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## The perpetual challenge and power's secret violence

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## The perpetual challenge and power's secret violence

### Abstract

The cat's cradle of relations between violence, power and secrecy, and how law refuses to acknowledge their activity, is examined here through readings of three novels, Bram Stoker's *The Lady Of The Shroud*, John Buchan's *John Macnab*, and Andrew Greig's *The Return Of John Macnab*. Like scissors/paper/stone, violence, power and secrecy combine and recombine to generate different outcomes. This analysis provides a context for considering Craig Murray's memoir concerning his period as British ambassador to Uzbekistan, *Murder In Samarkand*, a period which ended when his disapproval of the UK's attitude towards torture made his position untenable. Recent case law on the relation between law and torture is drawn on in order to verify the hypothesis that law's blind spot is power's secret violence in the context of a situation where the challenge of, for example, terror, is received on our part not as a challenge to our values but as a challenge to our power, and responded to accordingly, by means not of a reassertion of our values but by a deployment of violence.

# The perpetual challenge and power's secret violence

Angus McDonald

## Introduction

The cat's cradle of relations between violence, power and secrecy, and how law refuses to acknowledge their activity, is examined here through readings of three novels, Bram Stoker's *The Lady Of The Shroud*, John Buchan's *John Macnab*, and Andrew Greig's *The Return Of John Macnab*. Like scissors/paper/stone, violence, power and secrecy combine and recombine to generate different outcomes. This analysis provides a context for considering Craig Murray's memoir concerning his period as British ambassador to Uzbekistan, *Murder In Samarkand*, a period which ended when his disapproval of the UK's attitude towards torture made his position untenable. Recent case law on the relation between law and torture is drawn on in order to verify the hypothesis that law's blind spot is power's secret violence in the context of a situation where the challenge of, for example, terror, is received on our part not as a challenge to our values but as a challenge to our power, and responded to accordingly, by means not of a reassertion of our values but by a deployment of violence.

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### Scissors cut paper (violence destroys secrecy)

... it is apparent that they do not trust me in full — as yet, at all events. Well, I must not complain. It is all only right and just. As yet I have done nothing to prove to them the love and devotion that I feel to the country. ... the trust of a nation ... has to be won and tested; he who would win it must justify, and in a way that only troublous times can allow. No nation will — can — give full meed of honour to a stranger in times of peace (Stoker 1974: 100).

Twelve years after his success with *Dracula* (Stoker 1983), in 1909 Bram Stoker published a rather less successful novel, *The Lady Of The Shroud* (Stoker 1974). For much of the novel, as in its more famous predecessor, the titular Lady is taken, not least by the narrator hero, Rupert Sent Leger, to be a vampire. This turns out not to be the case, and there is in fact a rational explanation for the ghostly appearances of the shrouded lady. She is the daughter of the absent leader of the Land of the Blue Mountains, and she had been thought to have died. News of her death would give encouragement to the Land's enemies, and was hushed up. Her death turned out to be only a trance, from which she eventually awoke. Her awakening was a new problem for the leaders of the Land as the suspicious mountaineers of the Land who knew of her death might doubt her return to life, at best splitting the nation into two camps. So it was decided that she would pretend to stay dead, and enact her continuing death by lying in a glass topped tomb; she would be able to leave the crypt only in the guise of a shroud-wrapped Undead. It was in this guise that Rupert Sent Leger, a plucky Englishman who inherits the local castle, first encounters her. He marries her anyway, and all turns out well. The tale is a variation on Sleeping Beauty. The Lady is revived by the love of the hero.

The interest in this narrative is in this sequence of secrecies: first, the figure of power in the story 'dies'. Her people are distraught, but hide her death from the nation's enemies. Subsequently she revives, and the nation's leaders hide her revival from the nation's people, as the news would cause factionalism.

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In the absence of her father (abroad) she represents the sovereignty of the Land. It is too risky to let the enemy know of her death, so the people (it is a small country) are sworn to secrecy. National sovereignty is a vacuum, but the people keep this secret from the nation's enemies. This is the constitutionality of the people/nation: the agreement to deny to their enemy that their sovereignty is dead, no longer exists.

When she revives, and the ruling Council keep this from the people this is the secret state hidden within the apparent constitution: their sovereignty is in fact in full occupancy of its position, but the people will still be lead to believe there is an absence at the heart of their sovereignty, an absence which only their silence keeps from the enemy, an absence which must not be debated in public. This absence is substantiated by the corporeal presence of her apparently dead body in its glass-covered tomb in the crypt, viewable by the people if needs be.

As Baudrillard has argued,

To dissimulate is to pretend not to have what one has. To simulate is to feign to have what one doesn't have. One implies a presence, the other an absence. But it is more complicated than that because simulating is not pretending. ... Therefore, pretending, or dissimulating, leaves the principle of reality intact: the difference is always clear, it is simply masked, whereas simulation threatens the difference between the 'true' and the 'false,' the 'real' and the 'imaginary' (Baudrillard 1994: 3).

If this distinction is carefully applied to the narrative, it is clear that the dissimulation (pretending) that happens is the initial cover-up, in which the people and their leaders are complicit. What is dissimulated, what they are pretending not to have but do have, is a vacuum at the pinnacle of sovereignty, caused by the apparent death of the Lady. A presence is implied, in the sense that, in keeping the vacuum secret, the continued, dissimulated presence of the Lady is implied, when she is, at this point, absent, presumed dead. The dissimulation is a pretence, implying a presence when there is in fact an absence.

The simulation, by contrast, is the simulation of her death, when she is actually alive, implying an absence — of life: manifested by the

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presence — of a body. The body simulates death. The simulation (and it must be conceded, this too, in this case, is a pretending) does indeed blur true/false and real/imaginary, as it proliferates into a vampire tale of the Undead.

Dissimulation is a concealing; simulation is an appearing. The absence of sovereignty must be concealed; the dead body must be shown. The first episode corresponds to Baudrillard's observation that 'the modern political imaginary goes increasingly in the direction of delaying, of concealing for as long as possible, the death of the head of state' (Baudrillard 1994: 25). The second episode corresponds to this: 'a head of state ... is nothing but the simulacrum of himself, and *only that gives him the power and the quality to govern*. No one would grant the least consent, the least devotion to a *real* person. It is to his double, he being always already *dead*, to which allegiance is given' (Baudrillard 1994: 25-6). This is the case precisely with the Lady, even though she is not the head of state. In his absence, she is the figure of allegiance, and only her continued death will give rise to continued allegiance.

The two secrets, of dissimulation and of simulation, do not cancel each other out, but mutually reinforce each other. All is stasis, undead, until the return of the father, the aggression of the enemy, or some other irruption of the real into this fantasia. This event, the reinstatement of the violence of the real, comes from neither of these directions, but instead from the inheritance of tenancy of the castle by the young Englishman.

In the absence of her father and now of her, the swashbuckling English hero enters the scene and seeks to win the love of the people, mainly by arming them. It is a dream of personal chieftainship, where the charisma and valour of the hero will win the service of the people. He does indeed win the loyalty of the people, the heart of the Lady, and the power of sovereignty through marriage, by force of valiant deeds at the risk of his life, and even, he thinks, at the risk of his soul.

To summarise: the absence of sovereignty must be kept secret from the nation's enemies; the absence of the absence of sovereignty must

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be kept secret from the people, lest they doubt its true existence — better that they be fed a vampire myth. Into this somnolent and absent sovereignty, a true, healthy man of action appears, whose actions permit the return to life of the 'Undead' Lady, the defeat of the nation's enemy, and the renewed loyalty of the people to the nation and its leading family.

This is a novel of a heroic age. The young Englishman is an adventurer who yearns to find a context in which a man can be a hero, and finds it in the Land:

They are in reality the most primitive people I ever met — the most fixed to their ideas, which belong to centuries back. I can understand now what people were like in England — not in Queen Elizabeth's time, for that was a civilized time, but in the time of Coeur-de-Lion, or even earlier ... (Stoker 1974: 54).

It is precisely a time *before* civilisation that is required, because only in such a time can the hero escape constraint (the first chapter of the novel has a narrator who deplores Sent Leger's adventurousness) and find a purpose not in thought but in action. Sent Leger's action is so exuberantly swashbuckling as to stand comparison with Douglas Fairbanks: '... he was very athletic and active, liked movement and space ... He worked with speed and, basically, with grace ...' (Thomson 1980: 180). Once he finds a place where he can rediscover this legendary time, he is able to give full effect to his energy, manifested in a violence cartoonish and excessive.

When the Lady is kidnapped by the nation's enemy (they may have intended to steal the body, and been surprised to find a living woman), she is rescued by the hero, in a Tarzan-like descent from a great tree:

As he fell he pulled his handjar free, and almost as he was falling its sweep took off the head of one of the assassins. As he touched ground he stumbled for an instant, but it was towards his enemies. Twice with lightning rapidity the handjar swept the air, and at each sweep a head rolled on the sward (Stoker 1974: 169).

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These decapitations are a virtuous violence, in the cause of saving the endangered Lady, and of defeating the nation's enemies. There is no *need* for this violence to be denied, it is to be celebrated. The point of the setting — 'before civilisation' — is that it allows for a violence that need make no apologies. There is therefore no need for any secrecy about the exercise of violence, and that violence is rewarded by the recognition of the mountaineers that Sent Leger is a hero amongst men, justified in his aspiration to lead a heroic nation.

From the regime of secrecy to the regime of open violence, the Land is redeemed. Secrecy had been all about concealing or simulating events around the troubled question of national sovereignty, and with the coming of open violence, strategies of secrecy can be abandoned. The absent father even reappears (rescued from a high tower by another athletic escapade involving dangling from an airship) to consecrate the new union between the action hero and his daughter, a union earlier celebrated under the dubious auspices of dark vampiric ceremonial.

In the context of a setting 'before civilisation', open violence trumps secrecy, and a healthy new order is inaugurated.

### Paper wraps stone (secrecy conceals power)

There was mystery here which had better be unriddled away from the gaze of the profane crowd (Buchan 1996: 180).

John Buchan's *John Macnab* (Buchan 1996) of 1925 has as an opening premise a wager. A challenge is made to a number of Scottish Highland estates. The challenge runs, 'Sir, I have the honour to inform you that I propose to kill a stag — or a salmon as the case may be — on your ground ...' (Buchan 1996: 11-12). The challenge comes from a trio of bored gentlemen (lawyer, politician, banker), that is, from the same class as those addressed. An *ennui* is shared by the three and they are looking for an adventure.

On the advice of their Harley Street doctor, the bored gentlemen undertake to do something *risky*. It is their situation of total *security*, it

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is suggested, which is at the root of their jaded attitude. They must put themselves in danger, in order to recover some zest and enthusiasm for life. Going hunting for sport is a run-of-the-mill activity for them, so they need something with a greater potential for excitement than that. They are however respectful of the obligations of the law, in particular of private property, and the wager is couched in such a way as to suggest that it may not amount to theft. The stag will be removed and then returned, and a charitable donation of a greater or lesser sum will be made, depending on success or failure. The challenge, in effect, is the pre-announcement of the intention. This is not to be furtive poaching, kept secret from the victim. It is a challenge of the order: this is what we intend; stop us if you can!

The danger, at the most obvious level, is the danger of physical harm, as they are going hunting in the Highlands, and, beyond the usual risks associated with that pastime, they are challenging the landowners to catch them. This latter point reveals that the real danger is to reputation — exposure of their crime could bring ruin to their successful, prominent, and very establishment careers.

The modulations of secrecy at the outset, then, are of this order: the gentlemen keep their true identities secret, adopting the collective pseudonym, or *nom-de-guerre*, of John Macnab: 'At once business-like and mysterious' (Buchan 1996: 12). However, they make their business known to their targets by letter — so, not entirely public, but not secret. The idea was inspired by one of the party's recall of one Jim Tarras, who had made the same challenge. The response to Tarras tended to be: 'Most of the fellows he wrote to accepted his challenge and told him to come and do his damnedest. ... One or two curmudgeons talked of the police and prosecutin' him, but public opinion was against them — too dashed unspartin' (Buchan 1996: 8). Clearly, 'public opinion' here meant *aristocratic land-owning* public opinion, a current which could be in limited circulation in one social stratum, but *kept secret from the public authorities*. Which anticipates the outcome of the John Macnab narrative.

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The plot of the novel lies in the escapades of the fictive John Macnab, but the theme is about the nature of challenge. Challenge, and the risk entailed in issuing a challenge, is seen as intrinsic to a properly aristocratic ethos. This claim is most explicitly stated by Janet Raden:

‘... Radens were in everything that happened in the old days in Scotland and France. But civilization killed them — they couldn’t adapt themselves to it. Somehow the fire went out of their blood, and they became vegetables. Their only claim was the right of property, which is no right at all.’

‘That’s what the Bolsheviks say,’ said the puzzled Sir Archie.

‘Then I’m a Bolshevik. Nobody in the world today has a right to anything which he can’t justify. That’s not politics, it’s the way nature works. Whatever you’ve got — rank or power or fame or money — you’ve got to justify it, and keep on justifying it, or go under. No law on earth can buttress up a thing which nature means to decay.’

‘D’you know that sounds to me a pretty steep doctrine?’

‘No it isn’t. It isn’t doctrine, and it isn’t politics, it’s common sense. I don’t mean that we want some silly government redistributing everybody’s property. I mean that people should realize that whatever they’ve got they hold under a perpetual challenge, and they are bound to meet that challenge. Then we’ll have living creatures instead of mummies’ (Buchan 1996: 99).

Raden’s position, in summary, is that holding power needs justification, and justification comes from meeting the perpetual challenge to the holders of power. This ‘eternal struggle’ is natural, is life itself, but gets lost beneath the suffocating impact of civilization. ‘Justification’ in this sense is not extrinsic (for example by appeal to divine right, democracy, utility or ethics), but intrinsic to power. Holding power is justified by meeting any challenge to one’s power: that is, by meeting the challenge, and winning. The ultimate ‘justification’ for power in this argument, once the illusions of civilization are stripped away and the natural core is revealed, lies in the willingness to resort to violence in order to hold on to it. Power is justified by the successful defence of it. This is in contrast to any delusion that one holds it by legal title, or any such sophistry.

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This is pure Hobbes: compare '... every man is Enemy to every man; the same is consequent to the time, wherein men live without other security, than what their own strength, and their own invention shall furnish them withall' (Hobbes 1968: 186) with Raden's 'whatever they've got they hold under a perpetual challenge'. Hobbes allows 'strength and invention', but the essence of this in Raden is violence. It is a perfect description of the state of nature. This is social Darwinism. The inspiration may be more Nietzschean, or Lawrentian, even, in the appeal to forces of nature which transcend the taming effects of too much civilization: precisely the malaise the Macnabs suffer from, of course. It is also an aristocratic code of honour, that privilege is earned by risk, and privilege without risk is illegitimate. Janet Raden's position, although styled as beyond doctrine and politics in her view is also, with the forebears just itemised, a form of fascism for a polite society. In the period between the Bolsheviks and the General Strike, the defence of class privilege is not grounded in law, or social good, but purely in the willingness to use force to defend that very privilege: might is right. You have a right to it if you are willing to fight for it, and succeed in winning that fight.

Raden starts from a position apparently acceptable to theorists of legitimacy: 'Nobody in the world today has a right to anything which he can't justify.' But, in effect this is a tautology. If you can justify your claim, then you have a right. You only have a right where you can justify. And justification is grounded in right. The argument is circular, unless the meaning she gives to 'justification' is other than 'grounded in right'. Which it is, of course. Justification, and right, have themselves a common basis, which is the ability to hold, against perpetual challenge, that which you have. One justifies one's holdings by holding on to them. It is equally clear that Raden doesn't mean the challenges that one might encounter within 'civilization', for instance, holding on to one's land title, or denying access to one's land against the challenge of the rambler, by aggressive litigation. It is clear that Raden means a far more archaic sense of perpetual challenge, the challenge of the duel, the joust, the use of physical force. It is violence alone which

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underpins the justifications which might be advanced for the social order. Hobbes' argument about duty to a sovereign, that it expires simultaneously with the loss of the sovereign's ability to compel obedience, offers a parallel mode of reasoning.

At the conclusion of their tale of adventure, the Macnabs poach a deer from the estate of Johnson Claybody, for whom they have little respect, and from whom they would expect little respect either. He is a son of the aristocracy, but not as comfortably established as his opponents are. However, the twist in the tail of the tale is that the Macnabs have never really managed to put themselves outside the situation of total security, which was the origin of their malaise. After many adventures, the risk turns out to have been illusory. Their reputations could never have been harmed, because they belong to a cohesive social class which would close ranks and look after its own at the very hint of any scandal.

When they are caught, as one of their erstwhile targets, Lord Claybody, puts it,

Do you think it conceivable that I would do anything to weaken the public prestige of a statesman I believe in, a great lawyer I brief, and a great banker whose assistance is of the utmost value to me. ... in these bad times I am out to support anything which buttresses the solid structure of society. You three are part of that structure. You might poach every stag on Haripol, and I should still hold my tongue (Buchan 1996: 183).

These quite close social links, from Claybody's point of view, justify a social solidarity which transcends the legal order, and a social solidarity which is justified by a class ethos anticipated in the Tarras episode: it would just be 'too dashed unsportin'' to invoke the law against one's social peers. Transcendent of the legal order, the attitude does not transcend the social order, for, to Lord Claybody, he is simply closing ranks within the social class which 'buttresses the solid structure of society'. It is not the law which performs this function, but the social privileges and power of the aristocracy. Thus, his class's 'public prestige' must be maintained, maintained by the maintenance of secrecy concerning his friends' sport.

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The less secure Johnson (Claybody's son and heir) worries about the undermining of property — 'you three, who are the supporters of law and order, have offered a pretty good handle to the enemy ... It's a dangerous thing to weaken the sanctities of property' (Buchan 1996: 184).

The 'enemy' (Sir Archie's Bolsheviks) is the class enemy, the unpropertied class. Johnson worries that disrespecting the spirit of the law weakens also 'the sanctity of property'. His mistake is to fail to distinguish the fact of the utility of law and order as between the socio-economic classes from the fact of its irrelevance to challenges within the aristocracy. When some aristocrats challenge some others, it is all a bit of fun, and even if it gets out of hand, the law is not to be called to one side's aid. As long as the story does not become public beyond those class contours, law, order and property remain 'sanctities'.

Durkheim argues,

If, then, when a crime takes place, the individuals whom it offends do not unite to manifest what they share in common, and to affirm that the case is anomalous, they would be permanently shaken. They must fortify themselves by the mutual assurance that they are still in unison. The only means for this is action in common (Durkheim 1972: 127).

The present case seems at first glance to contradict this, as the crime goes unpunished. However, the crux is that the individuals affected *are not offended*, which in Durkheimian terms means there has been no crime. The event does require a reaction, to reaffirm a 'mutual assurance that they are still in unison', but this reaction is not by way of repressive, punitive law, but instead by way of secrecy, a secrecy which tames the violence.

They are not offended not so much because of the nature of the act perpetrated, but because of the identity of the perpetrators, whose transgression must be overlooked by their peers. It is a cohesive class secrecy, a secrecy in triplicate which keeps intra-class violence secret from the law and from other classes, and also keeps secret inter-class violence, in the form of the aristocracy's willingness to resort to violence against any class challenge to its supremacy.

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One of the Macnabs concludes,

We've been making godless fools of ourselves. We thought we had got outside civilization and were really taking chances. But we weren't. We were all the time as safe as your blessed bank. It can't be done — not in this country anyway. We're in the groove and have got to stay there. We've been a pretty lot of idiots not to think of that (Buchan 1996: 184).

Uncannily like the situationist observation, 'In the society that abolishes adventure, the only adventure left is the abolition of that society.' The Macnabs could only really experience the life-enhancing thrill of risk by becoming revolutionaries! Or, alternatively, '... we're cured, all of us. We're simply longing to get back to the life which in July we thought humbug' (Buchan 1996: 183).

In the context of a setting 'in civilisation', secrecy trumps open violence, and a decadent old aristocratic order is confirmed.

### **Stone blunts scissors (power mitigates violence)**

Two novels connected by one plot, separated by seventy years. Andrew Greig's *The Return Of John Macnab* (Greig 1996) appeared in 1996. This return to a theme, with variations, might be taken as a rather typically 1990's exercise in appropriation of a traditional novel, which, with the addition of inverted commas, becomes one more exercise in postmodern irony. Even so, the change in attitude to the thematic concerns around, concretely, landed property and poaching, and, abstractly, class, law and state, acknowledging the shift in political attitudes in the intervening period, allows for a tracing of a different relation of power, violence and silence.

Both novels share the opening premise of a challenge to a number of Scottish Highland estates. In contrast to the Buchan version of the challenge, in Greig, the tone is different:

To Whom It Concerns! You are hereby informed that, for reasons too numerous to mention but which include an excess of rain, midgies, boredom,

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absentee landowners and the Criminal Justice Act, the undersigned intends to take a salmon or a brace of grouse or a deer, from the estates of ... (Greig 1996).

In Greig, it is a Glaswegian radical, a mountain guide and a second-rate copywriter, joined by a local journalist, who make up the new Macnabs. They have of course read the Buchan novel, and it forms a template for their challenge. Melancholic middle-aged ennui remains a constant, too.

In Greig's retelling of the Macnab plot, much of the reflection on social class disappears. This is paradoxical, because there is much more explicit class consciousness in the characters, and a distinct recognition of the class difference between the Macnabs and their targets. However, looking for the politics in the Greig leads to a disappointment. There is a window dressing of radicality: characters with leftist pasts, a nod to land access issues, but otherwise a contemporary world where we're all middle class now, more or less, is the milieu. This may be because the targets are not the traditional aristocracy, but the new landowners, foreign and corporate.

Instead of social hierarchy, there is, however, the state. In relation to Durkheim, here there is punitive repression, but once again it is not the law, but violence which is invoked. The new Macnabs have their lives threatened, in a distinctly contemporary, non sepia-tinted encounter with state violence:

Neil tripped on a heather root and the first bullet cracked off the rock above his head. He looked up and saw the two men in flak jackets, one above, the other coming in from the side, guns at the ready. He looked to Al for the next move.

'Sorry, old sport. Face down, hands out, and don't move a fucking muscle.'

They lay there. Neil heard the boots clacking over the rocks. He tried not to think of Gibraltar. Shoot To Kill. ...

Then the boot went into his kidneys. And again. ... 'Turn over, you Fenian bastard. Very slowly.'

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Very slowly ... he did as he was told. A heel went into his gut ...

'That's enough, sonny. These aren't terrorists' (Greig 1996: 262).

This is not the heroic violence of Stoker, nor the sport of Buchan. This is the ugly life-threatening violence of the secret state, operating in a sphere beyond regulation by the law. In the Greig version, the cat and mouse game is not so much between the Macnabs and the country estates as between the Macnabs and the agencies of the secret state, which are monitoring them from the moment of their public challenge.

The prominent characters in the Greig version have a hearty dislike of the landowners, of the government, and of laws which protect privilege. But in the denouement, they are strangely deferential to a character closely resembling Prince Charles — although this might be because their lives are also under threat should they not agree to walk away from the adventure quietly.

The alternative put to them under the supervision of the Prince is entirely in line with Bagehot's analysis of the English Constitution, where he argues, '... constitutional monarchy ... acts as a *disguise*. It enables our real rulers to change without heedless people knowing it. The masses of Englishmen are not fit for an elective government ...' (Bagehot 1963: 97). Transposed to the context of the Greig novel, this is translated into something like, 'the constitutional monarchy acts as a guarantor of *secrecy*. It enables the real violence of the state to remain secret. The masses are not fit for freedom of information.'

The real violence deployed is held back from the ultimate deployment, as a Shoot To Kill policy, in being reigned back ('That's enough, sonny. These aren't terrorists.') Power, with the threat of violence guaranteeing its concealment in secrecy, is confirmed.

In the context of a contemporary setting, a violence openly deployed but kept covert *enforces* secrecy, and an order of secret state power grounded in violence is confirmed.

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### Power's secret violence

The interplay of violence, power and secrecy has been exemplified so far as a combinatory variable on the model of the child's game scissors/paper/stone, wherein the strengths of one are balanced by their weakness vis-à-vis another. Rather like a kind of separation of powers doctrine, constitutionally; a virtuous co-existence. In the first example, a power dependent on secrecy was transformed into a power based on violence. In the second and third examples a violence was kept secret by power. In the former the power of a cohesive social class kept a largely symbolic violence secret, while in the latter the power of the state kept a real violence secret (but in doing so, kept it within limits). In each fable, the ending was 'happy'. In each narrative too, law was non-existent or peripheral. Non-existent in Stoker, peripheral in Buchan and peripheral in Greig too. In Greig, it might seem that law appears, with police and intelligence officials playing significant roles, but it is state, not law, that they represent.

Turning from fictions with happy endings to our unhappy reality, we must confront what happens when secrecy, violence and power no longer act as counterbalancing forces but instead conspire together. The scissor-blade hammered home by the stone, concealed by the paper; power's deployment of secret violence: this is our concluding subject matter.

The fact of *realpolitik* remains this: the willingness to resort to force is the fact that justifies the holding of power. Craig Murray's memoir of his period as British Ambassador to Uzbekistan, *Murder in Samarkand* (Murray 2007) tells a cautionary tale of violence, power, secrecy and the irrelevance of law. The heart of the book concerns the consequences of his decision to speak out about torture in Uzbekistan. He is, in his self-portrait, an undiplomatic diplomat, both as regards his hosts and as regards his superiors. He refuses to maintain a silence on the question of torture and political trials in Uzbekistan.

Already breaking with protocol, he attends a political trial, and hears this:

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The old man's statement was read out to him, in which he confirmed that his nephew was a terrorist ...

'Is this your testimony?' asked the prosecutor.

'But it's not true,' replied the old man. 'They tortured me to say it.'

The judge said that the accusations of torture had been dismissed earlier in the case. They could not be reintroduced.

'But they tortured me!' said the old man. 'They tortured my grandson before my eyes ...' (Murray 2007: 23).

Murray first presumes that the UK political leadership will want to know that this is going on, and will support him in speaking out against it, which he does, in Tashkent, when the opportunity arises. In a public speech in Tashkent, he states, amongst other indiscretions:

World attention has been focused on the prevalence of torture in Uzbek prisons. The terrible case of Avazov and Alimov, apparently tortured to death by boiling water, has evoked great international concern. But all of us know that this is not an isolated incident. Brutality is inherent in a system where convictions habitually rely on signed confessions ... (Murray 2007: 110).

Murray's point is that it is arrant hypocrisy to use human rights arguments to justify war against Saddam, yet not criticise abuses in Karimov's regime, purely on the strategic grounds that Uzbekistan is geopolitically useful in the war in Afghanistan, and for Central Asian oil exploitation. His view is an immanent critique of the claim that we are responding to a challenge on the level of values, and standing by our values, a view contradicted by the geopolitical pragmatism he observes.

His outspoken criticisms eventually lead to his departure from his post, but not before he has established that there is a distinction being made between *the* UK's treaty obligation to exclude torture evidence from court proceedings, and the use of information derived from torture for 'operational' purposes. This distinction was confirmed in the House

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of Lords. He is clear that this use is not dependent on the truth of the statements extracted under torture. Statements concerning one's knowledge that other named persons are part of a terrorist network at work in the UK have their operational efficacy even if not true. So, torture is condoned, as long as it is secret. The treaty obligation, which seeks to exclude torture evidence from court proceedings, might be thought thereby to indicate a general disapproval of torture. The current interpretation is not so, it merely indicates a need to keep the practice of torture secret. As it cannot remain secret if used in court proceedings, it will not be mentioned there, but its usage has now gone far beyond the relatively crude use of securing convictions. Torture is now about establishing that we are subject to a challenge to our power, and that being so, our power is justified only if we rise to that challenge. Not by affirming our values, but by affirming our power. The secret that lies beyond law is revealed: power justifies itself by its willingness to be power.

Murray's account is not trivialised by keeping company with a sequence of novels — not always even very good novels in this instance — which share a melodramatic tone. His tale is melodramatic also, and he has chosen to tell it in a populist style, even as it discusses matters of the most serious import. In framing his account with Stoker, Buchan and Greig, one thematic concern is isolated, that of the interrelation of secrecy, power and violence, such that the tales told illuminate the concepts necessary to an understanding of the situation.

### **Law's blind spot**

Secrecy dominates this world, and first and foremost as the secret of domination. According to the spectacle, secrecy would only be a necessary exception to the rule of freely available, abundant information ... The fact is that almost no one sees secrecy in its inaccessible purity and its functional universality. Everyone accepts that there are inevitably little areas of secrecy reserved for specialists; as regards things in general, many believe they are *in on the secret* (Debord 1990: 60-1).

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Law will not see domination, power itself is secret, and even more so its violence. Most of all, the law must not see the function of the violence. Law defends its own purity in denying the violence legal status, which is to ignore that the violence does not seek legal status, as long as it is 'operationally useful'. Sovereignty has already lost to secrecy, as the practices of violence are not concerned with an accountability to public sovereignty (Parliament), but only to the 'secret sovereignty' of executive authority.

'The role of political power, on this hypothesis, is perpetually to re-inscribe this relation [of forces] through a form of unspoken warfare; to re-inscribe it in social institutions ...' (Foucault 1980: 90). When Foucault refers to unspoken warfare, this is the secret violence discussed here. Power perpetually re-inscribes itself by secret violence. Law's attitude towards secret violence, in the form of torture, can be illustrated by reference to one recent case, the conjoined appeals considered in *A v Secretary of State for the Home Department* (2005); *A v Secretary of State for the Home Department* (2006). Of many similar statements, the following three most forcefully make the point:

[T]he executive arm of the state is open to the charge that it is condoning the use of torture. So, in a sense, it is. The government is using information obtained by torture. But in cases such as these, the government cannot be expected to close its eyes to this information at the price of endangering the lives of its own citizens (Lord Nicholls of Birkenhead: [69]).

[I]t is accepted that the executive may make use of all information it acquires: both coerced statements and whatever fruits they are found to bear. Not merely, indeed, is the executive *entitled* to make use of this information; to my mind it is *bound* to do so. It has a prime responsibility to safeguard the security of the state and would be failing in its duty if it ignores whatever it may learn (Lord Brown of Eaton-Under-Heywood: [161]).

[Your Lordships' decision] on these appeals should not be seen as a significant setback to the Secretary of State's necessary efforts to combat terrorism. Rather it confirms the right of the executive to act on whatever information it may receive from around the world, while at the same time

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preserving the integrity of the judicial process and vindicating the good name of British justice (Lord Brown of Eaton-Under-Heywood: [171]).

The conclusion is clear. It is not a matter of using the law to protect the victims of torture, actual and potential, from torture. The crucial matter is to protect the law itself from being tainted by torture, so it can continue to plead ignorance of the secret violence of power, and lay claim to the terrain of values. The judges see the issue as a constitutional matter of separation of powers doctrine, whereby the executive, defending security, may make use of knowledge derived from torture, but the courts, defending legal principle, may not.

It is instead the difference between sovereignty and disciplinary power. Disciplinary power, the power perpetually re-inscribed by secret violence, is not limited by law, law being the 'value' sovereignty establishes. Law fails to achieve a purchase on the secret violence of power: but the recent case law shows that this is not merely an incidental failing of law, but a positive strategy of law. Should the violence of power become a matter of public knowledge, as in the instance of the recent concerns about torture raised by Murray, the law will re-instate, at the level of a legal fiction, if with no further efficacy, the secrecy of the violence. This legalistic 'secrecy' is not of the order of the unknown, as it is of course now known, but of the order of the questions not asked, and the evidence not admitted in court. This is not so the law can challenge the violence, but so the law can insist that it does not know about the violence. If to no one else, at least to the law the violence remains a secret. The law is concerned with defending its own purity — this is sovereign power insisting on its difference from disciplinary power. However, '... it is not through recourse to sovereignty against discipline that the effects of disciplinary power can be limited, because sovereignty and disciplinary mechanisms are two absolutely integral constituents of the general mechanism of power in our society' (Foucault 1980: 108).

The ethos of the willingness to face the perpetual challenge to one's power was a feudal, aristocratic ethos, in which Janet Raden nurtures the dreams of Rupert Sent Leger. When the power referred to becomes

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the power of the state rather than the power of the aristocracy, no such ethos can be invoked. The rule of law state can appeal only to its values, not to its power, for its power is grounded legitimately only in its values, of which the rule of law is pre-eminent. Feudal aristocracy had a claim in violence; the modern state should have none, at least in the terms of a discourse of sovereignty. It is the disciplinary power identified by Foucault which escapes this discourse, which re-inscribes the violence of the social order. When the judiciary, guardians of the rule of law ethos, acknowledge a separate sphere wherein the claim of violence is justified, where torture is a legitimate response to the challenge of terror, then this separation is complete.

The heretic, the enemy of society, will always be there, so that he can be defeated and humiliated over again. ... The espionage, the betrayals, the arrests, tortures, the executions, the disappearances will never cease. It will be a world of terror ... Always we shall have the heretic here at our mercy, screaming with pain, broken up, contemptible ... (Orwell 1954: 215).

Against this well known Orwellian nightmare, there is the other Orwell, with the hope that civilized life and intellectual decency, might yet be asserted as basic values to be deployed when challenged, against all the dreams of uncivilized violence even at the heart of our civilization. The principle Orwell again wished to proclaim, that virtue '... lies in *defending* a conception of right and wrong, and of intellectual decency, which has been responsible for all true progress for centuries past, and without which the very continuance of civilized life is by no means certain' (Orwell 1970: 192). This is the tradition in which Craig Murray has taken his place, with the closing words of his memoir: 'How have we come to this, that integrity in public life is now so rare that some consider me a hero just for exhibiting the most basic human decency?' (Murray 2007: 368).

If we do not understand the challenge as a challenge on the plane of values, to which the only response is a renewed commitment to values of decency, such as not finding ways to make use of torture, then the alternative is to understand the challenge as a challenge on the

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plane of power, to which the only response is the deployment of violence, nuanced by secrecy or openly.

As in Janet Raden's understanding, we are justifying ourselves by our willingness to face the perpetual challenge. But the fatal confusion lies in this: it is not the perpetual challenge to our values which we are rising to in a defence of our values. It is the perpetual challenge to our power which we are rising to, defended by our willingness to deploy violence in defence of our power. That this deployment of violence destroys our values is, from power's perspective, only collateral damage, in this understanding, as it is our power, not our values, which is the stake.

## References

- Bagehot W [1867] 1963 *The English Constitution* Fontana Library London
- Baudrillard J 1994 *Simulacra And Simulation* Trans S F Glaser University of Michigan Press Ann Arbor
- Buchan J [1925] 1996 *John Macnab* Wordsworth Classics Ware
- Debord G [1988] 1990 *Comments On The Society Of The Spectacle* Trans M Imrie Verso London
- Durkheim E [1893] 1972 *Selected Writings* Cambridge University Press Cambridge
- Foucault M [1976] 1980 *Power/Knowledge* Pantheon Books New York
- Greig A 1996 *The Return Of John Macnab* Headline Review London
- Hobbes T [1651] 1968 *Leviathan* Pelican Books Middlesex
- Murray C 2007 *Murder In Samarkand* Mainstream Publishing Edinburgh
- Orwell G [1949] 1954 *Nineteen Eighty-Four* Penguin Books Middlesex
- [1946] 1970 *The Collected Essays, Journalism And Letters, Volume 4 1945-1950* Penguin Books Middlesex
- Stoker B [1909] 1974 *The Lady Of The Shroud* Arrow Books London
- [1987] 1983 *Dracula* The World's Classics Oxford
- Thomson D 1980 *A Biographical Dictionary Of The Cinema* Secker & Warburg London

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**Cases**

*A v Secretary of State for the Home Department* [2005] 1 WLR 414

*A v Secretary of State for the Home Department* [2006] 2 AC 221