felons became a duty to which any honest communist in the USSR had to respond, particularly if one is already a part of the state security service. One had no reason not to believe in the major processes, since these were believed in, even abroad, and were not questioned even by trained lawyers who had no political sympathies for Stalin and Bolshevism.

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22 V. Carin, *Smrt je hodala četvoronoške (Death walked on four legs)*, Zagreb, Mladost, 1961, pp. 98-99.

23 See H. Arendt, op. cit., p. 448 and A. Ulam, *Stalin. The Man and His Era*, London, Allen Lane, 1974, p. 443.

While the previous explanation primarily relates to interrogators, a different, simpler explanation would apply to camp guards. This service was a well-paid and secure job. Under the conditions of permanent shortages and material poverty in the USSR, following the forced collectivisation and other “ingenious” economic moves of the regime, this was no small matter. Such poverty was later, in its own manner, deepened by the regime itself, introducing apathy and derailing an enormous number of people, who could be employed more productively instead of being held in camps, whether in the capacity of an inmate or a guard. We already mentioned that the economic effects of using camp inmates as a workforce were next to null, while the burden their guards imposed on the economy is evident from the figure showing that, at one point, the number of guards had exceeded the number of railway workers and miners in a country as vast as the Soviet Union was. There were 2,126,000 guards, 939,000 workers employed in the railway and 539,000 employees in the mining sector.<sup>24</sup>

This is just one vicious circle of terror. Terror had reproduced itself and became the third reason for the zeal of its lowest executors. After a brief time, both the interrogator and the guard were themselves overcome by the omnipresent fear. Why would enemies not also hide among them? No one was trustworthy, everyone was suspicious. The accomplishment of discovering agents and saboteurs becomes unusual or grand only if a major player is discovered within the security apparatus. In the general atmosphere of betrayal and incessant requests to denounce the closest friends and colleagues, even those carrying out the terror clearly understood that they were constantly preyed upon by those who will denounce them for “lenience” or failure to accomplish certain tasks, either in order to increase their own bureaucratic chances or to avert danger from themselves. A general fear would have the capacity for creating such an atmosphere per se, but fear was also incited by the fact that several sets of those exerting terror were deposed during the terror times, where those deposed did not retire or become unemployed, but had immediately joined their victims in order to experience some of their own methods. Certainly, each new terror group included those who were aware of such an outcome in advance but who, caught up in the dynamics of terror, had no

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24 R. Conquest, *op. cit.*, p. 410.

choice. The complete success of the reign of terror lies in the fact that everyone knows that the final outcome is not beneficial to them and they only try to postpone it for as long as possible.

As is usually the case, the very top of the terror apparatuses, not to mention their main inspirers and architects, is more packed with sadistic personalities. Highest-ranking terrorists gladly choose such associates, even though some of them are just sycophants, who, should the need arise, *pretend to be sadists*.

The offensive “ball” Stalin had organized in 1936 for his police chiefs is an uncanny testament to that effect. Judging by all, Zynoviev did not believe that after the death sentence to which he had contributed by his confessions was pronounced, he would actually be killed. It must have been a false promise that he would be spared should he do a favour to the Party by confessing, or a misconception that Stalin would not dare to execute such an important old Bolshevik. After the death sentence was pronounced, Zynoviev acted adequately, showing, however, an increasing level of confusion, as it became clearer to him that he would not be left alive after all. Believing, as many others did, that comrade Stalin was not informed of the affair, he requested, ever more desperately, to speak with the secretary general until, suddenly, he was shot in the back in the hallway. The main act at the drunken party was to imitate the frantic Zynoviev (“For the love of God, call Iosif Vis-sarionovich!”) and his dying convulsions, which those attending the party found to be irresistibly funny.

In the short speech he delivered at the XX congress of the Communist party, A. N. Shelepin had provided yet another short and illustrative example. When the general Jakir was sentenced to death in a secret trial (it seems that neither he, nor Tukhachevsky and other Red Army commanders could be “taxidermied” for public accolades), he sent a moving and honest letter to Stalin, assuring Stalin of his innocence and loyalty. Comments of “responsible” comrades are preserved on the margins of that letter. Stalin wrote “A scoundrel and a prostitute”. Molotov had just verified that with his signature. Voroshilov added “A completely accurate description” and Kaganovich “For a traitor, a scum and a whore the only sentence can be – death”. Unaware of this, Jakir died with Stalin’s name on his lips.

The extent to which the prospects of success, the attempts to preserve privileges or the simple impossibility to step away from

the terror system without a radical break or considerable risk, constitute a reason for becoming an instrument of terror, can be clearly seen in the examples from less complex communities.

One of the king's prerogatives in the Zulu state was to point, without any cause or explanation, at any time, even in the middle of a meal or a party, to a man in his vicinity whom he sentences to death. This divine prerogative (which every monarch had to use in order to preserve the aura of having supernatural features) was amply utilized by the distrusting and bloodthirsty Shaka. At the king's mark, other present members of the entourage would stand up and bludgeon the unfortunate victim to death – these would seldom die glorifying their ruler. There was no special terror apparatus, as it comprised all the members of the elite, who knew themselves that there was nothing they could do to prevent themselves from suffering a similar destiny. On the other hand, the price of leaving the king's entourage was too high: even if it did not imply punishment, it did imply leaving the king's kraal (a mobile capital city) and living in ultimate poverty and famine. The prize, conversely, was attractive: those who killed the marked man would share all his goods among them.<sup>25</sup>

The rules of the Asian despots in the so-called "hydraulic society" were similar. The despot could punish cruelly and capriciously, but, unlike the Zulu king, he had at his disposal a massive bureaucratic apparatus, the true backbone of such a society, and also its' most privileged class. When, however, some of them was affected by a punishment, no one was allowed to show even basic human compassion. The rulers were known to test the degree of fear they caused in their bureaucrats. The story of Chinese official Sum Chien is instructive – he was sentenced to castration for daring to disagree with some of emperor's assessments. The punishment was, however, conditional: if Sum himself or someone else deposited a sufficient amount of money, the punishment shall not be enforced. The high official had enough rich friends, who could certainly help him collect the necessary sum, but none of them dared to give him a loan, and hence Sum, as he complained in his preserved memoirs, was castrated.<sup>26</sup>

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<sup>25</sup> See in more detail in E. Walter, op. cit., p. 133 et seq.

<sup>26</sup> See K. Wittfogel, *Oriental Despotism. A Comparative Study of Total Power*, New Haven, Yale University Press, 1967, p. 159.

The terror systems capable of indoctrination, particularly systems that, just like the Inquisition, relied on relegation, also produce a type of executor, particularly the torturer, who not only thinks that he is executing a holy duty, but who also thinks that he carries salvation. The torturer can truly be convinced that he or she is “helping” the victim by forcing the victim to confess and repent while being tortured, and by killing the victim in the moment of purification. For the torturer, his teaching is a reality, just like, in some primitive societies, and in primitive spirits in general, the threat from the use of magic, on which fear of the divine rulers and their witchdoctors is based, is quite realistic. A similar quasi-religious attitude can also be found in cases when the victims is helped, after he or she confesses and repents, to return under the wing of the political movement, such as the mythologized party. One police chief in theocratic fundamentalist Iran stated he would not shoot those sentenced to death immediately, but only once they, having been re-educated, are ready to go to heaven. Such actions, of course, may constitute a simple interrogation tactics.

When both the interrogator and the one being interrogated, the inquisitor and the victim of torture, share the same fundamental premises and views of the world, a peculiar dialectic situation arises; it was best expressed by the Russian monk Avacum in the XVIII century: “For ten years he tortured me, or I tortured him. I do not know. God himself, on the Judgment Day, will say who tortured whom”.<sup>27</sup> The interchange of “good” and “bad” interrogators, practiced by some secret police forces, as aimed as causing such a reaction, a gradual attachment of the torturer to the victim, who then surrenders to the torturer in absence of other human contact. Orwell’s O’Brien is quite calm and benevolent towards Winston Smith – he wants to help him, to “cure” him, by causing him most horrid pains.

## VICTIMS OF TERROR

The logic of terror requires that the victim be selected in a way that creates the maximum degree of fear. The victim is the object of violence, whilst the wider target, that part of the population that is to be influenced, or even the entire population, are the object

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<sup>27</sup> Cited at G. Gibian, “Terror in Russian Culture and Literary Imagination”, *Human Rights Quarterly*, 1983, p. 195.



of intimidation through acts of violence. According to the same logic, “rational” terror (if there is one) would choose as its victims those with whom the group that is to be intimidated can identify most easily.

Such “ideal type” of terror is quite rare, either because it is not devised as such, or because, as we have already seen, its practical realisation is non-discriminatory. Arbitrariness and randomness of terror may, moreover, be beneficial, since they create a more shapeless anxiety, an impression that the possibility of remaining innocent is even smaller.

In terms of victims, terror systems can be classified in two types. The first one is characterised by a predominant tendency towards destruction, while the other has as its primary objective to rule through the reign of terror.

### **Destruction terror (genocidal terror)**

Destruction terror can also be called genocidal, since, as a rule, its main objective is the total liquidation of one national, ethnic or religious group, although these can be joined by a social group, perceived as such in a biological manner. The latter, as we have already shown, happens in cases of vulgarized Marxists, who consider that pertaining to a given class is an inherent trait (Pol Pot, Russian extremists in the beginning of the XX century, some ideologists of the Red Army Faction in modern-day Germany). In genocidal terror, the difference between the direct victim and the wider group is almost non-existent, since the ultimate outcome of terror is to eradicate everyone. Perhaps we should be more precise and say that the victims are those who are actually and swiftly executed, whilst the eradication of the entire group is achieved more gradually. The eradication does not always take the form of physical eradication of an entire generation, but of a fundamental change, after which the group no longer exists. After that, if there is a difference between the victim and the wider terror target, such difference is of no significance to the terrorist, who takes victims randomly, leaving their selection to coincidence, caprices of the lowest terror organs, a rampant crowd or, even, pathological individuals. However, if the group that should be eradicated is any way organized and has its own elite, albeit a cultural elite, the process shall start by dismantling the organization and beheading it.



Wars waged in the ancient world are the role model for genocidal terror. In ancient times, a successful campaign would end in the killing of adult men in the defeated city or a group, whilst women and children were kept as slaves. The group thus ceased to exist, despite the biological survival of its major part. Compared to the first colonial conquests, this form of terror was milder, since the latter originated in the evident racial difference between the conquerors and the conquered. The attitude of Spanish conquistadors towards the Indian natives was such that it even shook their crude contemporaries. In his *Devastation of the Indies. A Brief Account*<sup>28</sup> a humanistic priest Bartolomé de las Casas has left moving accounts of relentless killing, sanctioned by a hypocritical belief that God's will is being carried out against those who do not want to take up Christ's faith. The terror was so severe, so unsubstantiated, inexplicable and horrid that the Indians who were not directly killed were struck by utter apathy and had completely lost the will to live, which made the job of the executioners easier, since the Indians resorted to suicide in masses. Despite the tirades representing it as a civilizing mission, the exterminating terror of the conquista was motivated by looting and creating conditions for undisturbed exploitation. A similar story, sometimes in a more refined form and at a slower pace, was repeated in other parts of America.<sup>29</sup>

The credibility of the records from previous centuries is corroborated by the attitude towards Indians in some Latin American countries in which they have managed to survive in more significant numbers, due to certain historic and geographic circumstances. The policy of the Stroessner regime towards the Aché

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28 *Brevissima relación de la decrucción de las Indias*. Translation into English *The Devastation of the Indies. A Brief Account*, New York, 1974. See more on Las Casas in E. Sevilla, Casas "Introduction" in *Western Expansion and Indigenous Peoples. The Heritage of Las Casas*, Den Haag, Mouton, p. 1 et seq.

29 Las Casas himself has estimated that, in the first fifty years of conquista, some fifteen million Indians were killed. These estimates may seem exaggerated, as the practice was in his times, were it not for rigorous demographic studies that paint an even bleaker picture. According to their results, in Mexico alone, in the 1515-1600 period, the indigenous population fell from twenty five million to one million, whilst at Hispaniola, where it amounted to between seven and eight million in 1496, it was completely extinct within decades. Disease and famine, naturally, had played their part, but susceptibility to them was increased due to a simple "lack of will to survive". See J. Kofler, "Terror and Mutilation in the Golden Age", *Human Rights Quarterly*, 1983, p. 118 and the literature cited therein.

tribe, which was in the way of the attempts at “modernizing” Paraguay by cutting down forests in order to open mines and create pastures, can be used as a good example. According to foreign anthropologist’s reports, this tribe is facing extinction. In cooperation with military forces, its members are being killed in masses (by machetes, in order to save ammunition), women are sold as prostitutes and children are sold as some kind of slaves for domestic jobs. Such slaves can also be bought in the capital city, Asuncion. Other Indians are gathered in reservations, which are often run by fundamentalist Christian missionaries, where they are forced to convert to Christianity and become submissive. The first victims are the tribe chiefs, who are publicly tortured and humiliated. In official language, the defaming term “Guayaki” is used to refer to the Aché tribe – a term which means “a rabid rat”. German anthropologist Münzel calls the “National Guayaki Colony” which is run by the official Paraguay administration “a destruction camp”, a denomination that should be believed in, particularly given the number of escaped Nazis who live in Paraguay and train the army and police in the country. Indians are forced to change their names and their religion and to abandon all of their traditions, which are considered shameful. Malnutrition, lack of medical care and the creation of a conviction that they belong to a lower race, again cause their complete indifference. Scientists, domestic and foreign, who wish to rescue at least the culture of the Aché tribe, are arrested and tortured.<sup>30</sup>

In 1967 in Columbia, men who had killed sixteen Indians from the Cuiba tribe on an “expedition” stood trial. When asked by the judge what he thought of the Cuibas, one of the accused had responded:

For me they are animals – like does or capybara.<sup>31</sup> Of course, fawns do not damage our crops nor kill our pigs. In addition – and you should remember this once for all – in these parts, hunts against Indians have been organized always. We call them “guajibiada”. Indians are not like us. They are like monkeys, which look like us, but are not our kin.

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<sup>30</sup> See R. Arens (ed.), *Genocide in Paraguay*, Philadelphia, Temple University Press, 1976.

<sup>31</sup> A type of Latin-American rodent.

The court acquitted these people because, when killing Cuibas, “they were unaware they had committed a crime”.<sup>32</sup>

In Brazil the number of Indians, which amounted to over a million in 1900, is now reduced to 100,000. They are left to the mercy of private companies and corporations, which the military regimes essentially serve. The eradication of Indian tribes in the Amazon (which may also be catastrophic from the standpoint of ecology) is carried out by methods such as intentional contagion by smallpox, measles and tuberculosis.<sup>33</sup>

The Nazi genocide against the Jews (which was the reason for the forging of this term) was already mentioned and it is well known. The origin of hatred that Hitler felt towards Jews is still being researched by psychopathologists, but the fact is that he had drawn it from the “historic reservoir” of anti-Semitism, which existed in the environment in which he grew up (Austro-Hungary), the environment that he wanted to influence (Germany) and in many other countries. *The Protocols of the Elders of Zion*, the main proof of the Jewish “world conspiracy”, was taken by Hitler’s propagandist Goebbels from the Russian secret police, which benefited from occasional prosecution of Jews in Russia. Nazi attitude towards Jews was ambiguous. In the social-Darwinist sense, they were a “lower race”, but were very dangerous at the same time. There was perhaps no better base to cause “legitimized” hatred as grounds for terror, in which many will participate, since the opponent was both strong and conquerable, due to some biological determinism. Whilst in case of Indians the predominant impression is one of inferiority and lack of capacity for a civilized life, Jews were also attributed with guilt.

We should, however, recall once again that the Nazi “new order” also implied genocidal terror towards non-Jews. Even if they were not coherent when it comes to other areas of their “ideology”, Nazis had quite a clear idea of the rank of nations that, according to racial purity, and therefore the extent of their worthiness to survive, were below the German nation. Just above the Gypsies, who were, in many respects, equalized with Jews, Slavs took the lowest place. The final plan of expansion towards the East implied

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32 See B. Arcand, *The Urgent Situation of the Cuiba Indians of Colombia*, Copenhagen, International Work Group for Indigenous Affairs, 1972, pp. 9-10.

33 See S. Davis, *Victims of the Miracle*, Cambridge University Press, 1977, p. 10 et seq.

if not complete eradication of Slavic nations, then at least their partial relocation and full transformation into modern-day slaves. As usual, the first step in that direction was the liquidation of statehood by tearing apart the existing states into protectorates or puppet-like creations and the destruction of potential leadership embodied by the intellectual elite. Renowned intellectuals were the first on the list of those shot and sent to concentration camps in Belgrade and Warsaw, regardless of how apolitical they may have been, since the logics of genocide is that the nation cannot survive without culture. In anticipation of final victory, the remainder of the population was transformed into a disempowered mass, the price of which is best seen from the number of hostages that were to be shot for every German killed in defence actions. According to the orders of General Turner issued on February 23, 1943, in Serbia, one German was “worth” fifty “natives”.<sup>34</sup>

As already indicated, the genocide programme against non-Jews had only begun to be implemented and did not last for more than four to five years. Therefore, the Reich still found it was opportune to form alliances with some members of “lower races” who were unaware of their position and had hoped that their services to the “inevitable” winner will win them a chance to settle their own bills. This had caused genocide in the “Independent State of Croatia”, which bore some bizarre resemblances to the eradication of Indians, since it was based on religious differences and forced religious conversion. For Nazis, it was economical to support such Ustasha programme, since, in their eyes, one “less worthy” nation destroyed another such nation, without the need for the German forces to be engaged.<sup>35</sup>

The case was similar with the ambitions of the Bulgarian nationalist bourgeoisie, which had shown its genocidal and assimilating tendencies already in the First World War, when it slaughtered Orthodox clergy in east Serbia and forcefully introduced Bulgarian language in schools. Whoever read Hitler, Rosenberg and similar Nazi ideologists had to know that the equalization of German

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34 Cited in V. Glišić, *Teror i zločini nacističke Nemačke u Srbiji 1941-1944 (Terror and atrocities of Nazi Germany in Serbia 1941-1944)*, Beograd, Rad, 1970, p. 251 et seq.

35 The fact that Ustasha ideologists endeavored to prove that the Croats were allegedly of Gothic or other non-Slavic origin would not have helped them a lot in the final instance. The place of Croats on the Nazi scale was clearly set out in the Order of the German commander for the South-East of December 22, 1943, whereby one German life was worth fifty Croat lives. *Ibid.*, p. 256.

and Bulgarian soldiers in the mentioned Turner's order was only temporary.

Collective punishment is characteristic of terror in general, and of genocidal terror in particular. If an act that is detrimental for the terrorist is committed, terror can preserve the illusion of legality by prohibiting it (regardless of what that act may be) and envisaging a sanction for the perpetrator. However, the terror system does not only reserve the right to assess whether an act is detrimental to it and to what extent only after the act is committed; for such a system it is irrelevant who will be punished, since, in its eyes, all the members of the group sentenced to eradication are the same. More precisely, terror is not interested in guilt, but in the effects of the reprisal, which should attain the maximum degree of horror while inflicting most biological damage. In that respect, the slaughter of schoolchildren in Kragujevac is a "logical" part of genocidal terror. Some form of "guilt" which is not completely abstract is useful to increase the intensity of terror and the will of those who carry it out. Pursuant to the concept of collective guilt, all members of a nation are guilty of whatever crime that is committed by any of their compatriots, all communists are guilty of acts committed by one communist or alleged communist etc. Even Hitler had used the assassination of a low-ranking German diplomatic officer in Paris, committed by an under-age Jew to initiate the "spontaneous" vandalism of the "crystal night". Somehow, all Jews were responsible for that assassination.

The existing and the created reservoir and charge of hatred seeks for a "detonator", for an abrupt change, whether such change is only utilized or created by the terror headquarters. Hence, a small incident sufficed to incite the massacre of the majority Hutu (Bahutu) tribe in Burundi in 1972, in which some quarter of a million people were killed. According to credible reports, the four government members who were also members of that tribe were killed, along with all officers and all Hutu soldiers, a half of teachers in Burundi and thousands of clerks and merchants. Only one nurse and around a thousand of high school students have survived. The Hutu tribe comprised some 85% of the Burundi population, but, as of XVI century, the ruling class was comprised of members of the Tutsi (Vatutsi) tribe, who were warriors and cattle breeders, originating from Ethiopia, and who turned the farming Hutus into some kind of serfs. Due to the mentioned proportion, one



cannot speak of genocidal terror, since in this case the majority were kept in obedience and social subordination by a minority, in a fashion similar to what the regime in South Africa is trying to do.

In neighbouring Rwanda, which has the same ethnic composition as Burundi, with which it comprised a single administrative entity under the Belgian colonial administration, the Hutu tribe started to get emancipated in 1959, and, after three years of bloody conflicts, had achieved domination. This resulted in mass emigration to neighbouring Burundi, whereby the Tutsi tribe in Burundi was strengthened and, as we have seen, has managed to preserve its advantages. The alleged attempt of a Tutsi counter-strike in Rwanda had resulted in mass reprisal. Within a month, at the turn of 1963 into 1964, at least 10,000 members of the Tutsi tribe were killed in Rwanda.<sup>36</sup>

When a minority is being eradicated, the genocidal element becomes quite conspicuous. This happened to Armenians in Turkey, starting from the second half of the XIX century until the culmination embodied in the slaughter during the First World War, in 1915. Whilst Armenian victims during the persecution under the sultans were counted in hundreds of thousands, in the last case, under the “modernized” young Turks, the figure rose to almost two million Armenians who were killed and exiled. Three circumstances stand out when seeking explanation for this massacre. Primarily, it was caused by a traditional suspicion towards a nationally and religiously different minority. Then, during the war, the suspicion that Armenians were potential secret Russian allies became stronger. And finally, in this case, the element of envy is not to be underestimated. Armenians were a “successful” minority and have held in their hands over a half of Turkish imports, some 40% of export and almost 80% of internal trade in Turkey. The potentials for genocide was legalized and incited by authorities, since, in the times of crisis and failures in peace or defeats in war, an internal enemy is always welcome.

The comparison of destinies of Armenians in Turkey and the Hutu tribe in Burundi shows that, in the former case, there was no selection amongst victims, since the objective was to achieve complete physical liquidation, whereas, in the latter case the eradication began from the highest social class, since it is impossible to eradicate the entire majority within short time-limits.

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36 See N. Wingert, *No Place to Stop Killing*, Chicago, Mody Press, 1974.

Physical liquidation of traditional leaders and prominent individuals, primarily liquidation of educated individuals, coupled with the eradication of national or ethnic structures and culture, which cause apathy and loss of will to resist, or even to live, is called psychological genocide by many authors. It can also result in an unhealthy tendency towards assimilation and self-contempt, which some believe happened to the Irish due to systematic British policy dating back to 1366. "Pertaining to a despised social group takes the toll from the entire function of personality."<sup>37</sup>

### Terror as form of governance

Unlike genocidal terror – although the boundaries are not quite clear when it does not come to a specific national or ethnic group – terror within one's own group does not aim at eradication, but at absolute control. In this respect, it is more "pure" and more "rational". It is purer because it does not include elements of genocide, and is more rational since destruction is not the true objective of governance. Ideal destruction implies the creation of graveyards, and ideal terror should produce a mass of obedient subordinates. This is the dialectics of violence in politics: its excessive use negates itself, since it destroys the very object of the rule.

In such a form of terror, the victim differs from the one who should be intimidated: the circle of victims is wider than the total population. The economics of use of violence would require as few victims as possible, which is sometimes achieved by consolidated terror systems. Of course, their objective never is and never can be the same as the aim of non-terror intimidation by criminal sanctions. The latter strives towards an ideal where there is no need for violence at all, since everyone abides by the legal norms. This ideal can be accomplished in practice, if not fully then at least almost accomplished, since, in addition to the fear of sanctions (which differs from the fear of terror) there are also other factors contributing to the observance of norms, such as morality and voluntary support of the majority of population.

Consequently, terror chooses a victim the tribulations of which will resonate the most among those at whom the intimidating message is addressed, and the destruction of whom will be best in

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37 R. Fields, "Psychological Genocide" in M. Hoefnagels, op. cit., p. 168. See also L. Kuper, *Genocide. Its Political Uses in the Twentieth Century*, New Haven, Yale University Press, 1981.



preventing their resistance. Such people have the characteristics of a leader or a potential leader (in terror jargon: “ringleaders”), have good reputation and set an example; they also have the propensity for critical thinking. This is an attempt to objectively describe the criteria used by terror. In reality, however, these criteria are reflected through the personal lenses of terror inspirers and commanders, which – coupled with their ideologized, and often quite irrational logic – leads to rather distorted and unrecognizable results.

Members of political parties or movements that have openly opposed the terror echelon are the first to go down as potential leaders and resistance front-runners, where the desire to cast revenge on them also plays a major part. Due to being well-organized, committed and disciplined, the communists are the first victims in the praetorian, corporate and quasi-fascist terror of the present day. Given that the terror system seeks support in mass xenophobia, the communists’ internationalist attitude helps designate them as foreign agents. The existence and the unfortunate practice of the III international helped qualify communists as a group that receives direct orders from the USSR, and rendered them a symbol of the threat of “international communism”, which is the most frequently used excuse in state coups aimed at instilling rightist terror systems.

The example of Uruguay in this respect is instructive. The devastation of Uruguay’s seemingly well established and old democratic institutions was a result of the increased activity of the *tupamaros*, a group that also undertook terrorist actions, but had opposed the then legal Communist Party of Uruguay (which, in turn, condemned the *tupamaros*’ methods). Despite that, the governments that ruled after the military coup have continued to torture and kill CPU members long after the *tupamaros*, who were few in number, were completely destroyed. As we have seen, in Uruguay, the retroactive statute did not only prohibit the Communist party, but had also prohibited all other “Marxist” and “pro-Marxist” parties and political groups, and their members risked prison, torture and disappearance.

Since the social and economic reason of existence of such terror systems is the desire to free the space for undisturbed and unlimited activity of national and foreign investors and to preserve the position of the landholding oligarchy, trade-union leaders and organizers are particularly targeted. In the year 1980 alone, in the



small state of Guatemala, at least 165 workers' trade-union leaders were killed or were missing, and 311 leaders of corresponding farmer's associations were killed.<sup>38</sup> The situation is similar in Chile, Salvador, Bolivia and many other countries. Trade union leaders can easily be accused of being communist, since they advocate for the rights of workers.

As mentioned before, a similar type of suspicion is triggered by all those who show humanitarian care or compassion for the poor, particularly if they, like doctor Filartiga and the likes of him, actually try to do something about it. Due to this, many Catholic priests also become victims, even though they are by no means communist.

Due to their ability to articulate social demands and individual suffering in a manner which is at the same time accessible and hard to censor, artists have always caused wrath in state terrorists. When political leaders are destroyed, artists strive to take their place in the eyes of masses, and, in case of genocidal terror or forced assimilation, become the only keepers of national or ethnic identity and culture. The duty to seek the truth and show scepticism renders scientists, particularly those working in the field of social sciences, their associates. As a rule, both categories are worst off when it comes to treatment in prisons and camps. Given the relatively high reputation they enjoy and the ideas the primitive people have of their easy, luxurious or even ostentatious life, which is encouraged by officials in order to portray artists and scientists as spoiled and ungrateful, the social envy of interrogators and guards is provided with an outlet in the form of having the pleasure of humiliating and torturing someone who, until yesterday, had an unjustifiably good life. This is coupled with strange accusations that somehow a person who protests against the suffering of others is less dignified than those who protest only against their own suffering.

The original systems, which are now only followed by the present-day right dictatorships, acted in the same spirit. The Nazis swiftly delegitimized, killed or arrested all leading communists and social-democrats. The racist myth rendered them as being Jewish or as being foreign agents. Soon, all independent spirits were internalized or driven to exile. Members of anti-fascist parties in

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38 *The Travail of the Guatemalan Trade Union Movement*, Washington Council of Hemispheric Affairs, 1981.



Italy had suffered a similar fate, and were even worse off in Franco's Spain, if they had not managed to retreat with the republican forces in time.

In the terror systems that are not a direct result of a civil war, of a coup or some other fierce political conflict, the enemies of the system are not so clearly identified, and the terror commanders have to look elsewhere.

The "red terror" during the October revolution and immediately after it, was directed towards real and potential counter-revolutionaries, who were identified with the overturned system and hence did not cause much sympathy. However, in time, this terror, just like the Jacobin terror, allowed rash, impulsive and summary actions and collective punishments in the form of taking hostages or passing of convictions based on origin or social class. An aberration within this type of terror were the measures against "kulaks" who were designated guilty as a social class, even though some measures of the Soviet government, taken in the interest of the entire economy, enabled their creation and prosperity. Stalin's terror started at the time when it seemed that the USSR had overcome the post-revolutionary difficulties and began to be recognized even by governments that had deployed their troops to intervene on the side of the counter-revolution some ten years ago. The choice of victims had shifted – they were now sought for within the party, among the revolutionary elite, among all those who had the capacity to become Stalin's rivals or who were well known, so that their liquidation may resonate widely and cause confusion and fear.

There is no need to focus on the generally known facts for too long: Stalin and his associates liquidated almost all old Bolsheviks, almost all Politburo and SCP(b)<sup>39</sup> members and almost the entire generalty (that is, all the capable officers therein).

The terror inventions of that system include the claim that a person who, until yesterday was a trusted ally, official and combatant was, during all that time, an agent of foreign, counterrevolutionary powers. This type of twist, this "exposure" has a multiplier effect. The terror seemingly resembles the real "red" terror, since it affects counterrevolutionaries. However, a more intense feeling

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<sup>39</sup> Out of 1966 delegates at the XVII Congress of the SCP(b), the so-called "Congress of Winners", held in 1934, a total of 1108 were killed. It should be borne in mind that the majority of the delegates at the congress were chosen to Stalin's liking.

of insecurity arises, since no one can be trusted. What terrorists do is paradoxical, but very efficient in psychological terms: they claim that their regime is at the same time strong, “victorious” and beloved, on the one hand, but also weak, endangered and corroded by dangerous enemies at top-level positions, on the other. This creates greater anxiety within a wider circle of the intimidated, without the need to increase the number of victims. Whilst violence affects only those who, at least by stretch, can be considered as opponents of the system, those who are honestly and openly loyal to the system can consider themselves safe, while those who are its latent opponents can save themselves by silence and inactivity. As long as violence is directed only towards the more prominent people, a “small” man can rely on his insignificance. Now, such safeguards no longer exist.

Finally, victims were no longer sought for among prominent Bolsheviks who confronted the leader at some point, albeit in the form of a mild inter-party discussion. The element of vengeance seems to have been lost. In the later period, the tendency was to prevent the emergence of possible opponents or to create an impression of complete insecurity within the top levels, since even the most loyal of Stalinists can become victims. If it settles in, terrorism must be fed. When the mechanism was set in motion, the result could have turned out to be quite unexpected. Guilt was no longer construed based on certain elements from one’s biography – biography was used to create a file of a pre-determined guilt. Just like Balzac had ingeniously noticed in one of his novels a long time ago, police investigation in political matters is not initiated based on the materials that exist in the files, it is the files that are pulled out when it is considered that an investigation is necessary for other reasons.<sup>40</sup>

In this respect, if one is to believe the memories of R. Barak, published in Czechoslovakian party paper “Rude pravo”,<sup>41</sup> the case of Rudolf Slansky is most instructive. Hearing of the trial of Hungarian “titoist” Laslo Rajk, Slansky had, allegedly, exclaimed at a meeting “We need a Czechoslovakian Rajk!” He probably thought that, in order to consolidate the Czechoslovakian regime, using the USSR as a model, it would be good to find an internal

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40 H. de Balzac, *Sjaj i beda kurtizana (Splendors and Miseries of Courtesans)*, Beograd, Kultura, 1950 (translated into Serbian by Marko Vidoković).

41 June 13, 1956.



enemy. And truly, the Czechoslovakian security services, with the help of experts from Moscow, embarked on a search for such a person, who turned out to be – Slansky himself; we was sentenced to death as a “dangerous agent of imperialism” in 1952. Even if we do not give credit to this story, it is true that Slansky was obedient and had shown no tendency for independent thinking, criticism or self-exposure.

The only thing that linked Slansky and a considerable number of the co-accused at his trial, on which Artur London left a moving testament,<sup>42</sup> was their Jewish origin. When one considers the “White Coats Affair”, which Stalin started to prepare before his death, one can assume that Stalin’s own anti-Semitism (his brilliant SCP(b) rivals were mostly Jews) or his desire to use Russian and East-European anti-Semitism as a cover for persecutions in that phase, had played a crucial role in the process. Let us recall: the mentioned affair had started by an accusation against a group of doctors, almost all of whom were Jews, that they have systematically, by malpractice or poisoning, murdered high Soviet officials, including Zhdanov. Such a beginning, however, considerably resembled the past when, some twenty years before, doctors were accused of liquidating, at the orders of prominent Bolsheviks, persons such as Kuyubishev, Maksim Gorky and others. Doctors were discovered in the new purge, but those who gave out orders remained undiscovered, which had caused understandable concern in Stalin’s surroundings and had led some to assume that that very surroundings had “helped” the generalissimos to die, an assumption that to date has not been convincingly proven.<sup>43</sup>

Terror’s tendency to widen the circle of victims outside the one that would have been rational according to the previously described criteria, is inevitable. It has to do so for two reasons. The first one lies in the fact that clearly set boundaries would diminish its effect. It may well happen that the population discovers the criteria the terrorists use, however difficult that may be, since, by definition, terror is not based on any rule and hence the choice of victims does not rest on their actions, but on suspicion, assess-

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42 *Priznanje (The Confession)*, Beograd, Prosveta, 1969 (translated into Serbian by Vera Naumov).

43 In our country, this thesis is supported by A. Kolendić, *Poslednji dani kulta ličnosti (Last Days of the Cult of Person)*, Rijeka, Otokar Keršovani, 1980.

ment of how dangerous a threat they represent or simply on how valuable they are as victims. As soon as this would be discovered, a feeble sense of security would be instilled in those outside the circle of potential victims, or, in other words, the fear would not be as strong. The ever-changing criteria create an impression that everyone can be a victim and the necessary measure of fear is maintained.

This was noted during the studies of terrorism. In cases where individual terrorists or terrorist groups scrupulously try to attack only those individuals who are somehow considered guilty or important, the effect of their actions is lesser, even though they enjoy greater respect in moral terms. On the other hand, while some terrorists, particularly those who fight against the reign of terror, care about ethical approval, since they see their fight as an act of justness, the state terror has no such ambitions, except in cases of propaganda directed at other countries, and it does not seek for an excuse for assuming full control and extending extraordinary powers. Had it cared, the state never would have departed from the principle of legality in the first place, and would not have been a terror state.

Using the uncertainty as to who will be the victim, the terror system slyly transfers some of the tasks from its apparatus to citizens. If one knew what exactly was prohibited, whether in terms of a system of rules (which is not terror) or some form of clear and predictable pattern of use of violence, one would have the possibility to do things freely, with a relative degree of certainty. When the boundaries are unclear, fear renders people to abstain even from actions that the state or other terror apparatus could not prevent or discover. Even though often comprehensive, the terror apparatus is never sufficiently large to directly monitor the entire population. Therefore, each citizen should constantly be under the impression that he or she is taking a risk.

This is contributed to by an atmosphere of secrecy or semi-publicity by which terror officials surround their activity. This is not done, as is usually thought, due to moral scruples or fear of criticism from abroad. As one researcher who studies violence well perceives:

This twilight zone is the essential mark of terrorist regimes. This must be so, because, if their existence and manner of

operation of the terror apparatus were the subject of public debate, then the citizens would inevitably try the terrorist practices against the confessed ideals of the regime. But if the methods would remain completely unknown, then they would not achieve their intimidating effects. Thus, the system of terror works through a steady system of rumours, through private conversations and person networks. This has been conceived of as the devilish shrewdness of the set-up: whoever mentions it, himself thereby collaborates with the reign of terror.<sup>44</sup>

The second reason for widening the circle of victims lies in terror's own dynamics. As any endeavour in politics and human society in general, it rests on a more or less specific, express or implicit, more or less clearly formulated plan, which is carried out by a large group of executors in an administrative manner; executors who invest in it a series of additional motives, ambitions, interpretations, understanding or misunderstandings. When, additionally, a terror directive is pronounced in general terms, since the desire is not to disclose it completely or since it originates from a personal ever-changing feeling that those in power are constantly endangered, such directive in fact constitutes only a series of slogans, it calls for hate and vigilance towards a general enemy. All this results in ultimate uncertainty. However, one tendency is always certain: it is better to do more than to do less, better to be strict than lenient, better to be vigilant than sleepy, better to be unsatisfied than self-satisfied, it is better to overestimate than to underestimate the opponent. General hatred as an incentive for terror is transformed from a justification into an instruction for the prosecutors, which is then complemented by the chance terror provides for the frustrated and dissatisfied people to harm those who bother them.

This is particularly striking in cases where the terror system visibly relies on parallel and ancillary organizations. Satisfaction of personal hatred is one of the prizes for their members. Hitler knew this very well when he addressed the Nuremberg SA members in 1930:

When we take power, each of you, my friends, will have several hours of time and opportunity to revenge, with a

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44 A. de Swaan, *op. cit.*, pp. 44-45.

strong hand, for all you have suffered so far, and will suffer in the future.<sup>45</sup>

One should not doubt that the SA members and many others have used this opportunity in 1933. In Bavaria, the bulk of terrorising was primarily committed by an ancillary police, which was, in a 5:3:2 ratio, composed of members of the SA, the SS and Iron Helm (*Stahlhelm*) militaristic organization, in that order.

When terror is associated to totalitarianism, as a tendency to monitor all human activity, including the most intimate human sphere, the chances to widen the circle of victims increases even further. This is because, from a totalitarian standpoint, it is difficult to remain good: even the most peculiar of actions constitute a sin, among these, the first and foremost is the lack of enthusiasm. A totalitarian regime is not satisfied by the fact that its subjects respect it and obey it: it seeks their limitless love and wishes to achieve such love through fear. The fundamental paradox of violence lies in the impotence of coercion to cause anything more than obedience, in the inappropriateness of using force in order to win over the hearts and souls of men and women. Just as a torturer's wrath is caused by the fact that they can never know for sure whether the pain they caused had led the person being tortured to tell them their true or simulated thoughts; just as the inquisitors could not know whether the person they had sent to the other side had repented and converted honestly or falsely, a totalitarian also does not know whether the signs of affection, excitement and worship addressed to him or her are real or false. To dispose of enormous physical power, at the same time being aware of its limits, and of its impotence in the sphere most important to its holder, is not a cause for the totalitarian to resign or to give in, but is a source of additional wrath.

According to the scale of terror exerted over completely loyal masses, Stalinism stands out in this respect. Stalinist terror had reached its peak *after* the destruction of any opposition, non-partisan and inter-party opposition alike, which leads us to conclude that terror was no longer an instrument but the very essence of power. Even though in the USSR after the killing of Kirov (which

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45 Quoted at E. Reiche, "From "Spontaneous" to Legal Terror: SA Police, and the Judiciary in Nürnberg", 1933-1934, *European Studies Review*, 1979, p. 241.

was staged by Stalin himself) no acts of anti-state terrorism took place – although many of those accused in grand processes were already condemned to death for these non-existing acts (including a traffic incident, when a car in which Molotov was sitting slid into a ditch) – “terrorists” were still incessantly sought for and were found everywhere. Since it was still necessary for a victim’s guilt to be proven – even though such guilt was irrelevant for terror, and even though the interrogators knew that the victims were innocent from the standpoint of the regime – a backstory had to be invented just in case, and the suspects had to participate in inventing it, in order to facilitate the job of the terror apparatus.

A story would not be convincing nor would the enemy be considered so dangerous if the suspect acted alone; therefore a suspect had to be a part of a conspiracy. Consequently, any confession per se produced additional candidates for prosecution, the number of which, as can easily be assumed, grew at geometric progression, like some kind of a deadly and grotesque St. Anthony’s chain. In a futile desire to redeem themselves, and to show the leader the love he craves for so much, the suspects were always given the opportunity to show their “devotion through betrayal”. They were given an opportunity to denounce those closest to them and thus confirm just how much more they love the state, the party and the great Stalin – more than anything that they, being common people, would emotionally prefer. For reasons mentioned before, the interrogator could not stop at these confessions; the terror apparatus had to act upon them, which sometimes resulted in consequences that otherwise would have been comical.

It is likely that Vladimir Voinovich used one such story as a model for his private Chonkin. Craving for glory, a guy named Silakov had introduced himself to the security authorities in Kyiv as a deserter from the Red Army who was heading a major anti-Soviet conspiracy. This charge had given birth to a story that an entire unit in which Silakov had served, officers included, was a part of the conspiracy. All members of the squad were arrested, as were many of their wives, Silakov’s two sisters, his father and his lame mother. His uncle, who had met him only once, was also arrested: this man, a former corporal in the czarist army, became “a czarist general”. The entire Kyiv prison was filled with members of the Silakov conspiracy. After Yezhov’s fall, the excessive scale of the entire case became clear to his heirs, the entire process was renewed



and the suspects were invited to revoke their confessions. Fearing a new trick, many refused: they were to be subjected to torture once again, this time to scale down their counterrevolutionary role.<sup>46</sup>

Silakov is a true amateur compared to some other denouncers, whose actions were proudly covered by the press at the time. One activist in Odessa managed to “expose” two hundred and thirty people. Naturally, proceedings had to be instituted in each case.

As a result, during the great purges, between 500.000 and 3.000.000 death sentences that had been pronounced by various courts, which acted secretly and without any rules of procedure, were executed, and the population of penitentiary camps, who later lost their lives due to unbearable living and working conditions there were exposed to, grew to an unbelievable scale. Again, anyone could be a victim: one’s knowledge of Marxism and Leninism could not save him or her, since Stalin’s version of the doctrine was different. One could not save oneself by quoting Stalin’s words, since Stalin often changed his mind. One could not save oneself by invoking the decisions of party forums, nor by expressing excessive enthusiasm, since this was a characteristic of the vilest hypocrites, and so on. One’s entire past became ambiguous, since its interpretation depended on the authorities. If someone was a volunteer in the Spanish war, or spent time in a Nazi concentration camp, he could be a hero – but, he could have also been converted there.

The victim’s physical liquidation was accompanied by subsequent denial of his or her existence. The victim did not only die or was imprisoned as a traitor – in addition to that, an impression was created that the victim never existed. The family does not know whether the victim is alive or not, and in any case cannot grieve for the victim, but should detach itself from the victim as soon as possible, through divorce or by renouncing any connection to the victim. Children who thus become orphans are raised in institutions and are unaware of their true identity. No one is allowed to mention the victim’s name in any context. One woman was punished because she remembered that marshal Tuhachevski was beautiful, while another citizen could not be rescued even though he cautiously said that Tuhachevski, “before being exposed as a traitor” demonstrated he was a talented officer in the war against Poland and during the Kronstadt rebellion. As Manes Sperber duly

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<sup>46</sup> See Conquest, *op. cit.*, p. 380 et seq.

notes, Stalin has managed to “deprive everyone of their identities and their past and to kill them masked”.<sup>47</sup>

This remark probably also explains the obsession with gaining recognition. In addition to the need to betray others in a futile hope of saving oneself and thus morally humiliating oneself before oneself, the person making the confession also denies himself and clearly exposes to everyone the relativity of truth. The truth does not exist independently any more, it no longer stands on its own feet, but is completely in the power of the regime. It is paradoxical, but also true, that humans, the more innocent they are in their own eyes, and even in the eyes of the interrogator, the less resilient they are to such a procedure, since the relativity of truth and the nothingness of their own existence are shown to them in their most horrifying form. There is no objectivity, there is only the subjectivity of the culprit, who is not subjectively, but objectively guilty. If the culprit were also good communists, they were led to believe that they served the interests of the Party by confessing their guilt, which, as Arthur Koestler duly notes,<sup>48</sup> drove them to assume some kind of a religious attitude, similar to those that the victims of inquisition had. The uglier and crueller the form of the interrogator in which the Party presents itself was, the more likely it was that in this way the Party was testing their righteousness. Consequently, the culprit must succumb, for, in accordance with Lukachev's apotheosis of the Party, which was fully accepted by Stalin, a party's common “soldier”, a common worker (a mortal) cannot comprehend the mysteries of its ways. Thus, the totalitarian terror succeeds in forcing people into self-alienation.

Before we try to indicate under which conditions terror arises, let us seek for an explanation in some form of rationalisation of the terror dynamics. Terror, and totalitarian terror in particular, entails some basic contradictions. It is supposedly exerted on behalf of the people, while suspecting the people. On the other hand, its subjects show all signs of humility and submission, while, at the same time, they do not believe in the legitimacy of the regime. The population fears the government, and the government fears its people. This is why the government portrays itself as both powerful and fragile at the same time. The regime has the innate need for

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<sup>47</sup> *Sieben Fragen zur Gewalt*, München, DTV, 1983, p. 28.

<sup>48</sup> *Pomračenje u podne (Darkness at Noon)*, Zagreb, Liber, 1972 (translated to Serbian by Željko Bujas).

an enemy, without whom it cannot function. Even though the government gets 99.99% of votes at the elections, the remainder of voters is extremely dangerous, since they have external support and are positioned at the very top. Since totalitarianism is already characterized by a constant alternation of actions, permanent mobility and by “response through action”, combat against the enemy must always be on its agenda. Even though each conflict with the enemy is successful and ultimate, it soon turns out to be the penultimate. Similar to the tendency to base its legitimacy in other fields on the need to be given the mandate to carry out tasks that are in essence either impossible to accomplish or the realization of which may be permanently delayed, in order for the government to still have a task and a mission, the terror system tries to legitimize itself within its most narrow domain: since it is objectively unjustified if there is no danger, no adversary, it has to constantly produce danger and enemies.

The non-Stalinist terror systems also strive to widen the circle of their victims, but none is so intent on affecting the truly loyal citizens and fierce supporters of the regime. National-socialism had widened the circle of its victims mostly for genocidal reasons, since it equalized internal opponents with foreigners in national terms, and hence strived for their destruction. The modern-day terror in the right-wing “national security states” primarily affects those who are at least intimately critical towards a completely unprincipled praetorian dictatorship, the only purpose of which is sheer power that enables it to preserve the privileges of the domestic elite and of foreign capital. There, at least, the wealthy members of the elite feel safe, provided they do not display any humanitarian instincts.

In such systems, the widening of the circle of victims is a fruit of the corruption of the terror apparatus, which is particularly prominent in cases of terror that is deprived of any higher idea and ideological coherency. Violence is then used as a result of the existing prejudices, of envy, or in order to obtain money from ransom or blackmail of some other form, or in order to settle one’s personal accounts, which the terror regime tolerates: ultimately, in the eyes of the terror regime, such practice is not dysfunctional, since it provides the necessary measure of non-discrimination to terror while at the same time widening the zone of fear.

The only terror systems that are close to the Stalinist one in the mentioned respect are those that can be explained mostly in

an idiosyncratic manner, that is, by the personality traits of the almighty dictator, the supreme commander of terror. Just like in the case of king Shaka once, certain psychopathic traits have been identified in tyrants such as Francisco Macias Nguema from Equatorial Guinea, Idi Amin from Uganda, emperor of the former Central African Empire Jean-Bédél Bokassa, Rafael Trujillo from the Dominican Republic and Papa-Doc Duvalier from Haiti, in whom manic suspiciousness was a predominant trait.

According to modern political science, the idiosyncratic factor, (as opposed to romantic historiography) here plays a relatively small part, a part which becomes all the greater the smaller the number of political decision-makers is, and which becomes undisputable when that number is reduced to one. Then, the decision-making process takes place in one head only and it assumes psychological instead of political features. Even a pathological individual-dictator wishes to cause fear by terror, but the choice of victims of terror is susceptible to his sick criteria, which a precious few can comprehend. Because of that, the fear is spread widely in its most anxious form. Since the countries in questions are mostly poor ones, true success and prosperity can be achieved only at the centre, in the proximity of the dictator. The dictator is aware of the fact that he controls the elite in this way, whilst members of the elite know they cannot become its members without a major risk, which to them seems to be a pay off compared to a life on the periphery or a life abroad. None of them can foresee which gesture shall cause mercy or disfavour, if these depend on gestures at all.

Those who interpret the Stalinist period solely in terms of a “cult of personality” are inclined towards, idiosyncratic explanations whether expressly or implicitly. There are reasons to believe that Iosif Vissarionovich Dzhugashvili, although he was an unparalleled political tactician who was able to control himself when necessary, showed signs of a personality disorder, including sadistic propensity and pathological distrust. According to the accounts of his own daughter, he honestly thought that there were people who rotted away in czarist prisons, who spilt blood in the revolution, who zealously built the Soviet government and rose high in the party and state hierarchy, who nonetheless remained agents of the czarist police and of foreign secret services. His assumption seems to have been that everyone was guilty. Some authors go as far as to claim that in this way, as often is the case, he projected his

own characteristics onto others; this opinion is based on certain uncleared episodes from his past, when he seemed to have been working for the Okhrana.<sup>49</sup>

Although this would not be surprising, having in mind the similar episodes from Russian history and the Okhrana files, these claims cannot be considered to be proven. It is more likely that Stalin, aware of his limited abilities – particularly modest compared to the myth of his own genius in all fields – feared all talented people, and above all those who came close to the top. Their elimination, as the case was with the famous economist and administrator Voznesenski, should have both served to indulge his feeling of insecurity and also to send a strong message that there was no safe place and no grounds for self-confidence. Only the absolutely obedient and colourless people could survive in such an environment, and hence they were sent only milder warnings: when Molotov's wife was arrested, this closest of Stalin's allies understood the message, and had not changed his expression nor lifted a finger.

Some political scientists believe that there is no true totalitarian terror without an individual dictator. They believe that, in fact, an absolute terror regime is the incarnation of such individual's wildest dreams, the fulfilment of his most intimate wishes and the image of his own fear. This opinion seems to be shared by the authors of anti-utopias. Zamyatin's *One state* is led by the Benefactor; Orwell's *Oceania* is ruled by the "Big Brother". Orwell did not respond to the question whether "Big Brother" was only an imaginary entity, a façade used by oligarchy, or whether he truly existed. Perhaps we should say that every terror, if it lasts for long enough, must produce a big brother.

## WIDER TERROR TARGET – THE ZONE OF FEAR Manipulation

The true response the terror wishes to cause is not the response of the victim, particularly if the victim loses his or her life in the process. The terror system is most interested in the reaction of those whom it wants to rule, whose actions it strives to control – and that is the entire population, whose obedience is the aim of terror. It is

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49 Instead of many, see. M. Voslensky, *Nomenklatura (Nomenclature)*, Wien, Molden, 1980, p. 79 et seq.

towards them that the terror message, contained within the act of violence, which is exercised against the direct victim, is addressed.

There are almost no terror systems that rest only on causing fear. The masses are influenced, manipulated with in different ways, including indoctrination, development of adequate ideological consciousness on which the government relies, rendering its actions to appear as good, inevitable, based on higher principles. Even some terror systems that, at a first glance, do not seem to have ideological grounds and resemble “nude terror”, rest on a certain degree of support in the minds of the majority or a part of their subjects. Zulu kings could not have done what they wanted to do had the religious beliefs not bestowed supernatural characteristics on them, had opposing them not been a grievous sin and had their bloodthirsty autocracy not constituted an expression of their divine traits.

There is no religion that does not depict its deity as being incomprehensible, impervious to human reason and therefore unpredictable and cruel in the outpours of its wrath. The believer who is thus harmed is left to conclude on his own just what he did wrong. The assumption is that the human is wrong, and that god is right, and that, just like the righteous Jove, the human should continue to praise the almighty who justly tortures him or tests him through torments. It is only natural that all gods’ regents on earth try to show these exact characteristics – from the axiomatic character of their power, through requests for complete obedience, to the right and duty to make their subjects dwell on their own sins, by way of sentencing them to unreasoned punishments without a warning, instead of having them contemplate on the purpose of government and the failings of those who rule. This is also true for the systems that are seemingly secular, but which rest on ideologies that have a religious dimension of absolute determinism. In that case, too, history is presented as having an inevitable significance and course, which is covert from most, but is known to the all-knowing elite; in this case, too, a crime is “objective” and not subjective. In such systems too, there is a distant prize, embodied if not in the afterlife then in an ideal society, for which the current generations endures sacrifices, so that their great-grandchildren may enjoy it.

Even without the need to resort to violence, a system of complete ideologization produces a certain type of constant anxiety.

The truth loses its meaning, the facts become false, the causation relations are temporary – someone else determines all of these. Doubting his own reason, and even his own senses, a person is left without a firm stronghold and lives in a world of unpredictability. In such an environment, a person does not exactly know where danger is coming from, and hence does not experience only a common fear, which is orientating in nature, since it makes one eliminate the source of danger, but an unhealthy, completely dysfunctional and useless anxiety, the precise origin and causes of which remain unknown. Hence, a person is unable to escape from it. These types of fear will be elaborated on further in the text.<sup>50</sup>

Such distrust in reality, such abdication of truth in favour of its undisputed keepers and permanent disclosers is achieved in countless ways. These primarily include complete oversight over the sources of information, both regarding the present and the past. History is changed, disobedient persons disappear from it, and they are joined, on a daily basis, by new “non-personalities”, even though some of them, portrayed in a quite distorted manner, are preserved in order to be used as constant threats, as negative heroes, Lucifers to whom weak individuals can succumb and become just like them. Only the things that are “necessary” are known about the present day – these are the domestic successes and failures of others. Even then, there is a lack of consistency: what was true yesterday can turn out to be a lie today. There are only a few men who can find their way around in this, men who manage to do so with considerable effort. This effort is not only intellectual, but also requires a special energy, perseverance and wit in seeking the way towards true information. And even then, one may fall into a trap, since the conflicting information so obtained can also be a lie, fabricated in another similar system, which differs from the first one only in terms of foreign policy or ideological rivalry. Eliminating the few who are capable of learning the truth is the “necessary” measure of terror, which can then be of small scale.

The process of socialisation and acculturation also takes place under control, where the “emptied” parents are joined by the school. The school provides students with a correct outlook on the world, where (even in natural sciences) an attitude is more important than the facts, where correctness is more important

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<sup>50</sup> See below.

than the truth. Such indoctrination does not always aim to instil resolute benchmarks into men and tie them to the official doctrine, which legitimizes the government and the social and political system – this practice happens almost everywhere, even in societies that constantly boast with their “openness”. No. The purpose of education and upbringing is to instil loyalty, which does not have permanent contents, but is rather an attitude towards those who are at the top, towards the “establishment”. It is the readiness to accept as true, correct and wise everything so declared from the top. This lack of contents is necessary, since instilling some type of criteria, however ideological they may be, would provide a possibility of the elite’s actions and its orders being judged once, based on such criteria. The elite not only seeks to preserve full freedom of its actions, but also the right to judge behaviour from the standpoint of official ideology, a right which implies the capacity and the power to declare its own actions as being in compliance with the principles that are in force.

Everything was relative in national-socialism, except for the limitless trust into and loyalty towards the leader. This is why the former and the present commentators of that “doctrine” find it so difficult to reconstruct it as a congruous, albeit irrational, system. Multiple readings of Hitler’s *My Struggle* (*Mein Kampf*) or of Rosenberg’s *The Myth of the Twentieth Century* could have perhaps helped predict the behaviour of the “leader of the Reich” in general terms, but could not help explain, let alone criticize his each individual move. Hitler was not even bound by his own doctrine. The “Night of the Long Knives”, Hitler becoming close to financial magnates, Hitler making a pact with Stalin – these would not have been in line with Hitler’s populist programme, where “plutocracy” and bolshevism were considered to be irreconcilable adversaries and sources of all evil. Even though the national-socialist regime lasted for a relatively short period of time, an average German had learned, not only due to fear of violence, that such inconsistencies are an intrinsic part of the doctrine that has to be believed in without reservations.

There is no need to use such drastic examples in order to understand the extent to which manipulation was developed, and along with it, the prejudices and the accompanying anxiety. Analyses of school curricula and means of mass communication show that, even in formally democratic societies, a sense of the existing system being



God-given is developed, a sense which is linked to incomplete or false information on other societies and to the creation of an image of a diabolical enemy. Even when a proportionally large part of the population manages to resist that influence and to think independently, without fear of being punished as an example for doing so, such people are put away in some kind of a counter-cultural ghetto, where they vainly address a wider audience through bulletins published using spirit duplicators, or through books and magazines of low circulation that have even fewer readers. The majority will cling to the opinions they formed in their childhood, which are constantly reinforced in the “legitimate” press and other sources of information. Such sources also deliver ready-made generalizations, labels that can be put on different, more independent people, labels the carrying of which can be more or less dangerous. In the USA, for instance, to be labelled as a “communist” or even a “Marxist” implies a series of limitations, and in times of McCarthyism, was an existential danger.<sup>51</sup> Even in recent times, high schools in some USA federal states have a subject under the name “Americanism versus communism”, better known under the abbreviation AVC. Communism, and even socialism, are no longer a theory that is being criticized from a different standpoint in order to prove that it is wrong or to point out its adverse consequences: they become devils’ labels for a group of evil men, who, without any reason, out of spite or out of wickedness wish to destroy the existing, good order.

We already mentioned that in the period of Stalinism, Marxism-Leninism turned from a critical theory into a futile apology of everything the government does, and finally, into a new cult of the infallible leader. The leader can then, in the spirit of the teachings of Marx, Engels and Lenin, change his course on a daily basis – and still remain in the right, since he is the only one competent to interpret it and compare it to the scientific socialism doctrine. Therefore, a leader can not only strike a deal with Hitler on how to divide the territories of other, independent countries, but can also deliver to him in cold blood the communists and Jews who fled to the USSR. Moreover, Stalin put unlimited trust in national socialism (which, until yesterday, he interpreted as a product of the most aggressive big bourgeoisie), and, again as the sole owner

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<sup>51</sup> See D. Cauter, *The Great Fear. The Anti-Communist purge under Truman and Eisenhower*, New York, Simon and Shuster, 1978.

of truth, refused to take seriously the warnings of the imminent armed attack of June 22, 1941. Just how firm that trust was can be seen from the pathetically naïve repetition of the words of an “oath-breaking attack”, as if any serious Marxist and interpreter of Lenin, or even any reasonable observer of developments between 1933 and 1941 could have ever put trust into Hitler’s word. People were, however, taught not only to consider these action as being correct, and being in line with Marxism and Leninism, but also to consider them as ingenious. Marxist ideology thus became an empty shell, into which any content could be put, but it was still taught, since, in a vulgarized form of dictatorship of the proletariat, it was used as the main way to legitimize the regime.

This process, which was once so well weaved into everyday life and institutions, becomes especially prominent when it takes on the form of a strong propaganda effort, which is particularly characteristic of totalitarian systems. All the knowledge of psychology, all the technological achievements, considerable material and human resources are used only to bombard the population, at all times and at all places, with messages telling the them what and how to think, or, if propaganda is more refined and subtle, instigate the population to take the positions that are desirable, necessary and useful at that time. In addition to eliminating all other ways for gaining information, propaganda has an even stronger, unbearable quality. While one cannot and may not tune into a foreign radio station, one also cannot tune out of a national station.

Given that coercion is defined as overcoming of other persons’ will, that is, as the change in the actions of the person being coerced against his or her will and agreement, in the case of perfect manipulation one would also talk of coercion. Authentic will and the elements for creating such will no longer exist in the majority of the population. This is the way to achieve the desired goal of terror – apathy and disorientation.

Even though we share this position, although it conceals some danger of being abused – since a critic can take a completely undemocratic position and consider that the will of the majority is false, or rather that it is a result of manipulation – we still find that in the case of terror, the use of physical violence against the victims, which then effects a wider circle, is important. We just wanted to show that terror is not alone on the list of methods for spreading the feeling of anxiety.

## Intimidation

If other methods, such as some of those mentioned above, are successful, terror is just their addition. It eliminates those who resist manipulation, doubt the dogma, ask inconvenient questions, dispose of different facts, persistently seek for truth, compare principles with everyday practice, deny the legitimacy of the government, etc. The punishments for such “offences” are a warning to all those who would, perhaps even without any bad intention, out of pure curiosity or cosiness, wish to escape the process of grinding of consciousness and propaganda.

For terror, legality is still not important, and hence the difference between a guilty person and an innocent person is insignificant. Therefore, the sanction may not affect a person who is truly guilty: it suffices to know why someone is being punished in order to strikingly state that the object of founded or construed accusation is prohibited and, more importantly, dangerous for the accused and his direct surroundings. The Inquisition most often acted in communities that were homogeneously Catholic, where masses of plain folk honestly believed in the Catholic dogma and all its implications, including the undisputable authority of the clerical hierarchy and the divinity of the secular masters. The Inquisition, however, had tortured and burned on the stake more alleged than true heretics and non-believers. The first ones included not only persons whose sin consisted in studying phenomena they considered were not in the competence of religion and church, e.g. naturalists such as Galileo Galilei, but also illiterate men and women, whose degree of consciousness and whose theological education did not even allow them to think what they allegedly thought, or to understand the guilt they confessed as they were being tortured.

The message, however, had reached its target in the form of a warning that it was dangerous to meddle in some things. When it comes to natural scientists, they were to be told that the truth was singular and indivisible, and that it was owned by the elite. Even though God stayed where he was, the Pope was still his emissary and the heir of St. Peter, to whom all Catholics owed allegiance, regardless of whether the Earth stood still or revolved around the Sun or the Sun revolved around the Earth. This position, once taken, was not to be challenged, since this would allow not only for other, more important truths to be challenged, but would also



cut into the absolute monopoly over the truth or, to put it more precisely, would allow for the possibility of the existence of the objective truth, a truth independent from any authority, a truth in the scientific sense, which requires evidence that can be verified by anyone.

As mentioned before, the terror seldom stops at this measure, which it considers to be truly necessary, *inter alia*, because it requires more than simple tolerance and refraining from meddling in public and political affairs from those it wishes to affect. Genocidal terror inclines towards destruction, which may consist in complete loss of the will to live.

As stated dryly and in manner bereft of emotions by an American author, the “national security state” regimes, which are in fact rightist dictatorships that wish to open up their countries to undisturbed exploitation, try to accomplish the “necessary measure of apathy and defeatism” in their population,<sup>52</sup> They wish to render their populations completely passive and have the people surrender to faith, to be ready to perceive life as mere existence, entailing poorly paid labour and humiliating living conditions. The people thereby become cheap not only as a workforce, but also as the act of living itself becomes cheap. The people therefore do not require any expenditures for hygiene and medical treatment. Whoever interferes with such an order of things becomes an external enemy, pursuant to the “aggression from within” doctrine. This seems to be the only way for the government to gain any support for persecution of such a person and to explain why improving the destinies of people from the social bottom is such a sin. The ones persecuted is, moreover, designated as a terrorist, however strange that may seem. We already mentioned elsewhere the definition of a terrorist provided by Argentinian general-president Videla, but it is worth mentioning it again: “A terrorist is not only someone who carries a gun and who plants bombs, but also a person whose ideas are contrary to our Western, Christian civilization.”<sup>53</sup>

Since today it cannot be openly said that subsistence of huge social differences, low wages, high child mortality, eighteen-hour workday and similar social facts are a part of the Western Christian civilization (given that the Catholic church itself denies it, particularly its priests in these countries), then the only ideology

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52 I. de Sola Pool, quoted by N. Chomsky – E. Herman, op. cit., p. 86.

53 Quoted by V. Dimitrijević, op. cit., p. 22.

that comes forward is the defence of national security, which is a simple absolutization of the existing state of play.

National security has no contents unless foreign countries are included, and hence any protest is a sign of national treason. When an element of Christianity is added to it, it is best for the regime that the agent discovered is in the service of a non-Christian, atheist force, such as the USSR. If one were to believe the propaganda, it would turn out that the Catholic Austria is in less danger of Soviet invasion than distant Chile and quite secluded Paraguay are. Even though some pious Chilean or Paraguayan peon cannot bear the thought of becoming an atheist agent or a terrorist, the ideology of the “national security state” is not distinctive from any standpoint: this is why it cannot create a political party that would support it and take over the propaganda and the indoctrination. This function then, as a rule, has to be performed by the army. Therefore, in these countries, terror ceases to be only an addition to manipulation and becomes the main tool of governance: it is hence dangerous to show signs of a real life.

With regards to this, it is perhaps best to let one of the eyewitnesses and best connoisseurs of the state of affairs in national security states, Salvador Mario Losada, president of the Latin American Constitutional Law Association, speak:

Who is afraid of power? Obviously, the powerless, those far from the protective radiations of power, that is the bulk of population. Among them are those who suffer economic oppression or deprivation from domestic landowners or local big business and those who are abused for their intention to participate in political life or in labour union activities. The educated segment of society has their scared ones: teachers, professors, artists, scientists and other members of the *intelligentzia*, bishops, priests, nuns, religious and civic leaders committed to the poor and to human rights; even judges and journalists. Why are they afraid? Simply because to challenge the absolute power of dictatorship – and sometimes that of their economic allies – is punished in many Third World countries with murder, torture and prison. University students, newsmen, political dissidents, religious leaders, human rights and labour union activists are murdered, tortured or imprisoned for long peri-

ods without any kind of process. Thousand are murdered with premeditation and thousand murdered by “mistake” or uncontrolled excess of murderous zeal. Thousand are murdered officially and thousand crypto-officially; some by apparent Government killers and some by unconvincingly disguised Government killers. Death is applied not like *ultima ratio* in the struggle for power, but like the first, superficial, practical and most available political resource.

Totalitarian systems with a leader request not only submission and obedience, but also infinite loyalty and fierce love. These, too, can be accomplished by non-terror means, as testified by all those who were trampled by the grieving masses at Stalin’s funeral and who were mentioned in Jevtushenko’s poem. Even rather pale personalities, in the states of “people’s democracy” became an object of a cult, even people without any credit that can be attributed to them, which Stalin perhaps could have claimed, people who did not lead or participate in any struggles as Mao Zedong did, but people who had grey biographies of climbing up the bureaucratic ladder. Such displays of worship still require a full psychological explanation, which we do not feel competent to provide.

At any rate, the terror system does not settle for this, it seeks an even greater love, and wants to accomplish it by force. The reaction of the widest circle of those intimidated perhaps consists of apathy and reluctance, as witnessed by those who became acquainted with the inhabitants of the totalitarian countries of eternal happiness up close and personal; however, reluctance itself must be masked as enthusiasm. However difficult it may be to accomplish love by coercion, it is even more difficult for a reluctant person to act as being thrilled. By setting an impossible task to itself, terror feeds and perpetuates itself.

Individual corrections or halts in this respect do not imply any significant changes. When he was forced to stop further terror in order to engage all of his forces in the Second World War, Stalin could see not only the enormous courage and zeal of the Soviet men (including those who were released from prison for the occasion) in defending their country, but could also witness that no one had used this opportunity to take subversive actions within a weakened and endangered country. However, as soon as the war ended, the old practices started anew: the first ones targeted

were the former prisoners of war (why had not they chosen to rather die for Stalin and the homeland, in that exact order than to survive?). Next, the terror format was exported to allied “people’s democracy” countries, purges began again and, finally, the shapes of the grand monster-process in the form of the doctor’s affair started to emerge.

The objective of any terror, let us repeat, is to maintain as wide a circle as possible in a passive state, to have people reconciled with the state of affairs and with the system, regardless of whether this is also achieved through other means, ones that also resemble voluntary agreement. The society is thus pulverized into a mass of individuals, who are the final terror target. In psychological terms, being subjected to violence is, as a rule, an individual, particular experience, which in that respect resembles the most absolute of such experiences, death. As duly noted by a Polish researcher, “it is difficult to feel a connection with other people when your nails are being pulled out”.<sup>54</sup>

The only connection that can be formed is the connection with potential other victims of violence. Such connection, however, has no integrative power. Contrary to that, this is what terror counts on when it differentiates between victims and the wider object of intimidation. Violence has a disintegrative effect, since there are still some potential victims who are still not affected by it, either because they were not in the terror plan or because, simply, the terror apparatus was not large enough to acutely affect everyone at the same time. This creates a temporarily privileged group of those whose turn still did not come, whether they be aware of it or not. This group has a natural propensity to preserve or prolong such a condition as much as possible, even at the cost of leaving others to their destiny. Their feelings are ambivalent: they may feel sorry for the victims but at the same also feel relieved for (still) being spared.

This may account for the lack of not only resistance, but also of any enterprise in those who certainly know that they are inevitable victims. Jews in destruction camps, facing a relatively small number of executioners and knowing that their days were certainly numbered, did not, as far as we know, ever attempt an – albeit

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54 J. Gross, “Terror and Obedience – A Society Under Occupation”, *Arch. europ. social.*, 1979, p. 336.

suicidal – rebellion of a large number of bare-handed slaves against a small number of armed guards, never tried to do something that perhaps would have saved the lives of a few. Comintern officials and officers gently continued to live in the Moscow “Lux” hotel, waiting for their turn – they even pretended not to notice that each night one of the “guests” disappeared or jumped from the window to the yard. Revolutionaries until the day before, some of whom had endured the worst torments in the prisons of fascist or fascistic regimes, have lost that necessary connection with others. They became loners and as such, took care only of themselves.

What is paradoxical about all of this is the fact that in this way, terror manages to maintain itself even in an uncharacteristic way. Non-terror regimes, namely, primarily try to obtain support by rewarding the observance of rules, not by instilling the fear of sanction due to failing to observe the rules. The position of terror is quite the opposite. However, a small and worthless prize, which consists in delaying the inevitable evil, a brief and delusive pleasure in temporary freedom and suppressed life, in an atomized society of individuals constitutes an additional incentive towards conformity. Human degradation is complete.

## **FEAR AND ANXIETY – THE NIGHTMARE STATE**

The essence of the reign of terror is to cause, by performing violence over the victim, fear in a wider circle of people, in order to make them incapable of opposing not only the existence of the government and the system it imposes and ensures, but also all future orders it decides to issue. This why fear is the focal point of terror, to which it had provided its name. Fear, however, is also more, since terror dynamics gradually turns it from a tool into an objective. In addition and before all, it is also its cause.

In order to understand this better, it is necessary to at least briefly analyse the psychological meaning of fear and the effects of the fear mechanism on human behaviour. This is also necessary in order to clarify some terminological dilemmas.

In Serbian language, the term fear is used to refer to two feelings, which are designated by separate terms in some foreign languages. One type of fear is the reaction to a real danger. It is not necessary for the assessment of a number of people on the existence and the intensity of this danger to coincide, but its observation needs to be derived from a real situation. Such fear has its cause, its exact



origin, which is known to the subject. Applied to our topic, this would mean that a man who has committed a criminal offence feels fear of being discovered and convicted. His fear may be more or less grounded, since the likelihood of being discovered may be low or high, and the punishment may depend on mitigating or aggravating circumstances, which the culprit cannot correctly assess. However, the culprit's fear is derived from the fact that he had done something that exposes him to danger. This type of founded fear, which is known to every human being and which is a useful reaction (when within normal limits) should be differentiated from the second type of fear, which is more revealing with regards to personality traits than with regards to an objective situation. This is the feeling of anxiety, which is not caused by a clear danger, but which originates in wrongly observed or quite unclear surroundings. There is a reason for the first type of fear, whilst the second type creates its own reasons. The first type is limited by the number and scale of danger, whilst the second one is unlimited, just like the capability of an anxious person to find danger, is unlimited.

In German, the first type of fear is called *Furcht*, and the second one *Angst*. In English, there is a similar difference between the words *fear* and *anxiety*. Under the influence of these words, in Serbian, the psychological jargon had to an extent accepted the designation *anksioznost* (*anxiety*) for the feeling of undetermined disquiet before an unknown danger.

On the other hand, the transition between these two types of fear is not as abrupt as the theoretic description may lead us to believe. An objective assessment of the situation and the origin of fear does not exist. The criterion is rather based on how such a situation is assessed by average ("normal") people. Whoever departs from such averages or notices less danger, or underestimates danger, is considered frivolous – whoever sees more danger than necessary and overestimates it, is declared a coward. Because it is impossible, in practice, to always draw a clear line between fear and anxiety, even though abstract differentiation between the two is possible, some authors believe that such a differentiation is unnecessary even in communities where the two are traditionally differentiated between in language.<sup>55</sup>

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55 For example D. Suter, *Rechtsauflösung durch Angst und Schrecken*, Berling, Duncker & Humblot, 1983, p. 21 et seq.

For us, however, these indications are important because terror often does not try to cause or truly does not cause a specific fear from a concrete, clearly outlined and foreseeable danger, but causes a general and undetermined feeling of insecurity and disquiet. While pure, “normal” fear, as we said, is a useful defence response, both for an individual and for the society, since, as a rule, it provokes both the individual and the society to secure themselves before possible dangers, defend themselves from existing dangers and elude them, the diffusive fear in the form of an amorphous anxiety is quite futile for the person feeling it. Diffusive fear does not direct or mobilize the person feeling it, it does not tell one what to do and what not to do – it stuns the person, nails them to the ground and destroys them.

Speaking, for a moment, of all political and legal systems, the gradation of the use of fear in order to ensure the desired behaviour could be designated by differentiating between non-terror intimidation systems and the terror systems, which could again be classified into conditionally “rational” and completely “irrational” terror systems.

Non-terror systems use intimidation to suppress anti-social behaviour in general, where the politically non-conforming actions also have a place. In such systems, political crime is usually reduced to attempts to violently overturn the constitutional order. What that system is like, and whether the attacks against it are justified or not, is not of significance to this context.

The second degree of intimidation is achieved by terror systems that manage to stay within “reasonable” limits (from their own standpoint), or, to put it more precisely, as long as they manage to stay like that. In addition to suppressing socially dangerous behaviour in the common sense of the term (although this is where the differences between the privileged members of the terror apparatus and unprotected people outside it already start to show), intimidation is also directed against all those whose action could jeopardize the regime in any way. Whilst in the previous, non-terror example, a political criminal offence is defined just like any other offence, that is, it is described in the law in a clear manner with a clear indication of the possible punishment, a terror government does not stop at that. In addition to offences listed in penal regulations, those who have committed similar offences, or offences that subsequently turn out to have been harmful for the ruling elite, are

also prosecuted. Also, the people who are known to or assumed to be able to jeopardize the government or to think badly of it, are prosecuted as well. In addition, and even with the huge potential for abuse, the essence of “rational” terror lies in the fact that it exerts pressure primarily on the political sphere and that it, albeit arbitrarily, affects or deems it affects only its political opponents. To put it quite simply, it “leaves alone” some parts of the population, lets them engage in their petty affairs. This, of course, is not a guarantee that one can remain innocent (since the government assesses which actions are dangerous for it). However, it shows that at the price of being below average, backward, devoid of any ambition, not caring for general affairs, not showing any gift, waiving any success, reconciling with social destiny or completely withdrawing oneself – one can remain unnoticed. Some terror systems, for example, are not interested in entire fields of human activity – furthermore, they exist in order to remain uncontrolled, as the case is in some “newly developed” countries outside Europe (e.g. Taiwan, the Philippines, and South Korea). There, political terror conceals complete “freedom” in economics, which implies a brutal workforce market, no social legislation, abolishment of trade unions, uncontrolled investments by foreign and domestic capitalists, low wages and destruction of the environment, etc.

Some of these systems also have a form that can be called “kleptocracy”. This term, introduced into political science by Amos Perlmutter<sup>56</sup> designates a system the top level of which, in addition to the despot, is comprised of thieves, corrupt people and sycophants, who use the state in order to get rich and satisfy their personal needs. Such administration performs other social tasks only incidentally and only to the most necessary extent, whilst a more or less transparent ideological and legal façade (most often “preservation of tradition”, “faith in God”, “protection of home and family” and “defence from communism”) is used only to avoid complete cynicism regarding foreign countries. Nicaragua under the Somosa family, which kept it in almost private ownership, was a manifest kleptocracy. The case was similar with the Dominican Republic under Trujillo’s dictatorship, and Duvalier’s Haiti and Stroessner’s Paraguay are still like that. In some societies, to point

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<sup>56</sup> Modern Authoritarianism, New haven, Yale University Press, 1981, p. 41 et seq. Perlmutter admits he had adapted a term that was already introduced by Stanislaw Andreevski.

out to a common crime becomes – a political crime, since the objective of terror is to “liberate” the classical criminal sphere!

The third, highest degree of gradation is achieved by the developed “irrational” terror, where intimidation has become its own purpose. In addition to the terror apparatus in the narrow meaning of the word (which is per se enormous in such systems), in this case everyone is included in the terror activity, but, at the same time, everyone is a potential victim. Innocence is quite impossible, it can be only temporary. Innocence is not a fruit of one’s credit, but is a result of an accidental “lack of vigilance” on the part of the terror organs (which will not last for long) or of mercy from above (which can be suddenly withdrawn). In principle, everything is prohibited and punishable, not only the things that, even if outlined most unclearly, belong in the political domain. Each move can be dangerous for the regime; for the regime, everything is a question of life or death. The subjects cannot be passive or inconspicuous, they have to be exhilarated and in love with their leaders, infinitely thankful to their “saviours”. They consequently fear all those above them, next to them and below them, and finally, they fear themselves, since they cannot master their own thoughts as firmly as the state would want them to. Knowing in advance that they are unable to fulfil all the tasks their authorities put before them, for a simple reason – the tasks are impossible and rather undefined – they start to feel permanently guilty, which psychologically prepares them to admit such guilt as soon as they are “apprehended” by the government’s vigilant eye. Some authors started to call such a state – an incubus, or a nightmare-state.

We have already indicated that the internal dynamics of terror, after a while, must lead to such consequences, must result in a total, seemingly distraught terror, the real purpose of which is not evident and before which Orwell’s hero asks his powerless question “why” and in turn, receives a cynical answer from his interrogator O’ Brien...that there is actually no answer:

The Party seeks power entirely for its own sake. Not wealth or luxury or long life or happiness.... Power is not a means, it is an end. One does not establish a dictatorship in order to safeguard a revolution; one makes the revolution in order to establish the dictatorship. The object of persecution

is persecution. The object of torture is torture. The object of power is power.<sup>57</sup>

Similar to this is the well-known remark of the British historian lord Acton, according to which “power corrupts, and absolute power corrupts absolutely”; it should be accompanied by a sentence that is quoted more rarely – “the only use of power is its abuse”.<sup>58</sup> Such practice of turning a means into a goal is also noticeable in other fields. A debate is often degenerated into a quarrel, where it is important to defeat and humiliate the opponent, and not to prove a point, which is sometimes even done at the price of changing the point. Wars usually start with a cause, which later turns only into the word “victory”, and warfare becomes its own purpose. In real political life, ideology is at the same time a value set, therefore, an aim that is to be achieved, and the means to attract allies and –finally – it justifies its own position.

Yet still, what does feed the total and permanent terror, save for the pure enjoyment in it? It is indicative that some serious authors, debating on the above-mentioned Orwell’s paradoxical answer, which is so important because it reflects one of the greatest riddles of modern times, have mentioned two instances, in which they “corrected” or “amended” the insightful English writer.

One of them is the Slovakian historian Milan Simecka:

The main object of power, the main reason because of which people seek it so eagerly is not power itself, but its fruits, the golden eggs it lays, welfare and luxury – which O’Brien hypocritically despises – privileges and prerogatives, which all the more warm the heart of the government’s servants the more others are deprived of them and which confirm the inequality of men. The mystery of power is banal and, I would say, almost tedious.<sup>59</sup>

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57 G. Orwell, op. cit., 239-240.

58 See F. Rottensteiner, “1984 und die Science-fiction” in D. Haselblatt (ed.), *Orwell’s, Jahr – ist die Zukunft von gestern die Gegenwart von heute?*, Frankfurt, Ullstein, 1983, p. 63.

59 “Mon camarade Winston Smith”, *Lettre internationale*, 1/1984, p. 20.

The second one is American political scientists Robert Tucker:

O'Brien was either misinformed or lying. For the truth that history has revealed about the why is that Big Brother really existed. He exists in every instance of the nightmare state, and it is his needs—above all the colossal grandiosity, the need to be adored, worshiped by millions of subjects, and to gain never-ending vindictive triumphs over hated enemies — that motivate, under his near-total domination, the life of the society and the workings of the state. They motivate its repression of every fact that contradicts a Big Brother's monstrously inflated image of himself as one who could never err; its insistence on a culture of antisex so that all erotic emotion can focus on the single object at the center of it all; its projection of violent hatred upon the collective and individual enemy figure; and its twisting of historical reality to conform with the demands of Big Brother's demented self. Understandably, the fulfilment of such a set of needs necessitates virtual totality of control by the state over the private as well as public lives of its subjects. It has to be a total state, or something very close to it.<sup>60</sup>

Simecka's explanation, as cited above, is as simplified as Orwell's paradox, but without the justification of a literary text, which makes it look like the kind of "materialism" that is professed in a pub or during barber talks of "politics". Power and motives for acquiring power and using it are more complex than Simecka imagines, unless he has in mind specific examples of kleptocracy and those more pompously named systems that have turned into kleptocracy. However, if, in his text, the word "power" were to be replaced with the word "terror", the text would deserve more attention, as it would point to some of the motivational mechanisms of its carriers, who, by causing total fear, wish to preserve the advantages that cannot be sustained through regular social and political mechanisms.

Let us try to be clearer: it is the common truth, at least for a person who takes the Marxist understanding of society as the point of departure, that the entire social and economic system and

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60 "Does Big Brother Really Exist" in: I. Howe (ed.), *1984 Revisited*, New York, Harper & Row, 1983, p. 100.

the form of state such system creates serve to protect the existing relations in production and distribution, which privilege some parts of the society to the detriment of others. When such a system functions in the usual manner, that is, without major shakes or imbalances, and is not exhausted, the necessary measure of duress and intimidation is not such that terror must be resorted to. The stability of a society, and the constancy of social advantages are both maintained through the entire activity of economic, ideological, moral, legal and repressive factors. When most of them fail, or when polarization becomes such that the privileges of the minority cannot be justified, and naturally, cannot be reserved in that manner, the *feeling of being endangered* harboured by those who enjoy the existing state of affairs becomes stronger and, for them, unbearable. The system must be artificially maintained and is then maintained by means that seem most efficient to those who feel so endangered, since they are most drastic: bare violence and its intimidating outcomes.

The pathology of the nightmare-state can be compared to a cancerous disease: under the impression that they are defending the entire organism, some cells grow to the point of attacking and suffocating it. Instead of being just *one of state's functions*, repression becomes *its only* function; instead of the social and economic system (however susceptible to criticism from an ethical or other standpoint) being maintained through harmonized activity of all those elements that render it efficient, it is maintained forcefully. This can also be expressed in modern vocabulary: structural violence, which exists in every class society and represents the past violence of the ruling class, embodied in social institutions, which do not allow each individual to fully express himself or herself (disalienate) and force the individual to settle to the role that is thus granted to him or her, is replaced with *direct violence*, the destruction of men and their goods and the threat of such a destruction.<sup>61</sup>

If applied to the terror systems such as the Nazi or Fascist systems, or to the modern national security state, the common trait of which is the impotence of capitalism to act and subsist (for reasons that are not always the same) in the usual way, through

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61 For this type of terminology see J. Galtung, "Violence, Peace and Peace Research", *Journal of Peace Research*, 1969, p. 168.



the effects of economic rules, such an answer has certain merit. Let us, however, remember that one motive for terror is the strong fear on the part of those who terrorise.

If we now look back at Tucker's claims, we will have to agree that the highest gradation of terror is, as a rule, linked to the exceptional position of the supreme despot or a tyrant, who is represented as God-like, all-knowing, extremely wise and inflated in every respect. He himself believes that, whilst others are divided into those who also honestly share that conviction, those who are forced to think like that, and those who do not think at all. Asian despots, Russian autocrats, kings in the Zulu state, Hitler and Stalin, not to mention the living tyrants, were like that. When it comes to their subjects, one can speak of an accepted or unaccepted despotism, according to the proportion of the population that is under the influence of religion or some other dogma, which finds that such a state is natural and that the supreme ruler or the leader is indeed a being close to a deity, with all the characteristics of clairvoyance and endless power to know, on the one hand, and unpredictable, random outbursts of inexplicable wrath, on the other.<sup>62</sup>

The dilemma which Orwell literarily expressed in the question of whether the Big Brother really exists (to which, as we have seen, Tucker answers affirmatively), is in fact the question of whether such a leader is an inevitable product of certain political systems or if the leader imposes himself on such systems, with his specific capabilities, in the times when these systems lag behind or degenerate. In other words, does this one grand character cover for oligarchy, which puts forward one individual, since it knows that the kind of mass devotion, love and worship, which in a certain libidinous way can be expressed towards one man, cannot be expected to be expressed towards a group of people?

This is self-explanatory in an absolute monarchy, but can also occur in different systems and under different circumstances, as

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<sup>62</sup> When it comes to Stalin, it is best to quote, without any comment, the testimony of Gojko Nikoliš, "What are we without Stalin and what shall become of us should he – die? This must not happen. At that time, I had already advanced with the studies of medical sciences, abandoned God and stood on the firm ground of physical and biological laws. Still...*Stalin cannot die!* For Soviet medicine, which has adopted dialectical materialism, there are no problems that cannot be resolved, especially when Stalin's life is in question. I am not sure that I was completely alone in this foolish phantasy." *Korjen, stablo, pavetina. Memoari (Root, tree, clematis. Memoirs)*, Zagreb, Liber, 1981, p. 126.



testified by the above-mentioned tendency of the etatistic socialism to create infallible leaders from average men, men whose biographies are later revised, from the earliest childhood, in order to present them as political “wunderkinds” and even demi-gods, whose magical radiation was felt by their immediate surroundings. It seems that a man put in such a position need not become the main inspirer of terror, but such a man is suitable for terror when the necessary characteristics are found in the chosen man. Such traits are most often found in those who had unscrupulously and skilfully managed to use the weak points of the system, that is, its lack of resilience towards tyrannical ambitions. Not having the real right to absolute power, not being legitimate, they feel even more endangered; one of the principles of power does not work in their favour, regardless of how hard they may try to subsequently gain legality by forging history. To paraphrase Max Weber, such individuals have seized an opportunity provided by the social and political system, and that system should also be judged according to the type of people it provides opportunities to.

Let us now go back to fear in its form of an inexplicable, unclear and limitless anxiety. It is clear that terror, in its highest gradation of a nightmare-state, strives to cause that feeling among its subjects by executing causeless, autocratic and unpredictable acts of violence against the victims. However, it becomes clearer that such fear is also present on the opposite side, the side on which terror originates. Totalitarian terror is born out of the need to monitor every aspect of the society and every manifestation of life, private and public alike. This need exists since the holder of power sees danger everywhere and in every place. The more he promotes his grandeur, the more fragile it seems to him. The more he enjoys the unrestricted outbursts of people’s love, the more he fears those who hide bombs in bouquets of flowers. The more aware he is of the vile methods he himself uses, the more he believes that there are those who are even more capable in that respect. From that, he concludes that his life is in constant danger, and that therefore the lives of others must also be like that; he feels that he had put everything at stake, and that hence nothing is certain for anyone. In order to show him loyalty, others must always commit betrayal: if they were ready to betray their brother or a friend, wouldn’t they also be ready to betray their beloved leader?



Great terrorists are in fact cowards, the type of cowards that are called aggressive by Adlerian psychologists. They wreak their fear on others. The characteristic of aggressive anxiety is that it is expressed as a propensity to destroy the source of danger. Since these sources are numerous and strange, since this type of fear is not based on the normal assessment of circumstances, the desire for destruction can never be satiated or stopped. The subconscious goal of such cowards is omnipotence, since there is no other means to overcome fear. Since omnipotence does not exist, there is no end to the sources of danger, and the vicious circle is closed.

After forcing others to acknowledge all of his virtues, the terrorist is convinced he is courageous. The already mentioned Dionysius the Elder, the tyrant of Syracuse, resented Plato for not having recognized him as the bravest of all men. He, however, had not only killed a man who was loyal to him only because he dreamt he was a traitor – an act that could perhaps be explained as thoughtless cruelty – he also demonstrated all other characteristics of a person who is always intimidated. Dionysius did not allow anyone to approach him with a sharp object, so that even his hair could not be cut by scissors. Prior to entering his chambers, everyone, his son included, had to replace their attire with the robes given to them by the court's servants. Dionysius's brother once wanted to draw him a position of a certain location in the sand and had used a sword of one of the guards to do so; frightened to death, the tyrant ordered that the careless soldier, who gave away his weapon so easily, be executed. Dionysius said he was particularly afraid of his friends, because he knew they were smart, and a smart man prefers to rule than to suffer someone above him. "And so", Plutarch writes, "the soul of the ruler was filled with all the misfortune that cowardice brings".<sup>63</sup>

Stalin, a man who had chosen the name of "man of steel" for himself, was also considered a coward by his immediate surroundings. "The most ingenious military leader of all times" who finally awarded himself with a somewhat ridiculous title of a generalissimo, spent only one hour at the front during the Second World War. Khrushchev claims that, after June 22, 1941, Stalin was overcome by desolation and despair, and at the Twentieth Congress, he called Marshal Voroshilov to testify of Stalin's cowardly attitude

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63 Quoted by M. Sperber, *Zur Analyse der Tyrranis*, op. cit., p. 78.

during the civil war. The cautious Voroshilov (who managed to survive the great purge of the Red Army) remained true to himself: he only nodded his head in confirmation. Stalin did not spend the decisive night between November 6 and 7, 1917, in Smolny, as all Bolshevik leaders were obliged to do, but in a private flat.

The fear and suspiciousness of Iosif Vissarionovich only grew as his position was solidified. Boris Volin, who was then the editor of “*Rabochaya Moskva*” recalls how in 1928 the general secretary attacked him in panic when he abruptly reached for his pocket to take out a handkerchief. The security measures that later surrounded Stalin are difficult to describe. The road from Kremlin to his nearest dacha partly led through a section of the Moscow underground, which was not used for anything else. The dacha itself was surrounded by high walls and other obstacles and was guarded by an entire division of the security forces. The rooms in the building had an asymmetrical layout, so that an intruder may not easily find his way around. Stalin decided in which room he would sleep in at the last minute. The expression “sleep” is not quite appropriate, since he did not dare lay down until the morning. This affected the working hours of his associates, who had to stay up late in his offices, until the break of dawn.

Stalin’s fear of being poisoned is particularly well known. According to the testimony of his daughter, all the ingredients he consumed had to be inspected, and at banquets he always drank only from “his own” bottle. Even the air in the rooms was inspected.<sup>64</sup>

Mutual intertwining of fears in the terror system is not fully portrayed if one does not bear in mind the opportunity that the tyrant’s anxiety provides to his surroundings for mutual confrontations. All witnesses agree that Stalin, overcome by constant fear, was relatively easily convinced that a man who until then was close to him is in fact a suspicious secret enemy. This may have implied a decisive advantage for the informant – until it was his turn. How-

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64 Stalin’s housekeeper, who made him tea, was arrested because one package of tea was damaged; this was considered as reliable evidence that she wanted to poison him. In order for the guilt to be more convincing, or due to bureaucratic inertia, she was also charged with arsony, although she was the one who prevented, in time, even more grave consequences of a fire caused by short circuit (for which the electrician in charge had already been serving time). See A. Kuusinen, *Bog ruši svoje anđele* (*God brings down his angels*), Zagreb, Globus, 1981, p. 1962.



ever, to become part of the terror spree at any rate implied only temporary exaltation. It is still unknown whether these men settled with the fact that the ultimate delights of power are short-lived or if they thought they were the chosen ones, who will be bypassed.

In order to illustrate this and to show just how cheap a human life was in the terror system, it is worth to repeat an unverified anecdote, told by Voslensky:

When once in Georgia Stalin drove to his dacha in Gulripsh, Beria,<sup>65</sup> without providing any explanations, had ordered the local militia commander to hide in a bush next to the road and to fire his gun in the air when the car arrived. The commander did not dare disobey the order of his intimidating boss. As soon as the gunshot was heard, Beria, who was sitting next to Stalin, theatrically protected him with his own body. The shooter was pulled out from the bush, but Stalin, contrary to Beria's calculations, wanted to interrogate him in person. Before the wretched commander even managed to open his mouth, Beria shot him and at the same time fell on his knees before the leader: "Forgive me, I could not refrain myself from killing him. A Georgian who shoots at Stalin!" Stalin not only forgave his saviour, but also grew fonder of him.<sup>66</sup>

It would be wrong to reduce the anxiety of Iosif Vissarionovich Dzhugashvili to this collection of anecdotes. Despite flavourless praises, despite the title of generalissimo, despite his pretensions to, in addition to being a classic of Marxism and the greatest military leader of all times, also be the greatest linguist, economist and biologist, Stalin was not akin to an operatic dictator; he was a patient, cunning and flexible politician and tactician. This is corroborated by the fact that he had overcome the great contradiction between his own claim that the Soviet Union was, from the very beginning, ruled by spies, hypocrites and traitors (including party secretaries at all levels) and the need for that great country to keep functioning and defend itself in a war. Naturally, he attributed the

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65 Lavrentiy Beria, the last Stalin's chief of political police, was executed soon after Stalin's death. On Beria's character and the art of flattering see R. Tucker *Stalin as Revolutionary*, New York, Norton, 1981, p. 441 et seq.

66 M. Voslensky, op. cit., p. 71.

devastating consequences of his own political moves to others, who were then tried and shot to death, whereby, in addition to the fear he instilled in everyone, he gained approval from those who sustained it.

The complexity and, let us say, a deeper and higher dimension of his fear was evident from Stalin's relationship towards the Red Army authorities. Tukhachevsky, Yakir, Bliher, Uborevich and others were men in their prime, who had experience and had acquired high military ranks during the revolution and the civil war. Once he crushed the old Bolsheviks, Stalin found these individuals to be the greatest danger to him. At the same time, he was aware of the fact that the USSR was on the brink of a war, since Hitler did not hide his ambitions towards the East, which were incited by other forces, in order to avert Hitler from themselves. Not believing in the loyalty of his men, particularly of those who were not Russian, Stalin dreaded the consequences of a foreign attack and did everything to avoid it, even at the cost of shame and being discredited. Under such conditions, he needed a strong army with capable officers. Sensing the Stalin's teetering between these two fears, the NKVD had seized, as Beria did later in the story with the militia commander, its opportunity. Even today it is unclear which ways were used to achieve the fabrication, in Germany, of written "agreements" whereby Tukhachevsky puts himself at the disposal of the Nazis. Given that the Soviet marshal, prior to Hitler coming into power, often spent time in Germany and made deals with the Reichswehr, it would have been easy to find his signature and place it on the bottom of such a document, which then, via Czechoslovakia, came into the possession of the Soviet services, of Yezhov and Stalin. The manoeuvre was so transparent (for never had any traitor committed to cooperate with a foreign power on paper, in some sort of a formal contract) that even the suspicious Stalin did not quite believe it – this "contract", after all, was never shown to the members of the court martial who sentenced Tukhachevsky and his comrades to death.

Stalin's ambivalence with respect to the army, as a consequence of the conflict of the two types of fear, was also demonstrated in the fact that the choice of high officers who were to be liquidated was completely arbitrary: some were spared, while some of those who were sentenced to serve time, were reinstated to their positions, especially when the war started. The dictator,

however, had the pleasure of the terror affecting the army which had not been touched until then: the heroes of the civil war now agreed to administer justice over their innocent friends and refused to meet with the members of their families (towards whom the procedure was particularly cruel). By standing aside whilst party leadership was being liquidated, they gradually turned into accomplices of terror. The mechanism we had already described was in action: brave men become lonely also because they, by avoiding it temporarily, turned the fear of being punished into a short-term prize.<sup>67</sup>

Many other examples can be added to that of Stalin. In 1979, three terror bosses in Africa fell down: Idi Amin, who ruled Uganda until 1971, Jean-Bédél Bokassa, who was the undisputed ruler of the Central African Republic as of 1966 and was later the emperor of the Central African Empire and Francisco Macias Nguema, who was the president of Equatorial Guinea as of 1968.

Let us stay on the last, whose history is least known in these parts. Moreover, Macias was the only one of the three to be convicted in his own country instead of, like the others, living in relative comfort of emigration.

Francisco Macias Nguema Biyogo N'egue Ndong was a loyal subject while Equatorial Guinea was a territory of Franco's Spain. He even changed his real name, Msié, so that it would sound "more Spanish". Whilst other opponents of colonialism rotted in prisons, Macias, who was once a peaceful clerk, became a politician who pleased the Spanish, and had led his territory's delegation at the celebration of the twenty years since Franco took power. After Guinea gained independence, Macias skilfully, using all means at his disposal, eliminated all reputable Guinean individuals and gradually replaced them with his relatives.

A man of profound complexes, Macias was anxious in front of educated people, and despised the common folk. When he became president, he prohibited the use of the word "intellectual": at one government session in 1973 he punished his minister of education for this "offence" on the spot. Macias carried out the final purge after having staged a "coup", which was allegedly prepared by his minister of foreign affairs. For various reasons, he killed all

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<sup>67</sup> Marshal Bliher was a hero who had been wounded eighteen times. Since he was a part of the college that had sentenced marshal Tukhachevsky to death, this man, who was victorious against the Japanese, was liquidated as a Japanese spy!

members of the government, which was finally reduced to three ministers, one of whom was in charge of five departments. When someone broke Macias's photo in one high school – naturally, his photo was everywhere – he arrested both the children and their parents and immediately shot the competent minister.

Obsessed by security, Macias had created, in the capital of Santa Isabel, some kind of an empty space around his presidential palace, by evicting the residents of all surrounding houses and closing the cathedral. After one of his marriages, the president of Equatorial Guinea secured himself from that side also: he ordered that six former lovers of his new wife be killed; the seventh “proven” partner of this sexually active woman had saved his head – since he was a foreigner, he was only banished. Just as Stalin preferred his “closer” dacha to Kremlin, Macias also abandoned his presidential ghetto in the capital in favour of living in some form of a hundred-percent secure, luxury bunker. Not having any confidence in his compatriots, he reinforced his personal guard by Cuban and North Korean officers.

At the same time, sycophants, carrier seekers and fanatic members of the “Youth Marches with Macias” movement created the cult of the president. His most important titles included “The Grand Master of Education and Culture”, “Supreme Army General” and “Singular Wonder of Equatorial Guinea”.

Macias was bothered by the fact that he ruled a relatively small country of some 400,000 inhabitants, a third of whom had fled from the country. He persistently wanted to increase the figure to over a million. When the official census started to “fail”, it was immediately stopped. However, the chief of the Statistical Bureau for Rio Muni (the continental part of the country, which also includes several islands) was careless and had announced that the given territory had only 136,000 inhabitants. This unfortunate man, named Saturnine Antonio Ndongu, was killed in a most cruel manner. The president himself, as he boasted, ordered that his ears, legs and arms be cut off “so that he would learn to count”.

Seeing that the dictator had fully developed his paranoid features and that they were also in danger, his surviving associates-relatives have organised a mutiny and instituted a trial against the overturned Macias. At the trial, where the period after 1975, when the coup echelon held the top-level positions in the government, was not to be mentioned, it was established that the number of

Macias's victims amounted to 80,000 (20% of the population). However a total of only 101 death penalties were demanded for him, on account of the same number of murders where it was reliably proven that he himself had ordered them or had taken part in their execution.

Macias was executed on September 29, 1979. However, the group of his relatives and close associates, freed from their pathological leader, did precious little to change the state of affairs in Equatorial Guinea. This goes to show that the terror system owes its excesses and particularities to the personality of the supreme leader, but can also retain its main traits, as long as all the necessary preconditions, where fear is the most important one, are present.<sup>68</sup>

The fear of a privileged and endangered group is complemented by the personal anxiety of its leaders. Terror is a system saturated with fear. The scared rule over the intimidated. To break this chain of fear, anxiety and disquiet is the first, brave, dangerous, but necessary step in the fight against terror.

## PRECONDITIONS FOR ESTABLISHING A TERROR SYSTEM

In an attempt to understand the phenomenon and the widespread of more or less permanent terror systems in our age, a number of questions remain open – old questions that the former, simple answers could not delete nor resolve. All these answers suffered from fundamental flaws of the so-called mono-causal theories, that is, of explanations that are reduced to exclusive or decisive influence of just one social factor.

When this is borne in mind, the real explanation could be obtained only by investigating each individual case, by identifying and untangling the combination of factors and circumstances that have resulted in the terror system. This task cannot be fulfilled by us, due to lack of space and resources.

However, it may well be possible and necessary to make a rough sketch, which would deal with the most important, types of terror governance in our times, in the hope to outline the main explanations and point out the main dangers.

In that respect, we find that the two main terror tendencies of our time are the ones that exist in the capitalist system in the

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<sup>68</sup> More on Equatorial Guinea in M. Lignier-Goumaz, *La Guinée Equatoriale. De La Dictature des Colons à la dictature des Colonels*, Genève, Edition du Temps, 1982.



form of an authoritarian “national security state”, as well as in the countries that have declared themselves as being in favour of socialism, understanding the socialist revolution as a simple act of will and opting for the dictatorship of bureaucracy instead of a real power of the working class. This second phenomenon shall be called, for the sake of clarity, the Stalinist terror system.

### **Civic “national security state”**

Modern-day authoritarian political systems of this type emerge in places where capitalism is exhausted or is inapplicable, both as a method for resolving economic and social contradictions and as an ideology and ethics of a certain kind. This is particularly evident in countries that try to achieve fast economic development based on tired capitalism and worn-out civil ideals. The worst, or, as some authors put it, “dirtiest” terror systems of national security states emerge precisely in developing countries.

Fascism and national-socialism which, contrary to custom, should not be completely equalized, emerged as a response to the crisis of the capitalistic society after the First World War. However, they differ from the present-day national security states in a number of important features. Fascism and national-socialism have had their nationalist myths, rooted in the past, as an ideal, and have nourished contempt for any liberalism. Hence, they managed to present themselves also as anti-capitalist, or at least as anti-plutocratic. Their followers were given the sense of a historic mission. This was the origin of the mass support these movements gained in their countries, a support fully shared by petty bourgeoisie and declassed elements, but also by a considerable part of the working class. Many thrilled supporters did not know whom they objectively served, and had not even begun to understand that, when their charismatic leaders struck compromises with the alleged adversaries among the large bourgeoisie and the traditional elite. In politics, what is valid as the truth is often more important and effective than the truth itself.

The national security state does not have these features. It wavers between a corporate and a praetorian system and in this respect, its main forerunners are Franco’s Spain and Salazar’s Portugal. Whilst Franco had eliminated the falangist movement, which had fascist characteristics, relatively quickly, a modern national security state is incapable of even creating a political party that would support



it and provide it with a coherent and long-term programme. It either attempts to do that unskilfully and insincerely and fails, or it does not need such a movement. In its corporate form, it is reduced to an elite comprised of large entrepreneurs, classic landholding oligarchy of bureaucrats and military commanders. In a purely praetorian form, it is a system dominated by the army, although in essence it protects the interests of the privileged, since by the nature of things it does not have its own social interests, except for the personal goods of the officers themselves. It exists in order to protect the interests of the elite: its base and its goal is the *status quo*.

As this is not a real goal, it has to be replaced with an artificial one. And just like the army ceases to perform its classical function of defence from the outside enemy and turns either into a police force or even into the supreme legislature, so does the national security, which primarily implies the survival of the state as an independent community of men in international context, turn into some kind of internal ideology. The state as an international subject, as a national creation comparable to other such national creations, is equalized with the regime. Since the main objective of the state is to survive, the regime also has to survive. Whoever is against the regime is against the state and the natural order of things. Such a person is not treated as a political opponent, but as a traitor. This is why a citizen can be tried as a “war criminal” in present-day Chile, even in the times of peace.

This is particularly evident in some developing countries, because in them, nationalism, liberalism or the ideas of civic democracy and of the welfare state have no root or seem anachronous. In addition, material sources are too weak to create a real national capitalistic structure, and hence these countries are greatly influenced by international capital. The latter, embodied in multinational companies, requests social peace, stability, low wages, absence of strikes, etc, which is best provided by authoritarian systems. International capital also does not offer any ideology that could inspire and motivate nations.

The preservation of such a state on behalf of a small elite, a considerable part of which is connected to foreign interests, presupposes the exclusion of masses from politics. Unlike fascism and national-socialism, which occasionally resorted to plebiscitary

methods<sup>69</sup> in an attempt to keep the population in a permanent momentum by promises of progress or territorial expansion, the national security state does not have propagandists and is entrusted almost exclusively to specialists in carrying out violence. Its main objective is to make the people abandon the practice of being politically active and taking part in public life, to keep the people passive, in apathy and obedient. This tendency was almost perfected and brought to its logical end in the statement of the Guatemalan president Arana “If I am to turn this country into a graveyard in order to pacify it, I shall not hesitate to do so”.<sup>70</sup>

A major part of citizens is alienated and the government actually considers it as its enemy. In response, minuscule minorities, desperate in their lack of rights and misery and not fearing terror, constantly take actions against the national security regime – actions that, due to being isolated and small in number, must assume the features of terrorist attacks. This type of resistance, which is the only one possible in a politically blocked national security system, serves as constant food for the regime: the regime exaggerates terrorist actions, stages new ones, finds links between terrorists and foreign countries (international communist conspiracy) and gives itself one more long-term task: to fight against terrorism. Since terror, as a rule, tends to give birth to terrorism, this struggle will never end successfully.

Having in mind the lack of acceptance and the murky nature of “values” it preserves or strives to accomplish, the “ideology” of the national security state seems poor and unattractive. Some regimes do not even try to proclaim it, whilst others, in doing so, mostly resemble fascism. It is considered that the first attempt to expressly formulate the objectives of this kind took place in Brazil, as an introduction to the military coup of 1964. In any case, this is the outline that gave the national security state its name. Under some influence of advisors from the USA and of Brazilians who studied there, this draft was made in the Brazilian Higher military school. The basis of this plan rests on the following premises.

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69 Naturally, there were not ready to accept an unfavourable outcome. Elections and plebiscites, as already foreseen by Zamyatin, were just to be “the days of unanimity”. Mussolini clearly stated that “plebiscite may consecrate revolution, but cannot overthrow it”. Quoted by C. Friedrich – Z. Brzezinski, *Totalitarian Dictatorship and Autocracy*, Cambridge, Harvard University Press, 1956, p. 133.

70 *Latin America*, June 30, 1972.

One of them is the hegemony of Brazil, supported by the United State of America, over Latin America. The second one is the need for economic development, which requires perfect order and unlimited power. The third one is the need to remove, with an iron hand, all opponents, who then cease to be political opponents and become criminals.

If we leave out the first feature (which mostly resembles Hitler's understanding of geopolitics and the theory of the living space) since other similar states that do not have the population, territory and the resources of Brazil cannot foster such ambitions, the remaining elements of this doctrine can be recognized in many other places.

Namely, what these systems wish to present as the most progressive, most important and pressing is economic growth, which they mistake for economic development. On behalf of this cause, it is believed, the "luxurious" goods, such as human rights and freedoms of individuals and groups, can be temporarily abolished. Once this goal is achieved, rigid discipline shall, allegedly, be abolished and conditions for democracy, which the elite shall kindly bestow on the people, shall be created. Unfortunately, this goal shall never be accomplished, whereby the national security state regimes put themselves into a comfortable position, held also by the authoritarian systems of the second kind: the government constantly seeks sacrifice, patience and obedience from the people, since it always faces very important tasks. At the same time, the government never wishes to complete these tasks, since that would take away its legitimacy. Even if the government miraculously, manages to fulfil the goal set, it shall find new goals, which will keep it in the present position (one of them shall be the above-mentioned fight against terrorism).

Development, however, is not achieved because the of economic growth, which is noted in some cases, is not accompanied by any structural changes or improvements. As is well known, multinational companies, to which such regimes provide extremely beneficial conditions, find a multitude of ways to regain hundredfold the money they have invested in the country. What such companies leave in the country is more in the form of a tip to the privileged group, that is, a prize to those who are most closely connected to them, and who often hold positions within the government. It is believed that modern-day multinational companies, after the

condemnation they sustained for directly interfering with political relations in other countries, now mostly resort to corruption as the main and highly efficient form of influence.<sup>71</sup>

In order to create conditions for such a “development”, national security states maintain low wages and absolute dependency and obedience of the workforce. It is therefore no wonder that the main victims of terror are the trade union leaders and organizers. A sufficient number of the extremely poor, who will fight for work amongst themselves, is indispensable. That is why no one cares about the pauperisation of the village population; this at the same time frees massive natural areas for relentless exploitation. National security states do not care for preserving the environment, which is also one of the features that makes them interesting for investments, which are limited by ecological concerns in more developed countries. In Brazil, given the importance of the Amazon forests for the entire planet, the destruction of these resources turns into a world-wide problem.

Economic growth, as the main proclaimed goal, and the preservation of privileges of a narrow elite, as the main purpose, render such regimes insensitive towards general social needs. Such states half-heartedly plod the tasks that are considered characteristic of any organized government. Expenditures for hygiene, health care and education are constantly reduced, and child mortality, which is a very reliable indicator of true economic and social conditions, reaches up to 30%. One year after the military coup in Argentina in 1976, the defence and police budget rose to 1.8 billion dollars, which at the time represented one half of the total Argentinian export. Whilst workers’ wages were reduced by 40% in that time, the incomes in the army rose by 120% (which is not much, since the inflation was almost 400%).

In addition to the belief in economic growth, which cannot be a purpose in itself, and is, as we have seen, illusory, such systems also try to rely on some traditional values in the hope of justifying themselves and gaining at least the support of the ignorant and the backward. How crippled and profane such “ideology” is, is best seen in the constitution proclaimed by the Chilean military junta: it did not even have the strength to express these values in

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71 See J. Nye, “The Multinational Corporations in World Politics”, *Foreign Affairs*, vol. 53 (1974), p. 156.

a positive manner. Its authors hoped that, by expressing what they were against, they would show what they liked:

Any action by an individual or group intended to propagate doctrines attempting against the family, or which advocate violence or a concept of society, the State or the juridical order, of a totalitarian character or based on class warfare, is illegal and contrary to the institutional code, of the Republic.(Article 8, paragraph 1)

Declaring love towards the family is the favourite refuge of authoritarian regimes of this kind, since thereby people are redirected from wide to narrow interests. A deeper inspection shows that this provision has no political sense. Is the opponent of the family a person who advocates for women's right to abortion, or the one who advocates for the legalisation of divorce, or are these the members of the elite whose prerogatives always include sustaining of expensive mistresses and other sexual "endeavours"? The cult of the family is one of the most hypocritical traits of fascist regimes.

Mentioning of totalitarianism and class warfare also has a negative connotation in such systems, since it is an invocation of their main scare, otherwise known as "communism". As already mentioned several times already, it is very easy to be designated as a communist in such systems. The expression "totalitarianism" in them implies only the dictatorship of the proletariat and other left political goals, but, in theory, from the main work of Hannah Arendt<sup>72</sup> to date, regardless of their differences, the term totalitarian was also used to mark the far right system, primarily the national-socialism. As can be corroborated by numerous Hitler's associates who found refuge there, not one advocate of the ideas of Nazi or fascist totalitarianism was ever arrested or tortured in any country of such orientation. Moreover, when referring to Chile, one could say that if Article 8 of the constitution were to be conscientiously applied, it would first affect the president Pinoche and his junta.

It should be underlined once again that the number of such states, where the regimes do not exert any effort to make any

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72 Op. cit.

kind of ideological programme, is large. In kleptocracies, the only task of the state is to ensure sources of income and pleasure to the dictator, oligarchy and their sycophants. They do not care about legitimacy.

Even in countries that have some illusions of constitutionality, or cynically restrictive constitutions, such as the Chilean, the national security governments cannot observe them, and thus constantly resort to the introduction of the state of emergency or the state of war, when even the few guarantees of legal statehood that formally exist in the constitution are abolished. Even the mentioned Article 8 of the Chilean constitution must be read bearing in mind the fact that transitional provisions were also promulgated simultaneously with the constitution, prescribing that the implementation of the constitution is postponed for at least eight years after its entry into force (in 1981). During that period, the military junta will perform all of the most important legislative and legal functions. According to the thirteenth transitional provision, the eight-year mandate of the president of the republic starts in 1981, and according to the fourteenth, this office shall be held, at least until 1989, by army general Augusto Pinochet Ugarte, who was never elected to that office. The fifteenth transitional provision vests him with the right to, without consulting the other members of the almighty military junta, declare “the state of emergency and the state of catastrophe”, which he, of course, amply uses to persecute “terrorists” who dislike this kind of “democracy”. This state is renewed every six months.

In Paraguay, the state of emergency has been in force for a total of twenty nine years.

Since it is simplified to the point of being absurd, the logic of events that took place in Lesotho in 1970 is worth mentioning. The chief Leabua Jonathan, in January of that year, had organized elections pursuant to the constitution; in addition to his party, an opposition party with a mild socialist programme, led by Ntsu Mokhele, participated in these elections. When some 60% of votes were counted, it became clear that the opposition shall win the elections. At that point, the prime minister had stopped the count, declared the state of emergency and put the constitution out of force. Not only opposition leaders, including Mokhele, were arrested, the very king of Lesotho was arrested! After over two years, the winner of the interrupted elections,

Mokhele, was released from prison, since Jonathan had “pardoned” him.<sup>73</sup>

The national security state is, at the same time, very delicate and vulnerable. The regime may succumb to an ordinary blow, it is threatened by collapse due to essential incapability of the administration, by real revolution or by defeat by organized democratic forces. This is why the regime is in constant fear. This fear, connected to the awareness that neither persuasion, nor quasi-ideology nor material donations can ensure real support, inevitably pushes the national security state into terror. In this regard, it is irrelevant whether such a state more resembles a classical tyranny, with one man at the top, or if these are narrow groups whose members take turns, according to their agreement, in being “presidents” of the republic, national salvation committees, revolutionary commands, military juntas or national salvation boards.

One should not underestimate the propensity towards creating the national security state, or at least the atmosphere that resembles it or leads to it in developed capitalist countries of the so-called North.

In such countries, capitalism still functions in a more or less satisfactory manner in economic terms, and, owing to the fact that they are in a favourable position in the world market, the majority of their inhabitants feels materially taken care of and is satisfied with the living standard, provided to them by the state institutions (particularly in countries with social-democratic governments). However, such a condition shows two dangerous features on its reverse side.

The first one is the fact that, in addition to the satisfied and sleepy majority, there is also an extremely alienated and miserable minority, which is pushed to the very edge of society. It is either without a job, or works outside of those sectors of economy that ensure sufficient incomes, and is growing more dependent on social benefits, which are, in turn, reduced, due to permanently growing “defence” expenditures. It cannot take part in the allegedly open political system, or the political life in general, since the legitimate and “decent” parties cannot and will not represent its interests. Without any political articulation, its more intelligent

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<sup>73</sup> For this and similar events in Africa see Ho. Odera Orika, *Punishment and Terrorism in Africa*, Kampala-Nairobi-Dar es Salaam, East African Literature Bureau, 1976, p. 59 et seq.



members seek refuge in various forms of counter-culture, complete radicalism, and even terrorism, whilst the others “escape” into “alternative” lifestyles – drug addiction, apathy and crime.

The official “establishment”, with the express or tacit support of the manipulated majority, does not treat these marginalized individuals as a political minority which, according to the traditional understanding of human rights and freedoms, should be protected from the tyranny of the majority by the political system and the law, but treats them as offenders or patients. For that reason they are, as completely deviant, monitored and prosecuted as common criminals or are subjected to forced psychiatric treatment, since, in the eyes of the average conformist, they are not “normal”. According to that concept, to be “normal” is to be well adapted to the society, without questioning how adapted the society is to the fundamental human needs.

Related to this trait of the modern developed civil state, and intertwined with it, is the second feature. That is the exhaustion and lack of civil ethics and ideology, absence of any other perspective other than further economic growth and the enabling of a more comfortable life, reduced to material comforts alone. Without a goal and spiritual orientation, the system starts to be based on what is given and loses *active* support. Instead of it, there are only adaptation, tolerance and disinterest, and the state thus becomes the only keeper of the order. The state then starts to perform a series of traditionally non-state functions, on the one hand, and resorts to repression more often, on the other.

*Status quo*, the existing state, therefore becomes a goal in itself, and any radical opponent to it is inevitably suspicious. This is favoured by the state of affairs in international relations: the acute danger from the other bloc renders all opponents of the system (unlike the loyal opposition of the party that holds power) equal to foreign servants and traitors. In addition to the influence of the East-West course, the relation marked as the relation between the North and the South on the global scale also makes an impact. A number of developed countries receives a series of temporary immigrants from the “third world”, who perform the least valued and dirtiest of jobs and are mostly at the very social bottom. Often coming from real, undeveloped “national security states”, these immigrants also bring with them their political problems and conflicts, including terrorism. The latter circumstance, related to

the already existing propensity towards terrorism within domestic marginal groups, has particularly reinforced the repressive traits of some of the most developed civil states: the danger of terrorism is blown out of proportion and is used as an excuse to abolish or limit a series of human rights and freedoms.

Although not all developed countries are the same in this respect, specific expressions of the described social anxiety and the strengthening of repressive tendencies, which include a terror potential, is notable in them, to a smaller or larger extent.

The state increasingly monitors fields that are traditionally non-state in character. Universities, schools, libraries and similar institutions have to be subjected to “security” checks with regards to their personnel and materials.

A person becomes increasingly “transparent”, his intimate sphere is reduced. In order to get a job, he or she must provide all information on themselves, including the most personal data, and be subjected to a psychiatric exam. If one is keen on obtaining a government job (and the state becomes, directly or indirectly, the main employer), one will be rejected simply because of being considered “a security risk”. This, allegedly, is not because this person is a political adversary, but because that person jeopardizes the security of the country. The assessment is not provided by the court, since the individual is not charged with a prohibited offence, but by the administration, based on indicators such as the person’s membership in an association, inclination towards a certain type of literature, and even “extremism” expressed at a juvenile age.

It is clear that in a system of wide-ranging checks, the police becomes the main pillar of support to the regime, since it collects the relevant data. Perfecting of eavesdropping methods results in the fact that not one move a person makes can remain hidden and unrecorded: therefore, one is always subject to blackmail. For the purpose of fight against crime, which also includes radical thinking, massive computerized databases are formed, and gradually, every citizen is entered into them. These databases differ from the usual police files in as much as they do not include only the indications of previous encounters with the force of law. The centralized “databank” knows everything about everyone: in addition to purely police facts, the files also include social security reports on diseases, employers’ reports on disciplinary measures, the reports

of financial institutions and tax administrations on debts, and even library reports on the books read!

The strengthening of the police is expressed, in addition to the increased number of police institutions and staff, in the fact that the police is being equipped with ever more perfect means to act against those who show political discord. More perfect means are produced for combat against manifestations and demonstrations, means such as various gasses and “less lethal means” like blinding bombs, plastic ammunition, projectiles that cause total shock and temporary paralysis, ultra-sound boxes, vehicles for distributing electro-shocks to masses, etc.<sup>74</sup>

Police budgets skyrocket both in countries that faced terrorism and other forms of militant protest and in those that were spared of such incidents. The example for the first type of countries is the Federal Republic of Germany: in this country, the budget of the Federal Crime Bureau rose in two years from 22.4 to 54.7 million marks, and the budget of the real political police, the Constitutional Protection Bureau, has been tripled in three years. The Federal Border Protection Office (*Bundesgrenzschutz*), the only type of uniformed federal police, which turned from a border unit into a main authority in charge of countering terrorism and similar occurrences, had a total of 16,700 employees in 1969, and a total of 22,159 employees four years later.<sup>75</sup> On the other hand, in Norway, in a decade of great stability and social peace, police expenditures rose from 195 million krone (1966) to over 950 million (1977) – when this increase is adjusted using the inflation rate, it still amounts to a striking 224%.<sup>76</sup>

All these phenomena are accompanied by a rather “legal” narrowing of civil rights and freedoms. Permissions for tapping conversations or for opening of letters can be obtained relatively easily. The exceptions allowing the police to search and arrest people without a warrant are increasingly wider, and the warrant itself is obtained more easily. Investigative prison, which should be

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74 For an overview, see F. Visnar, “Policijsko-industrijski kompleksi u savremenim građanskim društvima – mehanizmi državne kontrole, represije i torture” (Police-industry complexes in modern civil societies – mechanism of state control, repression and torture), *Pogledi*, 1984, p. 95 et seq.

75 A. Funk – F. Werkentin, *In Richtung einer neuen Analyse der Polizientwicklung in Westeuropa*, Berlin-Berghof – Stiftung für Konfliktforschung, 1977.

76 H. Lorenzen, “Strukturdaten zur Polizienwicklung in Westeuropa, Einige Daten zur Entwicklung der Norwegischen Polizei”, *CILIP*, I, 1978, p. 10 et seq.

short in principle, is extended, and can even last for years. At the same time, “justified” reasons for which authorities can prohibit contact between the prisoner and his defence counsel and family members, are more numerous. Defence counsels are prevented from talking to their clients in private more often. And, finally, the convicted “extremists” (which, as a rule, include more of those who are left- than right-oriented), again, for security reasons, are subjected to a regime of complete isolation, which borders on humanly unendurable.

Not even those who observe such developments with utmost concern claim that there is a complete system of a national security state in all developed civil societies, nor that state terror is at bay. For that to happen, additional conditions would need to exist, including a more profound economic crisis and the successful organization of militant marginalized forces. However, should such or similar things happen, the terror arsenal need not be created from scratch – it is within reach.

### **Stalinist terror system**

The minutes from the great Moscow trials that took place in the fourth decade of this century were published in full, even translated into foreign languages and distributed outside the USSR. They included unbelievable statements of old Bolsheviks and prisoners of tsarist dungeons, who suddenly confessed that they had always been agents not only of Okhrana, but of all foreign intelligence services imaginable.<sup>77</sup>

A careful reader could see that the judgments passed in these trials relied solely on confessions. The only material evidence submitted by the prosecutors’ office in all of these trials was a Berlin phonebook, which could have helped establish that someone, who was allegedly the spy connection of the accused, had lived in that city. The phonebook was accompanied with a Honduras passport of one of the accused, which could only prove that he had dual citizenship.

All the convicted were declared guilty of terrorism even though – except for Molotov’s fall into a ditch – only a few victims could be named, victims who were not killed by firearms, but, in the case most beneficial for the prosecution, had died under unclear

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<sup>77</sup> Among other things, Buharin was accused of being an agent of Austrian, American and Japanese police.

circumstances. The only official who had been killed was Kirov, and, at the first trial, Zinovyev, Kamenyev and their comrades answered for that offence. However, at the last grand trial, where Buharin and Rikov were the main figures, their charges came close to truth: the accused included a once powerful chief of political police, Yagoda, who had eliminated Kirov following orders from above, and then arrested and accused a group headed by Zinovyev and Kamenyev for that crime. In that nightmare, anything was possible.

And, finally, from a land of greatest humanism, a land of eternally smiling people, where cheerful movies such as “Kostja the Shepard” were filmed, one could hear the main procurator (former Menshevik) Andrey Vysinsky, describe Buharin, who was once called the “Party pet” by Lenin, as a “damned mongrel of a fox and a pig”. The prosecutor ended his speech at the first great Moscow trial with the following request: “I demand that all these rabid dogs be shot – one and all!”.

Why did people who were not exposed to systematic indoctrination and who were not deprived of other information believe all this? In addition to the cynical and easy answer that a great lie is always more successful than a small one, the real reasons should be sought in the conviction, shared not only by communists and their sympathizers, that the system that arose from the October revolution, as a creative application of Marx’s doctrine and as the realization of the will of the working class and centuries-long craving for true democracy, is incapable of such hypocrisy and permanent terror. Knowing what powerful forces the new Soviet republic had to stand up to, objective observers were inclined to accept that the enemies of socialism were truly capable of recruiting almost the entire Bolshevik leadership.<sup>78</sup>

It was with the same disbelief that the reports of other, wider features of Stalinist terror, which were already discussed in adequate places in this text, were viewed.

Until today, there is no reliable answer regarding the genesis of the Stalinist terror. To put it more precisely, the explanations offered waver between extremes. On the one hand, everything is explained by Stalin’s paranoid personality, whilst, on the other, it

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<sup>78</sup> “Socialist Herald” issued by Menshevik emigrants in Paris wrote on March 25, 1937: “There is no doubt that the Germans have succeeded in having their agents reach the highest positions in the USSR”. Quoted by A. Ulam, op. cit., p. 446.

is claimed that Stalinist terror was inevitable and conceived already during the October revolution, which made some conclude that the socialist revolution must continue as totalitarianism and terror.

Perhaps a close inspection of the developments that preceded the beginning of great purges and terror may provide a more balanced answer.

Most Bolsheviks, and in any case Lenin himself, embarked on the revolution convinced it would destroy the bourgeois state, embodied in alienated politics, the army and the bureaucracy, and connect these institutions with the entire nation. In Lenin's words, proletariat shall replace these with "a more democratic, yet still state-run machine in the form of armed masses of workers, which will turn into universal people's militia".<sup>79</sup> In such a concept, any political or secret police was unconceivable.

This is true even for those attitudes that appear completely different at first sight. The issue in question is the interpretation of the dictatorship of proletariat as a system of coercion, unrelated to any legal and moral scruples. It is:

...the setting up for the transitional period of an exceptional regime – a regime in which the ruling class is guided, not by general principles calculated for a prolonged period, but by considerations of revolutionary policy.

For:

...the revolution does require of the revolutionary class that it should attain its end by all methods at its disposal – if necessary, by an armed rising: if required, by terrorism.<sup>80</sup>

Even such strict positions, which honestly and openly advocate for terror (today no one ever admits to practicing terror) are, in part, in line with the previous one for, if they do not cover the entire nation, they refer to proletariat as a class, not its specialized terror services.

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<sup>79</sup> V.I. Lenin, *Polnoe sobranie socinenii*, 5<sup>th</sup> edition, Moskva, Izdatelstvo politiceskoi literatury, 1958-1966, vol. 33, p. 100.

<sup>80</sup> L. Trotsky, "Terorizam i komunizam" (Terrorism and communism), in: *Iz revolucije*, Rijeka, Otokar Keršovani, 1971, pp. 144, 179 (translated into Serbian by Radomir Venturin).

Despite all of this, the difficulties the revolutionary government had faced, which have reached their peak in an exhausting civil war, a war marked with extensive foreign intervention, have resulted in, in addition to the spontaneous and expected “red terror”, the creation and gradual strengthening of the political police.

The *All-Russian Emergency Commission for Combating Counter-Revolution and Sabotage* (Cheka – VCK) was founded by a resolution of the Council of People’s Commissars of December 7, 1917. It was a purely investigative body, which, at first, was not vested with the power to deprive people of their freedom, let alone pronounce and execute punishment.

Cheka was vested with wider powers after the failed negotiations with Germany and the continued progress of German forces, which bore grave consequences. On December 21, 1918, Sovnarkom issued a decree ordering that all “enemy agents, speculators, scoundrels, hooligans, counter-revolutionary agitators, German spies be shot to death at the scene of their crimes”.<sup>81</sup> Even though power was not expressly granted to it, Cheka considered that the order gave it the right to execute the enemies caught in act. The enemies included former Chekists, who participated in an attempt of a social-revolutionary coup on July 6, 1918.

Death sentence was abolished at the Second Soviet Congress, just after the revolution had started, only to be re-introduced, under new circumstances, a year later.

In the end of August, an assassination was attempted against Lenin, and Uricky, the leader of the Petrograd Cheka, was killed. This act had resulted in the adoption of the Red terror decree, which was passed by Sovnarkom on September 5 of the same year. The decree had given Cheka the power to put class enemies into concentration camps and to shoot everyone caught in performing counter-revolutionary acts.<sup>82</sup> Some Cheka members thought that this vested them with the power of completely non-discriminatory, biological destruction of everything that was not proletarian. Lenin responded to this sharply, with an article, written in the end of 1918, which was, for reasons unexplained, published in the “Pravda” as late as on November 7, 1926. Moreover, Cheka came into a conflict with the People’s Commissariat for Internal

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81 *Dekrety soviteskoi vlasti*, Moskva, 1957, p. 313.

82 *Izvestija*, September 10, 1918.

Affairs and the People's Commissariat for judiciary, which ended by the representatives of the latter being appointed into the Cheka's supreme college. On the other hand, the supporters of Cheka's omnipotence and autonomy had insisted on the fact that Cheka was not an organ of state, but of the Party. A new compromise was reached by having Felix Dzerzhinsky simultaneously become a people's commissary for internal affairs and the president of Cheka, which was then divested of the right to pass judgments, except on territories where martial laws applied. It was, however, still vested with the power to send people to camps.<sup>83</sup>

Defending in principle the need for revolutionary terror as a temporary solution, impressed by the counter-revolution and foreign intervention, and refusing the general attacks against Cheka as an institution, Lenin harboured perhaps an illusory expectation that Cheka needs to strictly obey the law. Testaments are kept of his interventions with this institution, where his actions were highly principled: if there was no evidence of an offence, he demanded that the arrested be freed at once; if there was evidence, he stopped interfering. Agitated, on May 20, 1919, he sent this telegram to the Novgorod gubernia Executive committee:

Apparently, Bulatov has been arrested for complaining to me. I warn you that I shall have the chairmen of the Gubernia Executive Committee and Extraordinary Commission, and the members of the Executive Committee arrested for this and will insist on their being shot.<sup>84</sup>

After the successful end of the civil war and the introduction of the "New economic policy" (NEP), which drew more attention to speculators and saboteurs than to armed counter-revolutionaries, Lenin had supported attempts to limit Cheka's powers. At the ninth All-Russian congress of Soviets, in his speech, he said the following:

The task now confronting us is to develop trade, which is required by the New Economic Policy, and this demands greater revolutionary legality.<sup>85</sup>

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<sup>83</sup> *Ibid.*, February 21, 1919.

<sup>84</sup> Lenin, *op. cit.*, vol. 50, p. 318.

<sup>85</sup> *Ibid.*, vol. 44, p. 327.



Given all the above, on February 6, 1922, the Cheka was turned into the GPU (State Political Administration), a comprising part of the People's Commissariat of Internal Affairs. The tasks of the administration were to fight against open counter-revolutionary activity, counter-espionage, to secure railways and waterways and protect the state borders of the RSFSR. However, the Presidium of the All-federal executive committee and Sovnarkom could entrust other special task to the GPU, for the purpose of preserving the revolutionary order. The new body, however, had no rights with respect to pronouncing and executing sentences. Investigative prison could not last for more than two months. The USSR constitution of July 6, 1923, turned the GPU into OGPU (Unified general political administration) and into a federal institution. However, the newly-named institution did not stay limited in its rights for long. A VCIK decree of August 10, 1922, passed in ill Lenin's absence, vested the GPU with the right to "exile" abroad or to the distant parts of the country for three years, at the most, all those who engage in "counter-revolutionary activity".<sup>86</sup> A new decision, passed in the same year, allowed exile to be ordered for "activities of Anti-Soviet political parties". GPU already had its camps at Solovetsky islands, known under the acronym SLON (Severnye lagerja ossobogo naznacenija).

Whilst Lenin supported the red terror and had remained known for seeking the adoption of relentless criminal legislation against counter-revolutionaries and pests, he did all this under the impression of extraordinary circumstances, convinced that terror can reconcile with legality so as to affect and intimidate only true class adversaries. The other leading Bolsheviks, Zinovyev and Kamenev in particular, were much more weary of the bodies established to commit terror. They had hoped that calmer circumstances shall divest such institutions of their power and that, as Zinovyev once put it, the seats of Cheka shall be replaced by kindergartens.

Lenin did not live to see the abolishment of the temporary institution he considered a necessity at the peak of the revolution. "Cherezvichnaya" commission became a permanent body, which only changed names and gained more attributes of a political police, becoming quite distant from the people's militia, and being far less subject to control. All Stalin had to do was to keep changing

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<sup>86</sup> *Izvestija*, August 18, 1922.



its names, to remove it completely from Party oversight, that is, to subject both the Party and the political police, using staffing manoeuvres, to his own bureaucratic structure. That was when the new wave of terror was initiated, unjustified by any external or internal dangers, a terror in which almost all old Cheka members were killed.

In addition to the political police becoming stronger and more independent, and the illusion that it was possible to exercise terror and observe the principle of legality at the same time (this would require for terror to be carried out by people as scrupulous as Lenin was, when he learned of a particular case), the interpretation of dictatorship of proletariat that was advocated by Trotsky was also a precondition for the Stalinist terror. Given that not the entire proletariat had effected legislative power, nor was it able to efficiently monitor the promulgation and implementation of laws, this was done by smaller groups on its behalf, fully believing they represented the working class as a whole and that they had all of its historic powers.

Turned into legislative practice, this had two consequences. The first one was that legislative texts became imprecise and ambiguous, and neglected the principles of legality and prohibition of retroactivity. It was considered that the revolutionary instinct of the proletariat shall fill in these voids. The second consequence was an ever growing conviction that there were two groups in the country – “us” and “them” – and that strict and imprecise legal regulations are intended for “them”, class opponents or pests and that, therefore, possible mistakes are of little significance.

In addition to the already mentioned Article 58 of the RSFSR Criminal Code, some elements of which have preceded Stalin’s unlimited power in the Party and in the State, even Stalin’s opponents in the Central Committee, his future victims, have peacefully participated in the promulgation of laws having highly repressive and reactionary contents, still considering them to be a means that will never turn against themselves. This was also a testament of their bureaucratization, since some of these measures were not only backward and unjust in the general sense, but were decidedly against workers.

Thus, in 1930, a Decree on the prohibition of movement of the working force was adopted. At the same time, assistance to the unemployed was abolished, since unemployment had supposedly

ceased to exist. The following year saw the introduction of prison sentences for common violations of work discipline. Immediately afterwards, the article of the Labour Law that envisaged that a worker may be transferred only with his or her consent, was put out of force. In the end of 1932, “internal passports” were re-introduced – without one, no one could leave his or her place of residence. These documents existed in imperial Russia and Lenin considered them to be one of its major disgraces. In his report to the XX Congress of the KPSS, Khrushchev said that the Politburo had “incidentally” approved a Decree of December 1, 1934, based on which the Criminal Code of the RSFSR was amended. This act ordered that “terrorists” be tried after a brief investigation, in summary proceedings, without the possibility for them to seek pardon, while NKVD bodies were given the order to execute death sentences immediately after the judgments were passed. It is likely that the Decree of April 7, 1935, whereby the possibility to pronounce all criminal sanctions, including the death sentence, was extended to children over the age of twelve, was confirmed in the same, incidental fashion.<sup>87</sup>

When Lenin wrote that “revolutionary dictatorship of proletariat is a government that is secured and maintained by violence of proletariat over the bourgeoisie, a power not limited with any laws”<sup>88</sup> he meant that the same laws cannot bind both the proletariat and bourgeoisie in their class struggle, just like the bourgeoisie does not think that legal concerns may prevent it from defending its class supremacy. Trotsky, who, unlike Stalinist “ideologists” was a very educated man, contemplated on natural law for the same reasons, considering natural law to be a creation of the weak bourgeoisie aimed at establishing the control of the ideal norm over the real requirements of the working masses and revolutionary parties.<sup>89</sup>

As we have tried to indicate, seemingly resting on these theoretic grounds, the practice that was in place even before Stalin had used his chance, had demonstrated the main dangers of such an abstract position, dangers that are mutually intertwined and hence difficult to elaborate on separately, without having both of them in mind at the same time.

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<sup>87</sup> Ibid. April 8, 1935.

<sup>88</sup> Lenin, *op. cit.*, vol. 37, p. 245.

<sup>89</sup> Trotsky, *op. cit.*, p. 161.

The dictatorship of proletariat presupposed terror against the bourgeoisie. However, despite the revolutionary alliance with the farmers, everyone who was not a proletarian became a member of the civil class. At the same time, it turned out that the entire proletariat cannot make decisions on the execution of violence, including the specific application of the class membership criteria. According to the Lukachev's party theory, it is the avant-garde that should do that on behalf of the proletariat, and the avant-garde entrusts that task, due to circumstances, to special services. The political police stands out among these, and, in line with the relative insignificance of the general legal rules, it takes on the investigative, the judicial and the law enforcement functions. At the same time, it is believed that such narrow services preserve the true proletariat's instinct, whilst, in their interpretation, the class membership increasingly implies "objective guilt" – a guilt that does not stem from the activity of a specific individual, but from his origin, whereby, as we have underlined several times before, the notion of class is biologized, and the features of the class become almost racial.

Concurrently, the notion of proletariat is counterfeited and gradually loses its original meaning. In as much as the legislation and practice become anti-workers', a proletarian is equalized with a member of the bureaucratic class. This could be seen well in East-European countries, when the right to high education was, in one period, recognized only to workers' children: these primarily included state and party officials.

It becomes increasingly clear that the law that is not binding on all the subjects equally cannot be called a law and that it becomes a tool, not of the proletariat, but of whoever is implementing it.

It was left for Stalin to completely relativize legality, which, after Lenin's death, gradually turned into illegality and arbitrariness. After the failed attempt, in 1932, to obtain from the Central Control Commission and the SKP (b) Politbureau the permission to shoot Ryutin and those who shared his opinion only because they dared criticize party policy and himself personally in one document, Stalin was forced to stage and carry out the murder of the Politbureau member Sergey Kirov, in order to create grounds to enforce unlimited terror against the Bolsheviks themselves. This was all the more pleasant to Stalin since Kirov, whose political ideas were close to Stalin, was immensely popular with the workers and, in the concrete case, he explicitly opposed the liquidation of

Ruytin and other SKP (b) members who were close to Ruytin. By killing Kirov, Stalin got rid of a potential rival, took revenge and – most importantly – introduced the danger of terrorism, which will be the main topic of all subsequent secret and public processes in the game. Legal rules were no longer just selective in application, they have ceased to exist as a guarantee.

This is when the danger from underestimating due criminal procedure becomes particularly prominent. Under the impression that formal guarantees that are granted to the accused, such as the presumption of innocence and the independent role of the defence counsel, are a sentimental waste of time in the heat of the revolutionary battle, these undeveloped institutions could not represent any obstacle to Stalinist terror. A suitable court and a suitable process could always be selected. The famous judge Urlich had travelled, as once did the Pope's inquisitors, throughout the Soviet Union in various roles, mainly serving as the president of the military college of the Supreme Court. Visinsky had formulated a theory of the defence counsel as a friend of the court in establishing guilt. Whilst there were no defence counsels in the first major process, the final word of the defence counsel at the trial of Pyatakov, Radek and others, shows what it looked like.

Comrades judges, I shall not hide from you the extremely difficult, the inappropriately difficult position in which the defence in this case finds itself. Before, comrade judges, the defendant is a son of his country. He too, is a citizen of the great Soviet union, and the major disapproval, anguish and horror which is felt today by the entire population of our country, the young and the old, the feeling the prosecutor had so vividly expressed in his address, must also be shared by the defendant. All facts are proven and in that respect the defence does not intend to go into any dispute with the prosecutor. Also, there is no dispute with the prosecutor as to the assessment of the political and moral aspects of the case. Here, the case is so clear, the political assessment provided by the prosecutor is so clear, that the defence can only fully support that part of his speech.<sup>90</sup>

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<sup>90</sup> *Report of the Court Proceedings in the Case of the Anti-Soviet Trotskyite Centre, Moscow, 1937, p. 517.*



Even though the political police, under names that have changed, along with its leaders and staff, had liquidated or sent to prison millions of people, even without the judicial farce, the need to hold big trials remained – this need was imitated in all the countries to which Stalinist terror was “exported” after the Second World War.

What is the explanation for the insistence on the seemingly fair and completely public trial? One explanation is well-known, and that is the intimidating value of the exemplary trials, which are, as a rule, organized for renowned personalities. The second one lies in the desire to clearly show to the elite that its immunity, and hence its decisive role, is abolished and doomed. The state, which, by definition, is an apparatus of violence, is put above the party, which primarily relies on persuasion and agitation. Party and its ideology become only an embellishment of the state, a trace of its former legitimacy: this is best seen from the fact that the party policy changes often and abruptly both in the sphere of internal and external policy, and the state terror does not abate. Even though flashy propaganda and ideological uproar are still maintained, this is just an oral method which conceals the devastating truth: Stalinist terror system in fact becomes a reign of terror, devoid of ideas and emptied of contents, with no real programme other than to preserve the privileges of the bureaucratic elite, and, in that respect, starts to resemble its civic peer, the national security state.

In order for it to be classified as the worst nightmare-state, completely bureaucratized and state-instituted socialism, in which the worker is returned back to the position of servitude (this time serving the state), it was necessary to project onto it the personal idiosyncrasies of the supreme chief of terror. Stalin, let us just recall the things scattered over the text so far, did not settle for having supreme power and enormous political influence, which he gained even before the real beginning of terror. He thought better of himself, or, more precisely, he thought all the things he later forced or willed others to speak, write and sing of him. He was convinced he was a genius, more ingenious and versatile than Marx and Lenin, and was fully convinced he was immortal. All those who knew he was not like that, first of all his critics, but also his friends within the SKP (b), who let him, either with opposition or gladly, take the supreme position in 1929, had to go. In the state, which to him was not a nightmare, but the fulfilment of his most

wonderful dreams, there was place only for the people who either believed or immaculately pretended to believe that he was not only a capable organizer, administrator and master of intrigue, but also the embodied peak of human history. Stalin's example showed how a person without charisma could turn into a charismatic leader through manipulation and violence.

All this cannot but lead to a very important conclusion. The political system that was built in the USSR prior to Stalinist reign of terror did not have the defence mechanism to prevent the accumulation of so much power in the hands of a single man. Naturally, such mechanisms were missing from other elitist socialism systems as well, systems that were built in other countries using the Stalinist system as the role model, with the presence of Soviet advisors and monitors.

How did this come to be? The key to it seems to lie in a paradox. The emergence of one undisputed, all-knowing and omnipotent leader in a society that claims to be carrying out the dictatorship of the proletariat as a class and to be building socialism was enabled precisely by neglecting and underestimating the role of personality in politics and history. Bolsheviks saw themselves as a group carrier of historic inevitability, as a self-sacrificed and impersonal voicing of the will of the proletariat, which is fulfilling a historic mission, a mission that could also be fulfilled by someone else under the given conditions. Therefore, all of them, starting from Lenin, tried to remain inconspicuous and very modest and to strictly separate their personal traits from the function that was assigned to them.

Everyone who is even closely familiar with Lenin's biography knows of the great adversity – or to put it in better words, perfect indifference – he showed towards all attempts at his glorification. This man, who entered into stark conflicts with his party comrades during his entire his life, forgave them easily, for, he always saw his opponent as someone having an erred opinion, not as someone who is a bad person. Not even Stalin's crudity, which Lenin, in the appendix of his political testament, considered to be the decisive impediment for Stalin to remain the secretary general of the party, was not a generally bad characteristic, which would disqualify him as a good communist – it only rendered him unfit to perform that office. It is therefore easy to understand why the Central Committee, which was well aware of Lenin's warning, did not give much importance to it. Quite to the contrary, the lack





of flair, unconvincing knowledge of Marxist theory and lack of oratory skills in Stalin made his more striking rivals delegate the every-day running of party administration to him – a prosaic and routine job, which he knew how to utilize and finally eliminate all of them. Simply, it was considered that Bolsheviks were replaceable and that their personal traits are completely subject to the will of the abstract party and an even more abstract proletariat.

Less understandable, however, are the reasons for one additional phenomenon, which also incited Stalin's desires and had contributed to his final position. That phenomenon is the cult of Lenin, which had developed in the USSR only after Lenin's death. This shy and modest man, who was ready to confess he had made a mistake and who, at the end of his life, settled for the fact that he did not have much influence on what was going on, suddenly became a supernatural being. Communism, as a movement of masses and historic determination, as an ideology based on the supremacy of the economic base, had created a myth of some sort of a super-human. The traditional underestimation of a great personality, in Lenin's case, due to his undisputed exceptional characteristics and qualities, certainly had to be corrected in order to understand that revolutions fail if they do not have venerable leaders, but what happened started to go to another extreme. Perhaps what started to happen at the time explains, in other respects the occurrences in the USSR: Marxist ideology in certain areas started to give in before the Russian political tradition – romanticized vision of history as a collection of acts of great rulers and saints.

And thus, precisely because Lenin was incapable of even imagining the danger an individual tyrant may represent for the socialist state, the political system was left without constitutional, legal, party and social obstacles for whoever wanted to become one. By gaining the decisive advantage, Stalin could rule without limits, even without holding any state office. In such a position, the already mentioned weaknesses of the legal system did not stand in his way of producing an image of himself as a new, bigger Lenin, whose cult he also continuously built, associating himself with the deceased, and used every possible way of doing so, spreading terror even to the areas that are not critical for remaining in power.

As the events in many other socialist countries, where the undisputed leading positions were held by persons far paler than



Stalin, have shown the political system of socialism, in order to prevent terror and other catastrophic misses (such as the, for example, “cultural revolution” in China) had to weigh in not only the already identified danger of bureaucratization, but also the possibility of individual tyranny, and to ensure democratic institutions and processes that can prevent them in due time.

## TERROR ON AN INTERNATIONAL SCALE

The international scale of terror was already visible in the study so far. Even though terror is primarily a method for ruling people within the boundaries that limit a given power in territorial terms, it is also often used as a tool for controlling formal and real foreigners. The power is just imposed on them, or, as the case is with genocidal terror, they are to be eliminated in order to make room for others. The expression “formal or real foreigners” was used deliberately in order to include the situations, such as those created by colonial conquests, where members of other nations were declared if not full citizens, then colonial subjects, and were considered as own citizens. Formally, they were not foreigners, but they were treated as such, in the same way as those people with whom there was no connection of citizenship.

A reminder of the already mentioned examples shall make things more clear. During the Spanish conquista, major parts of Central and South America were declared as the dominion of the Spanish crown and the natives became Spanish subjects. Therefore, formally, they stopped being foreigners and genocidal terror towards them became an “internal affair”. Similar things happened in modern-day Algeria, while it was considered as an “overseas” French territory. The Arabs and Berbers in Algeria, just like the French who had settled there (the colons) were French citizens, but the terror of the military authorities was directed only towards the former, in order to prevent the realisation of their right to self-determination.

The fate of Yugoslavia during the Second World War has shown even “richer” forms of this type of terror. Our country was divided between several conquerors, who – contrary to international law – declared Yugoslavia a state that ceased to exist and divided it among themselves. Some of its parts were simply annexed to Germany, Italy, Hungary and Bulgaria, whilst others were held under indirect control of Quisling governments, including the



government of the “Independent State of Croatia”, however sovereign this creation tried to present itself. The only thing in common to all these parts was the terror towards the Yugoslavs, regardless of whether they were considered as own citizens or subjects, or foreigners. This terror was in good part genocidal (the treatment of Slovenians in some parts annexed to Germany, of Serbs in Pavelić’s “state” and of Jews and Gypsies almost everywhere), and in part a tool to ensure absolute obedience towards the unlawful regime of annexation and occupation. This terror was unparalleled in its fierceness, since, essentially, it was not successful: a growing resistance, as indicated before, caused a growing wrath of the terrorists. Due to the existence of national and cultural differences, the terroristic imposition of will to the occupied foreign population always results in decisive resistance and consequent bestiality. During the war, this also happened in Poland, and in occupied parts of the Soviet Union, and after the war, in a number of other countries. It suffices to mention the behaviour of Israel in occupied Arab territories, the USA in South Vietnam and of Vietnam in South Kampuchea. If, however, a non-terror system is maintained within the mother country, this creates the already mentioned “terror zones”, which cover only the occupied or otherwise possessed territory and people in it, people who are mostly of different nationality, regardless of whether they are really considered as foreigners.

According to all main traits, this type of “international” terror does not differ from the terror carried out within one state. The second dimension of international terror has already been mentioned. It is reduced to the fact that any international armed conflict, a war, is in essence terrorist. The aggressor does not strive for complete annihilation of the opponent’s armed force, let alone of the opponent’s population, but wishes to overpower the will for resistance by inducing fear of further consequences. In the war scheme, those killed at the battlefield are terror victims, and the survivors are the wider terror target: they are to be intimidated, paralyzed and forced to surrender. Just like in an internal political conflict, terror arises when violence is exerted without observing certain rules. The latent terrorism of war becomes open when the international law of war, which constitutes an ancient attempt to humanize international conflicts, is violated. In war, therefore, there has to be legality. Violation of the law of war, both with re-

gards to the members of the enemy armed forces, and in relation to the civilian population, turns an armed conflict into a terror action. It becomes one, for instance, when poison gases are used, hospitals are attacked, prisoners or war are shot, hostages are taken, population is forcefully displaced, collective punishment is applied, etc.

One does not need to particularly emphasise that modern-day armed conflicts in that respect become increasingly marked by a terror component. One of the reasons for that is the aggressor's refusal to admit he is at war, partially in order to avoid international condemnation. The second, real reason, lies in the fact that international conflicts, due to their strong ideological component – since they are not only conflicts of interest but also of irreconcilable views – assume the shape of a civil war, in which hatred towards any adversary is more prominent and where “chivalrous” behaviour towards a soldier of the opposite side starts to seem impossible.

The peak of terror in a potential international conflict and in present-day international relations is the possession and threat of nuclear weapons and other weapons of mass destruction. By definition, this monumental threat, where the number of potential victims is calculated in millions, is directed towards non-military facilities, primarily towards the population of major human agglomerations. At any rate, the relations between the major nuclear forces are openly called “the balance of terror”, an expression which is, for inexplicable reason, translated more mildly into Serbian language as the “balance of fear”. All the calculations of nuclear strategists are reduced to the fact that, in case of a nuclear war, the first strike will destroy so many millions people, that the response strike would kill even more, and so on, and so forth. They reach their extreme by the so-called overkill capacity, where the supremacy of one side is calculated in the fact that it can kill the entire population of the other side *multiple times*, more times than the other can kill the entire population of the first!

Nuclear weapons can never be brought in line with some fundamental principles of the law of war, the most important one of which entails the rule that in war it suffices to destroy only the enemy's armed forces, without causing needless suffering. Nuclear weapons are not only incapable of differentiating between military and non-military targets, between fighters and civilians,



they are precisely directed towards the latter. The neutron bomb is construed so as to spare buildings and materials and to destroy only lives. The effects of nuclear weapons, and particularly the radiation they cause, result in long-term and grave suffering and death.

Nuclear weapons and nuclear strategy also have a devastating effect on internal policy. Due to the catastrophic consequences, even the smallest inattention may incur an obsession with security and secrecy. This strategy, on which the lives of an enormous number of human beings depend, is not completely subject to public debate, which gives those who make the decision exceptional power and which results in inevitable militarization. In addition, in case of acute danger, there is also a tight timeframe: the decision must be passed within a few seconds. For that reason, the making of such a decision has to be entrusted to one man or a small group. However democratic the system may otherwise be, in such “moments of truth” all nuclear countries become dictatorships, since life and death are decided on by one person, who, on that occasion, expresses all of his or her characteristics, including permanent or temporary unsoundness of mind.

The field of international relations also includes the so-called “international right of one state to undermine or weaken the system of another state. This field of action has the characteristics of terrorism as an action against the government; however, it does not include autochthonous terrorist movements or individuals, but agents of foreign states or men working on their orders. Since we dealt with this type of terrorism (not terror) elsewhere, we shall not dwell on it here.<sup>91</sup>

Finally, when it comes to terror, the question can be completely reversed. What can the international community do against terror?

The answer was hinted at the very beginning of this study. The violation of most fundamental human rights, and therefore, the terror system, cease to be an “internal affair” of one state, if this courteous expression hides the seeming right of any government to do whatever it pleases to do to the people living on the territory it controls. States have renounced that right under the pressure of their own general public, learning from the experience that terror in one country, as a rule, has international consequences in the

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91 V. Dimitrijević, *op. cit.*, p. 218 et seq.

form of aggressive behaviour towards other states.

International condemnation of the violation of human rights and terror systems is therefore possible and legitimate, as testified by countless decisions of the United Nations and other international organizations. One should, however, keep in mind the fact that these organizations do not act as impartial courts, but as political bodies. This context results in the fact that some, doubtlessly terror systems, are not reprimanded, whilst in other cases the concerns towards human rights turn into an attempt at subversion of orders that the critic dislikes for quite different reasons.

Even when there is international consensus, the efficiency of such general condemnation is doubtful. The examples of South Africa, Chile and other countries, whose governments have been defying international decisions for years, are illustrative. A closer analysis, however, shows that such countries always have a powerful political or economic protector, which facilitates their isolation and supports them in further exertion of terror. When such help is missing, and when international pressure is accompanied by increased resistance from the inside, terror systems are revealed in their real, often forgotten, essence. These governments are, as a rule, incapable and lead their countries into foreign adventures, into economic and social doom, even though they conceal it, for a while, by limiting the flow of information and by continuous display of violence, even in the eyes of allegedly expert observers. The fall of the Greek colonels, of Idi Amin, emperor Bokassa, Macias Nguema and Argentinian military regime testify of that. A similar fate was shared by the Uruguay military junta, the crimes of which we have underlined several times.

Even though, therefore, international action against terrorism is not as unsuccessful as it may seem at first sight, one should not attribute it with great power. The combat against the reign of fear must be borne by the brave and the dignified within each community.

