

Fanon, Law and Absolute Violence

Patricia Tuitt

The native's challenge to the colonial world is not a rational confrontation of points of view. It is not a treatise on the universal, but the untidy affirmation of an original idea propounded as an absolute.

Frantz Fanon¹

An enduring preoccupation of *all* criticism is with the great event or cause which would lead to the ending of the *present* world. By this, I mean nothing so dramatic as the messianic ending that would follow certain modes of eschatological inquiry or speculation. Rather it is the end of a condition; the end of a particular period of conventional, *limited* possibilities, towards an age that opens up different possibilities and different futures that is implied in the dissolution of the present world.

As pressing today as ever is this question of transition. We question when a new era might come about but, more pertinently, we question under what circumstances and through what forces new forms of being and belonging cease to be mere utopian claims but logical possibilities. If one were to fix the present world into some descriptive and analytical category, one would be bound to point to the rise of bio-politics, which Foucault was the first to

¹ Fanon, Frantz, 1961, *The Wretched of the Earth*, Trans. Constance Farrington, London: Penguin Books at 31

systematically chronicle², and its present consolidation in the bare life of Agamben's posing³ Between these two well-know theorists of the modern condition lie many others who would concur with Agamben at least to the extent that he claims that in the present age we see '...the impossibility of distinguishing law from life...' ⁴

Yet, it is not the 'bio-political' condition *per se* that is vulnerable to change. Only when a condition reaches it's crisis point does it invites its own violent ending. Notably, the violence that will bring about transition is a form of violence which contrasts with the 'juridical' 'mythic' violence which frames the bio-political order.⁵ This violence has been labelled 'divine'⁶ or 'pure'⁷ violence.

In a little commented upon fragment in the *Wretched of the Earth* (reproduced in the opening quotation to this essay),

² Foucault, Michel. 1990. *The History of Sexuality. Volume I: An Introduction*. Trans. R. Hurley.

New York: Vintage Books.

³ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life, 1998* Trans. Daniel Heller-Roazen, Stanford University Press

⁴ Op Cit at 36

⁵ Walter Benjamin, Critique of Violence, 1921 in Walteri Benjamin REFLECTIONS Essays, Aphorisms, Autobiographical Trans. Edmund Jephcott, Schocken Books • New York

⁶ Op Cit

⁷ Agamben, Giorgio. (2000) *Means Without End: Notes on Politics*, Translated by Vincenzo Binetti and Cesare Casarino. Minneapolis: University of Minnesota Press.

Frantz Fanon offers to theory a way of conceiving violence or force as absolute violence. I suggests this contributes to understanding of what Agamben alludes to as *'...the third figure to break the circular dialectic of these two forms of violence:*

The law of this oscillation [between the violence that posits law and the violence that preserves It...]'⁸

Conceiving of non-juridical violence as 'absolute violence' allows sufficient mediation between those theorists that attribute to non-juridical violence a transcendental quality and those, like Zizek, who equate the notion with revolutionary terror'⁹ I suggest that it is the association with non-juridical violence with the 'divine' or 'pure' that has led many writers to seemingly relegate non-juridical violence beyond the realm of the cognisable.

The Function of Criticism

Implicit in this exercise is the claim that It is the task of criticism to make evident the form of force which 'expiates'¹⁰. This, I argue, Fanon does to far greater effect than perhaps commentary on his work has yet acknowledged. It is also a task of criticism to name the event or condition which is the precipitating cause for the advent of non-juridical violence. This naming must take place prior to the invocation of non-juridical violence, for not all causes (even great ones) urge transition. One might be tempted to say (for instance) that in the face of environmental instability, nature disaster or catastrophic

⁸ Agamben, 1998 at 41

⁹ Slavoj Zizek, *Violence*, 2008, Profile Books

¹⁰ Benjamin, note 5

accident, it is sufficient for criticism to confront and contemplate the cause, to postpone its effects, even to labour toward making the world appear *less* vulnerable. But other great causes- the atrocity, gross offence, the genocide present a different challenge to criticism. The event of the atrocity places a particular obligation on criticism - an imperative almost. The atrocity demands that criticism thinks toward the end of the world, by which I mean to think in ways that positively ushers in the conclusion to time and history.

How else does non juridical or non mythic violence enter the world and function in critical theory other than as an expression of the ethical task that criticism is called to engage when confronted with the atrocity?. Thus, for example, Walter Benjamin's reflection on divine violence in his *Critique of Violence* (1921) can be conceived as a rule or norm governing criticism: one that prescribes the ends of criticism in the event of the atrocity which results from deliberate human action.

Fanon and Violence

It is from the perspective that certain causes signal the end of present world that this essay contemplates two chapters in *Wretched of the Earth* devoted to the question of violence¹¹ In these chapters Fanon oscillates between a mythic violence and a non-juridical form of violence - the 'absolute' violence which will bring about the end of time

¹¹ These two are entitled: Concerning Violence: Violence in the International Context and Spontaneity: Its Strengths and Weakness, note 1 at 27-119

and history. In Fanon's work the distinction between mythic and non-judicial violence is revealed most potently in the distinction between what comes to the colonial situation as *terror* and when the colonial situation is confronted with the *terrifying*. I take these two notions (terror and terrifying) to bring Fanon's text in a relation with other leading works on the nature of non-judicial violence, particularly Žižek's recent work.¹²

I address the question of non-judicial violence explicitly in the last section of the essay. I begin, however, with the question of the naming of the atrocity. Engagement with the violence that 'expiates' comes fittingly at the end point of critics reflection on the question of transition. To will the end of the present world is not a decision to be taken lightly and requires at least two prior intellectual operations, both of which are strongly evident in Fanon's work. The first operation relates to the locus of criticism. The second operation is in obedience to one might call a methodological norm.

As regards the locus of criticism, the scientist, artist, philosopher, psychoanalyst, theologian or jurist, when turning criticism to *will* the end of the present world, must necessarily contemplate the law. For at the heart of the threatening event or cause, which is the atrocity, is the law.

The methodological norm imports a way of thinking toward the end of the present world, which is prescriptive and

¹² Slavoj Žižek, *Violence*, 2008, Profile Books

thus *restrictive* only in that the method demands from criticism an excursion into lawlessness. The methodology is that of a -systematic and careful exposure of a law that is not absent or lacking, weak or distant, but lawless in its very *proximity*, in its over-zealousness.

Naming the Atrocity

Evidence that Fanon locates his object of criticism in the law - albeit never explicitly - is immediately clear from the title of his major work, in which his protagonists - settler and native - are construed from the earth.

Although specific to the context of the Algerian independence struggle, *Wretched* speaks most compelling of the history of Europe; of a series of momentous events which brought about the modern world and the system of nation-states. This was a complex and involved history, *conventionally* dated from the early 15th to the late 17th century. It is a period of relevance to the discipline of law, perhaps *more* so than to any other field of the humanities. For this period produced a basic norm: A law from which all other laws derived their legitimacy. This basic norm was what the political theorist Carl Schmitt, defined as a law of the earth.¹³ Put simply, the existence of political community and all civic rights and responsibilities derived from political community are

¹³ The Nomos of the Earth in the International Law of the Jus Publicum Europaeum, 2006, Telos Press

predicated on a *taking* of territory, or a *working* on territory, or an *attachment* to territory.

*Says Schmitt: "...in some form, the constitutive process of a land-appropriation is found at the beginning of every settled people, every commonwealth, every empire. This is true as well for the beginning of every historical epoch. Not only logically, but also historically, land appropriation precedes the order that follows from it. It constitutes the original spatial order, the source of all further concrete order and all further law."*¹⁴

Schmitt deploys the term land-appropriation to depict the various ways of being with territory, but these ways of being cannot be exhausted in any simple description. The distinction between the basic law of the earth and the rules and regulations to which this one law gives rise, is at the heart of legal theory and is usually expressed in the distinction between the law as *nomos* (as opposed to *norm*) or the law as *thesis* (as opposed to *legislation*). More pertinently, the basic law to which Schmitt alludes is the law of the Schmitt *settler*

The age of discovery during which colonial powers acquired territories through intensive exploration of the world, and eventual settlement, remains a compelling example of the operation of the law of the earth - a law from which is spawned not only Schmitt's *settler* but also 'the native', the *wretched*'. What is also true for the bio-political is that this was a period in which individuals were to lose

¹⁴ SCHMITT, *supra* note 1, 48

forever a sense of the world as an expansive place. Colonialism was predicated on a shrinking of the matter that makes up the World. Indeed, such a mode of retraction is a condition precedent of all legal and political systems or formations. Specifically, key to the processes of colonial formation was the assertion of human potential and capacity to comprehend or discover the world as an entirety, and thereby to enclose it.

Of course, today we have a clearer sense of the concreteness of the World. Even as Carl Schmitt wrote his treatise on international law around a fundamental law of the earth, sea and air-space were undoubtedly constitutive of his *nomos* and today communicative technologies and networks sit alongside the old matter..

With the benefit of post colonial histories and other disciplinary engagements we have come to an understanding of the consequences of the processes in which large tracts of the earth - distantly located - can be brought into so close a proximity that they failed to provide sufficient for the European to share with others in prior occupation. .In short, we now appreciate the undesirable consequences that attend when we lose a sense of the vastness of the World. To comprehend the world is to know it as a small thing, to be seized and guarded most jealously. Specifically, from Fanon we learn that the 'settler' must produce the 'native' so that the space that the 'settler' has *himself* reduced can expand again and no longer threaten to suffocate him.

We see in migration modes and practice in today's so-called global village a similar process of a world that is shrunk technologically, only to be expanded again through the meting out of violence on others.

Of the concentration camp, Agamben famously wrote:

*'What happened in the camps so exceeds the juridical concept of crime that the specific juridicopolitic structure in which those events took place is often, simply omitted from consideration. The camp is merely the place in which the most absolute conditio inhumana that has ever existed on earth was realized: this is what counts in the last analysis, for the victims as for those who come after.'*¹⁵

The Camp is named here as the atrocity. It is the biopolitical order in its naked form and, as such, calls attention to the whole order of the world.

Decades before Agamben, Fanon was to squarely confront the obligation on criticism to fearlessly name the atrocity. There is little doubt that in *Wretched of the Earth*, Fanon encountered the colonial situation as just the form of catastrophic cause which begs criticism to inquire into the means through which to effect the end of time and history. The *'death of aboriginal society, cultural lethargy and the petrification of individuals...'*¹⁶ was more than the annihilation of a particular race or culture but is a total destabilising force. The opening pages of the work are imbued with phrases that clearly projects Fanon's analysis

¹⁵ Agamben, note 3

¹⁶ Fanon, note 1 at 73

of the colonial situation beyond the boundaries of colonialism *per se* towards the world *entire*. The ends of criticism are unequivocally stated: Says Fanon, *decolonisation is a process designed to change the order of the world*¹⁷, not merely to bring about 'the rise of a new nation' More pertinently, decolonisation is. 'Quite simply the replacing of a certain 'species' of man by another 'species' of man...¹⁸ It is to bring about the blank sheet that holds no trace - the *tabula rasa*: '...total, complete and absolute substitution¹⁹ that Fanon strives

Reversal of the status of settler and native is the driving force of *The Wretched of the Earth*. What the reader encounters for most of the writing is a reflection on conditions- social, psycho-social, environmental, economic and so on - that can be harnessed toward the redistribution of land and other resources and that can change and reverse human status and roles, bringing forward the true post colony. But the settler/native opposition, produced by positive legal norms are also categories which signify the origins of political community *per se*. For Fanon , then, the question of the colonial is ultimately and necessarily a question of the *nomos of the earth*: succinctly described by Carl Schmitt as the order that decrees that:

' ,...in some form or other the constitutive process of land appropriation is found at the beginning of every settle people, every commonwealth, every empire. This is

¹⁷ Fanon, note 1, at 27

¹⁸ Op Cit

¹⁹ Fanon, note 1 at 29

*true as well as for the beginning of every historical epoch. Not only logically, but also historically, land appropriation precedes the order that follows from it. It constitutes the original spatial order, the source of all further concrete order and all further law...'*²⁰

Consider, in this regard, the following short passage from *Wretched of the Earth*:

*The immense majority of natives want the settler's farm. For them, there can be no question of entering into competition with the settler. They want to take his place'*²¹.

In these few words Fanon is called to question the colonial order *and* to question the order of the world. In the idea of the native who takes the settler's place *without entering into competition with the settler* (my emphasis), Fanon folds in the conventional revolution - the rise of the new nation -and the potential *new beginning*: one in which settlement is not 'the *absolute beginning*' the '*unceasing cause*'²²

In colonialism there is a seizure and settlement of territory by an external foreign power that renders instantly the colony subordinate to the metropole and the indigenous inhabitants of the colony subordinate to the colonizer and their laws, but in every place where there is

²⁰ Schmitt, note 13 at 48

²¹ Fanon, note 1 at 19

²² Fanon, note 1 at 40

not colonialism there is a seizure and settlement. Colonialism is a precipitating cause for criticisms' contemplation of the end of the present world precisely because colonialism is a distortion upon an original distortion. The original distortion is just the fact that the legitimacy of community is a matter of *political fact* - the blunt fact of *settlement*. The original distortion - what Fanon speaks of as the '*numb violence everywhere...*' is made more ugly with the advent of colonialism. Overlaying the *numb* violence is '*violence in its natural state*', - the violence that '*will only yield when confronted with greater violence...*'²³

Fanon's Methodological Operation: Becoming Native

It is significant to the argument in this essay is that Fanon alludes to the native as 'petrified'.²⁴ I elaborate this significance later, but for now it is important to understand how the 'native' is produced by a law that has become no more than a senseless writing on the body. For Agamben, such a law is best described in Kant's idea of the 'simple form of law' as:

Being in force without significance... nothing better describes the ban that our age cannot master than Scholem's formula for the status of law in Kafka's novel. What, after all, is the structure of

²³ Fanon, note 1 at 48

²⁴ Fanon, note 1 at 73

*the sovereign ban if not that of a law that is in force but does not signify?...all cultures today (it does not matter whether they are democratic or totalitarian, conservative or progressive) have entered into a legitimation crisis in which law ... is in force as the pure "Nothing of Revelation."*²⁵

This is the condition that does more than invite new law, rather it invites the dissolution of law itself. For the critic, the law 'reduced to the zero point of its significance'²⁶ is the cue to contemplate seriously - indeed, to will into being the violence that expiates. Evident in the critics methodology is what I describe as an excursion into lawlessness.

Lawlessness

In common parlance, lawlessness pertains to the refusal, disregard or transgression of positive legal norms, particularly those that produce a prohibition against acts which create an assault upon public order - violent assault, theft or conversion of property and so on.

A second (and for these purposes more important) sense in which one might speak of lawlessness is not in terms of transgression of those minimal public order norms, but in terms of refusal or avoidance or categorical exclusion from those social, familial, economic relations, which are more or less structured by laws. To be without employment is not simply to refuse a particular form of exchange -labour for money , goods or other things in kind - it is also to

²⁵ Agamben, note 3 at 35

²⁶ Agamben, note 3 at 35

refuse to consent to a forms of regulation that manifests itself, inter alia, in formal contractual arrangements, healthy and safety regulations, fiscal obligations and so on. The point is that lawlessness in both senses brings about a more emphatic assertion of law. In defiance of the prohibition against individual violence, a person invites punishment, fine, incarceration, in some cases death. Arguably, no less catastrophic are the consequences of a failure to surrender to social and economic relations. For example, the relatively benign framework of the employment contract is substituted for the more blunt frame of social security regulation. Excluded from even basic welfare provision, the lawless person is confronted by the unregulated but tacitly sanctioned force levelled against the homeless, the destitute, - n relation to whom private citizens as well as state police are enforcers.

This is all to say that lawlessness in neither sense described connotes a lack or absence of law. To transgress the law or to avoid legal ties is to invite further intimacy with law. The more intimate with law one becomes the more law becomes a mere writing - numb, without control or measure - *excessive*.

Fanon carefully and systematically reveals how.' *the pimps, the hooligans, the unemployed and the petty criminals...the classless idlers, the hopeless dregs of humanity, all who turn in circles between suicide or madness...*²⁷ are made so in intimacy with law. In full appreciation of the gravity of the task to which it is put in the face of the atrocity

²⁷ Fanon, note 1 at 104

of colonialism, Fanon's criticism assumes the form of testimony to this all too proximate law; as if to lay evidence before the tribunal of judgment the horror wreaked by this colonial law -the violence in its natural state which makes *numb* violence no longer tolerable. It is at this point that the critic summons non-juridical force.

The Advent of Non-Juridical Violence

It would be a curious reading of *Wretched of the Earth* not to acknowledge Fanon's constant invocation of mythic violence - the '...terror, counter-terror, violence, counter-violence...'²⁸ that (says Fanon)'...balance each other and respond to each other in an extraordinary reciprocal homogeneity...'²⁹ . Equally it would be neglectful to overlook the frequent appearance of what Žižek seeks to deny in Fanon - the 'spectral 'or 'transcendental' quality of violence that haunts *Wretched*.³⁰ That the terrifying spectre is recorded very much in the margins or the footnotes to *Wretched* is not surprising given that divine violence, by its nature, enters abruptly, unexpectedly, intermittently, for:

,... mythic violence belongs to the order of Being, while divine violence belongs to the order of Event: there are no 'objective' criteria enabling us to identify an act of violence as divine; the same act that, to an external observer, is merely an outburst of violence can be divine for those engaged in it - there is not big Other

²⁸ Fanon, note 1 at 70

²⁹ Fanon, note 1 at 69

³⁰ Žižek, note 12 at 170

*guaranteeing its divine nature, the risk of reading and assuming it as divine is fully the subject's own. It is like what Jansenism teaches about miracles. Miracles cannot be verified objectively: for a neutral observer, they can always be accounted for in terms of ordinary or natural causality*³¹

For Fanon, revolutionary terror is overlaid by the terrifying force of the 'petrified'³² native, the near dead, the Zombies³³ whose principal mode of being is exhibited in the 'death reflex'³⁴

*'Believe me, the Zombies are more terrifying than the settlers; and in consequence the problem is no longer that of keeping oneself right with the colonial world and its barbed-wire entanglements, but of considering three times before urinating, spitting or going out into the night...the settlers powers are infinitely shrunken, stamped with their alien origin. We no longer really need to fight against them since what counts is the frightening enemy created by myths could go on to'*³⁵

Fanon's claim here that Zombies are more terrifying than settlers is not one to be lightly dismissed. More generally, critical theory should give greater credence to

³¹ Zizek, note 12 at 169

³² Fanon, note 1 at 41

³³ Fanon, note 1, 40-45 generally

³⁴ Fanon, note 1 at 42

³⁵ Fanon, note 1 at 43

the idea that the terror of conventional revolutionary violence might cede to the terrifying spectacle.

I suggest that there is more purchase than Žižek allows for in identifying spectral force with divine violence - or to use the terms I prefer to deploy, to equate mythic violence with *terror* and the divine with the *terrifying*, for this way of conceiving the problematic allows us at once to remove divine violence from the realm of 'terror and counter terror' whilst at the same time obeying Žižek's injunction to "*fearlessly identify divine violence with positively existing historical phenomena*"³⁶. Žižek errs in suggesting that the spectre exists outside the known historical scheme, or, to put it another way, the only historical phenomena Žižek appears to appreciate and acknowledge is 'terror' in the conventional sense.

What is to be gained for critical theory by the gradual substitution of the term 'absolute' for divine' or 'pure' as a term which depicts the nature of non-judicial violence? The appeal of 'absolute' rests in the fact that (more than can be said for other terms in currency), 'absolute' gives meaning to Žižek's argument that non-judicial violence belongs to the order of the event. Consider in this regard the entirely well-known phenomenon of the woman who has suffered years of physical and emotional abuse who *just once* in a violence that cannot objectively be seen as proportional to the violence she has suffered, ends, (completely and absolutely) the years of physical torment. Her response is *absolute* in its completeness, absolute in that it is a violence

³⁶ Žižek, note 12 at 167

uncontaminated by any frame of meaning, which frames might, for example, logically assert that counter-violence *to be complete* must be *equivalent* violence. Would it be too fanciful to say that her actions are '*...lethal without spilling blood*'?

What is imported much more clearly in the notion of 'absolute violence' is a form of force that exists - operates - enters the world independent of the social restrictions and conditions which would defeat its particular ends. In particular, It is absolute because it is independent of the contexts and understandings that have persuaded us through the years that certain forms of violence are *impotent*.

The spectral quality of violence is most evident when Fanon speaks of the 'death -reflex'³⁷; of the 'spontaneous, involuntary and near simultaneous muscular motion'³⁸ of the person who 'caught between suicide and madness'³⁹ can forget that the colonial exists.

With due respect and also with some sympathy to Zizek's desire to see a less 'decaffiinated'⁴⁰ Fanon in contemporary criticism', we can read from these references and from other parts of the work that Fanon's contemplations on violence do not exclude the spectral and the ghost-like. But this is not to say that when Fanon speaks of

³⁷ Fanon, note 1 at 42

³⁸ Fanon, note 1 at 41

³⁹ Fanon, note 1 at 73

⁴⁰ Zizek, note 12

'petrification'⁴¹ and so on, that he is invoking some transcendental force. Rather, he keeps alive the potential for even the most debased of individuals to 'expiate' precisely because in their debased state the enactment of any degree of force is *lethal*. The woman beaten near to death who yet musters sufficient force to strike her abuser must have a spectral quality about her. Bluntly, the near dead need not enact equivalent force to enact *silence*: it is enough that they can move, though their motion may be nothing more than what Fanon alludes to as 'the death reflex'⁴². The death reflex brings to the fore fears that the dead might be capable of mobility - this is not *terror* in the sense that Žižek allows but it is *terrifying*.

⁴¹ Fanon, note 1 at 73

⁴² Fanon, note 1, paraphrasing 41/42