

The 'Law' of the Police

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The 'law' of the police really marks the point in which the state, whether from impotence or because of the immanent connections within any legal system, can no longer guarantee through the legal system the empirical ends that it desires at any price to attain.

Walter Benjamin

What matters for the reality of legal life is he who decides.

Carl Schmitt

In this essay I will try to glean the aporetic nature of policing in the critiques of law offered by Walter Benjamin and Carl Schmitt, as later commented upon directly by Jacques Derrida and Giorgio Agamben, and as it connects in a more lateral manner with Michel Foucault's writings on discipline and biopower, through a selective reading of some of their key texts. This uncanny mirror held to modern law by the impossibility of confining policing within legal boundaries is first signalled in Benjamin's exasperation at the dissolution, with the emergence of the modern police, of his carefully carved distinction between law-preserving and law-making violence. It reappears when Schmitt insists on locating his apotheosis of the decision independent of the norm on which it is ostensibly based, firmly within the confines of the juridical realm; he limits his searing analysis to the constitutional centralised sovereign authority alone and does not seek to apply it to everyday policing. Derrida and Agamben have effectively underlined these dilemmas in their readings of these two key authors of the Weimar period, but it is Foucault's lack of interest in law in his characterisation of the modern disciplinary and governmental norm that I argue provides the key to understanding modern policing and its extraordinary (non-)legal character.

In his 1921 essay "Critique of Violence" (henceforth in this essay CV), Walter Benjamin provides a critique of the use of authoritative violence¹ as a means. He begins by dwelling upon the approach that the two principal juridical schools – Natural Law and Legal Positivism – have taken to this question. Natural law ends up justifying all violence for any just ends, thus not really addressing the issue of violence as a means but only passing judgment on the justness of its ends. On the other hand, positive law is only interested in

the legality of the (violent) means that guarantees the justness of the ends. Benjamin wants to question the neat equations in both schools of thought, that just ends can be attained by justified violent means. While Benjamin finds the onus of justiciability² of violence completely elided in natural law by its sole focus on justness of ends, he takes as his point of departure the tenets of positive law and its central distinction between sanctioned violence and unsanctioned violence. Benjamin tries to explore what this Weberian “monopoly of violence” says about the nature of violence itself. Individual violence cannot be tolerated by any state – not because the state is threatened by the specific aims of such non-legal violence, but because it is threatened by the very existence of such violence. What is feared is the ability of violence to found and modify legal conditions, i.e., the inherently lawmaking character of such violence, an ability to exceed its characterisation as a mere means. His examples of the violence of the great criminal, the general strike and the war that culminates in a peace agreement point to the fact that the foundations of all law eventually draw from such law-making violence.

In addition to this *law-making* function of violence is its *law-preserving* function as instantiated in conscription, modern policing and the debate around the death penalty – all modern questions. Benjamin calls this form of legal violence a threatening violence. Contrary to common theoretical claims, this violence is not intended as a deterrent plainly because it always lacks certainty.³ As a result, this uncertain legal threat is experienced as *fate*. This ‘fated’ legal violence is a non-mediate violence that does not really fit into the justified violent means/just ends logic of legal theory. Benjamin relates it to “the fundamental undecidability of all legal problems” because it is not reason but “fate-imposed violence” and “God” that decide the justification of means and justness of ends respectively (CV, p. 294). This follows from the impossibility of generalising and applying an always inherently indeterminate legal norm in any two different situations in accordance with justice, a routine hermeneutical exercise in modern law. The experience of legal violence as fate is further exacerbated with the pragmatic principle of *ignorantia juris non excusat* (Latin, lit. ‘ignorance of the law does not excuse’).

All of these issues play out clearly with regard to the modern police, which as Benjamin points out, breaks down the distinction between the two forms of violence – law-making and law-preserving – and in which both can be found in a “spectral mixture”. The modern police have wide discretionary powers and they can intervene “for security reasons”... “where no legal situation exists” (CV, p. 287). Benjamin almost prefigures Foucault when he says that the police accompany “the citizen as a brutal encumbrance through a life regulated by ordinances, or simply supervising him” (ibid.). While the legally adjudicated “decision” determined by place and time, chronotope has a “metaphysical category” capable of a “critical evaluation”; there is no essence at all to the police institution, thus making it a “ghostly presence in the life of civilised states”.

I now move to Derrida’s reading of “Critique of Violence”, in which he demonstrates how Benjamin first proposes some key binaries for his analysis and then eventually deconstructs

them himself. Of particular relevance here is Benjamin's distinction between law-making and law-preserving violence and Derrida's discussion of his spectacular dissolution of it in the figure of policing. As Derrida claims in "Force of Law" (henceforth in this essay FL), the law-making violence, which confers upon the "great criminal" an enormous romantic as well as dangerous stature, does not arrive from outside law.⁴ In fact, it is the "mystical foundation of authority" – it is the violence that might offend justice but is always justified retrospectively by the "law to come" (FL, p. 991). Derrida asserts in his essay that "this founding or revolutionary moment of law is, in law, an instance of *non-law*.⁵ But it is also the whole history of law. This moment always takes place and never takes place in a presence. Derrida compares a successful foundational revolution to a felicitous performative speech act that produces "proper interpretative models" conferring legitimacy and meaning to the violence.

However, as opposed to Benjamin's attempt to sever this non-law at the heart of the fundamental law-making violence from the everyday practices of law-preserving violence, Derrida locates the former as always already enveloping the latter and calling for its own repetition. The origins of law constantly need to be re-established by the violence needed for the self-conservation of law. This inscription of "iterability in originality" (FL, p. 1003) makes impossible any precise difference between lawmaking and law-preserving violence, and thus contaminates any difference the two might have had. The non-law that remains at the heart of any such violence, as revealed in the death penalty, for instance, makes Benjamin find "something rotten in law" itself (*ibid.*, p. 286).

It is, however, in the modern institution of the police that Benjamin himself finds the two forms of violence most explicitly and "ignominiously" haunted by each other. For Derrida, there is in Benjamin's discussion of the police a deconstruction of "the distinction between the two kinds of violence that nevertheless structure the discourse that Benjamin calls a new critique of violence" (FL, p. 1007). In this discussion, Derrida finds a "strange exposition" of a text where a "demonstration ruins the distinctions it proposes", undone by "the paradox of iterability" that "requires the origin to repeat itself originarily, to alter itself so as to have the value of origin, that is, to conserve itself" (*ibid.*, pp. 1007-09). The police, after all, not only enforce the law but also legislate. And "by definition, the police are present or represented everywhere that there is force of law" (*ibid.*, p. 1009). The problem with the police is that theirs is "a violence without a form" (*ibid.*, p. 1011). According to Benjamin, this "spirit" of the police is less "devastating" in an absolute monarchy than in a modern democracy, because in a monarchy, with the legislative and executive powers under a unitary authority, police violence is normal and in keeping with its spirit. In a democracy the police are not supposed to have such wide powers, but enjoy them anyway through a core dissimulation. Derrida finds in this condition a correspondence with the Schmittian criticism of parliamentary democracy that is "powerless to control the police violence that substitutes itself for it" (*ibid.*, p. 1015).

Derrida's comment allows us to segue into Carl Schmitt's discussion of the legal form in his book *Political Theology* (1922; henceforth in this essay *PT*) which tries to give a

systematic legal-logical basis to his famous definition of sovereignty, "Sovereign is he who decides on the exception". The exception is normally elided and relegated to insignificance in modern jurisprudence. But for Schmitt it goes to the heart of the matter because of the nature of the legal norm.⁶ Contrary to the liberal view of his principal interlocutor, the renowned jurist Hans Kelsen, Schmitt argues that this sovereign decision regarding the exception cannot be derived entirely from the content of the norm, but always exceeds it. The decision that a real exception exists can never "be circumscribed factually and made to conform to a preformed law" (*PT*, p. 6). In actual application it always depends on who decides whether a "situation of conflict" exists, or whether other standard provisos such as "public safety," "interest of the state" or "public interest" are really threatened (*ibid.*). He defines the exception as "that which cannot be subsumed; it defies general codification, but it simultaneously reveals a specifically juristic element – the decision in absolute purity" (*ibid.*, p. 13).

For Schmitt, two distinct elements make up the juristic – norm and decision. The legal order rests on a *decision*, not on a *norm*. Schmitt concedes that in the normal situation, there is very little autonomy that the decision enjoys; when it comes to the exception, the norm is destroyed. The general norms can only be factually applied in a "normal, everyday frame of life", but it is always the sovereign authority who decides that such a normal situation actually exists (*PT*, p. 13). According to Schmitt, there remains a possible separation between the everyday law and that under emergency, and conditions such as the latter obtain only under a Constitutionally declared circumstance and not otherwise.

Schmitt's principal move is to bring the question of sovereignty right back to the heart of Constitutional debates, and challenge Kelsen's liberal attempt to construct a pure normative jurisprudence and "radically repress" the question of emergency powers under the Weimar Constitution. Drawing inspiration from Hobbes, he demolishes the fundamental liberal tenet that there has been a move in modernity from the authority of persons to the rule of law, and that the legislature is the sole source of this law. Taking on what he calls the "confusions" caused by Max Weber's classic account of the modern move from *substantive* to *formally rational* law, Schmitt analyses the legal form as proposed by Weber, for whom the formal qualities grow from codification, the professional training of lawyers, and judges being made civil servants. These respectively conferred on the legal form juridical recognition, evenness with regularity and calculability⁷ and a "rationalistic' technical refinement" (*PT*, pp. 27-28). According to Schmitt, this analysis has led some to compare the legal form to the technical form. However, the technical form is more like what is applicable to the military command, which is goal-oriented, impersonal and oriented to action, and by its very nature free from any deliberation. On the other hand, "the legal form is governed by the legal idea and by the necessity of applying legal thought to a factual situation" (*ibid.*, p. 28).

Additionally, the legal idea is not self-realising: it needs the form of positive law, and an organisation to apply the norm. This has led theorists such as Kelsen to postulate an objectivist account of the legal form by "avoiding everything personalistic and tracing the legal order back to the impersonal validity of the impersonal norm", in an attempt to efface

all traces of personality, treating them as traces of absolute monarchy (*PT*, p. 29-30). Schmitt, on the other hand, argues that the legal decision can never be made purely from the content of the legal idea or from the norm to be applied, and indeed has to be at least partially indifferent to it, because “the circumstance that requires a decision remains an independently determining moment” (*ibid.*, p. 30). This makes the specific decision *an act of poesis* in a sense, radically alienated from the content of the underlying norm.

This approximates Derrida’s suggestion: “The law is transcendent and theological, and so always to come, always promised, because it is immanent, finite and so already past” (FL, p. 993). Indeed, Schmitt even says, “Looked at normatively, *the decision emanates from nothingness*”⁸ (*ibid.*, pp. 31-32).

Hinging on this question of the presence of the normative in a legal decision, Schmitt categorises a whole school of jurisprudence in which he places himself and that he calls *Decisionist*, which follows from Hobbes and rejects “all attempts to substitute an abstractly valid order for a concrete sovereignty of the state” (*PT*, p. 33). Schmitt concludes this discussion with a radical assertion of Hobbesian ‘personalism’: “In the contrast between the subject and the content of a decision and in the proper meaning of the subject lies the problem of the juristic form” (*ibid.*, pp. 34-35).

While Schmitt posits that there “exists no norm that is applicable to chaos” (*PT*, p. 13), he simultaneously insists that the “exception is different from anarchy and chaos” (*ibid.*, p. 12) so that he can continue to argue that even in this state of exception, “order in the juristic sense still prevails even if it is not of the ordinary kind” (*ibid.*). He decries any move to relegate the question regarding the decision to “sociology”, and instead retains the norm alone within jurisprudence, because for him the “pure” decision continues to be juristic even if it has nothing to do with the norm. Indeed, he has to do so because it only “remains a juristic problem as long as the exception is distinguishable from a juristic chaos, from any kind of anarchy” (*PT*, p. 14). He therefore goes to great lengths to keep this pure decision somehow within the domain of the legal, and does not allow it to enter the realm which for Derrida was “non-law”, and for Benjamin was far enough from law, that it could only be called law within quotation marks (as in this essay’s first epigraph).

In his book *State of Exception* (2005), much of which takes its inspiration from the texts discussed above, especially *Political Theology*, Giorgio Agamben presents a schematic account of the use of emergency provisions in the Constitutions of the principal North Atlantic powers, in contexts ranging from the French Revolution to the Iraq War, and convincingly shows how endemic and closely related these states of exception have been to the naked assertions of sovereignty in modern times. His is a contemporary reiteration of Schmitt’s challenge to Constitutional law and its attempts to “repress sovereignty”. My interest here is to examine how the insights about the indeterminacy of the legal form, which bear so closely on these constitutional debates about modern sovereignty, apply as much to the everyday experience of policing. An explicit connection along these lines is made by Agamben in an earlier essay where, based on Benjamin’s “Critique of Violence”, he argues that “the

rationales of 'public order' and 'security' on which the police have to decide on a case-by-case basis define an area of indistinction between violence and right that is exactly symmetrical to that of sovereignty"⁹. One can now see how closely related the questions of policing and sovereignty are – for instance, with regard to the key concept of necessity that Agamben provides a history of, and that he posits as the basis of the state of exception; going by the Latin adage *necessitas legem non habet* (necessity has no law), which could either mean "necessity does not recognise any law", or "necessity creates its own law".

The Constitutional conundrum this causes is thus effectively summarised by Agamben: "[...] the *status necessitates* appears as an ambiguous and uncertain zone in which *de facto* proceedings, which are in themselves extra- or anti-judicial, pass over into law, and juridical norms blur into mere fact – that is, a threshold where fact and law seem to become undecidable" (*Means without End*, henceforth in this essay *ME*, p. 29). Agamben critically analyses the telos of legality that Schmitt manages to find even in this indeterminate void zone.

Agamben compares Schmitt's separation of the legal norm and the decision in law to the Saussurean division between *langue* and *parole* in the domain of theoretical linguistics.¹⁰ The norm, like *langue*, exists but can only be manifested in a decision or *parole*. Just as actual linguistic activity is made understandable by assuming that something structural on the lines of a language exists, the norm can continue to be the reference point for a decision even when it is departed from (*ME*, pp. 36-37).

However, this question of applying a norm to a concrete situation is not an example of deriving a particular instance that is already contained in a given general rule. In other words, just like the passage from *langue* to *parole*, it is not a logical operation but a practical activity. It involves "the passage from a generic proposition endowed with a merely virtual reference to a concrete reference to a segment of reality" (*ME*, p. 39). The question of the actual relation between the legal norm and its application is analogous to that between language and the world, because in both instances, "there is no internal nexus that allows one to be derived immediately from the other" (*ibid.*, p. 40). Agamben here compares Benveniste's enunciative function¹¹ that involves the assumption and implementation of *langue* by speaking subjects, with Schmitt's 'Decisionism' theorisation with its programmatic declaration: "What matters for the reality of legal life is he who decides". What emerges for Agamben, therefore, is "a pure violence without logos", because it is impossible to weld norm and reality together except by presupposing their nexus, and thus constituting a normal sphere, as the very application of a norm *creates* an exception (*ibid.*). Schmitt, however, still could not accept the state of exception completely fusing its frontier with the rule. Agamben finds all theorising that attempts to place the state of exception within law, including Schmitt's indirect attempt to do so, fallacious because the 'state of exception' has no law, but is a space *without law* – a consequence of the force of law being placed under the Derridean erasure.

We have seen how Schmitt dodges the radical implications of his own argument by insisting on locating this anomic violence within the juridical realm – indeed, maintaining that

it is included within law by its very exclusion. He is unable to deal with the complete breakdown of difference between the rule and the exception. And that is precisely what Benjamin does in his challenge to all theorising of the state of exception in his justly famous lines: "The tradition of the oppressed teaches us that the 'state of emergency' in which we live is not the exception but the rule. We must attain to a conception of history that is in keeping with this insight"¹². Benjamin thus unmasks any attempt to give juridical form to the anomie violence of the state of exception. All that remains is pure violence without any relation to law. And policing is its archetypal form.

Michel Foucault's theories about the formation of the juridical subject appear to come closest to Benjamin's crucial insight. In his Collège de France lectures of 1976, Foucault recognises the co-existence of sovereignty and discipline in modern power, but constantly de-emphasises the role of the great state legislations, focusing instead on micro-agents, such as the police. As stated in his famous exposition of modern biopower in the last chapter of *The History of Sexuality: Volume 1*: "We have entered a phase of juridical regression in comparison with the pre-seventeenth-century societies we are acquainted with; we should not be deceived by all the Constitutions framed throughout the world since the French Revolution, the codes written and revised, a whole continual and clamorous legislative activity: these were the forms that made an essentially normalising power acceptable" (p. 144). This is exactly the first methodological move he clarifies in his 1976 Collège de France lectures (*Society Must Be Defended*, henceforth in this essay *SMBD*) of placing less emphasis on the sole central institution of power with its basis in either monarchical or democratic sovereignty. His focus is more on the "extremities" of power as embodied in local, regional and material forms and institutions, "especially at the points where this power transgresses the rules of right that organise and delineate it" (*SMBD*, p. 27), and where "its exercise becomes less and less juridical" (*ibid.*, p. 28). An example of such a study can be found in Foucault's *Discipline and Punish*, (henceforth in this essay *DP*), where he claims that the powers of the prison warder have from the beginning allowed him an "arbitrariness" in administering a penalty. Practices such as the excessive or "useless" acts of violence perpetrated by the warder are implicitly anticipated and made possible by his acknowledged right to act as the "sovereign in the prison" (*DP*, pp. 246-48). While the penalty itself continues to be based on a juridical decision, it is the prison warder who enjoys an absolute autonomy in modulating, individualising and administering this punishment.

Foucault discusses how the emergence of the disciplinary power in modernity should have logically led to the disappearance of the juridical edifice of sovereignty, being radically heterogeneous. However this does not happen – in fact, sovereignty gets a renewed status as an "ideology of right" with the passage of the great juridical codes in 19th-century Europe, after the Napoleonic Codes. Foucault asserts that these Codes helped to "superimpose on the mechanism of discipline a system of right that concealed its mechanisms and erased the element of domination and the techniques of domination involved in discipline" (*SMBD*, p. 37). While these Codes enabled a democratisation of sovereignty, it was severely undermined by disciplinary mechanisms. These two modalities

of power continued to co-exist, although always in tension with each other because “the discourse of discipline is alien to that of the law; it is alien to the discourse that makes rules a product of the will of the Sovereign”; and because discipline goes by the “code of normalisation” produced by the human sciences and not by the code of law (ibid., p. 38).

Besides, the techniques of discipline have invaded and found place in law. A concrete instance of this kind of change could be found in the process by which the concept of the “Dangerous Individual” becomes central to penology.¹³ Foucault analyses the fundamental move from *Homo Penalis* to *Homo Criminalis* – i.e., from the Beccarian or Benthamite model of legal sanction based on what one has *done*, to the criminological idea of “Social Defence” based on what one *is* – but emphasises how throughout this process, the codes are not explicitly changed. Indeed, Foucault concludes that a new kind of “law” emerged with the carceral institutions of disciplinary power: the *norm* that is “a mixture of legality and nature” (*DP*, p. 304). This norm, he later affirmed in his Collège de France lectures, actually circulates and intersects through both discipline and biopower, acting on their respective axes – the individual body and the population as a whole (*SMBD*, pp. 252-53).

For such a modern normalising power to exercise the old sovereign right to kill, it had to become racist (*SMBD*, p. 256). The *ur*-case of such a racist power examined by Foucault is the Nazi regime. While the Nazi state exercised rigorous disciplinary power and biological controls over life, it also gave the power to kill to a very large body of individuals from a plethora of security apparatus. In fact, according to Agamben, the entire ‘Final Solution’ “was conceived from the beginning to the end exclusively as a police operation. It is well known that not a single document has ever been found that recognises the genocide as a decision made by a sovereign organ”, except for one “that gathered middle-level and lower-level police officers”, and included Adolf Eichmann.¹⁴

I began this essay with Benjamin’s discussion of the “*law*” of the police. I will end with Foucault’s reflections (*DP*, p. 283) on the archetypal figure of Vidocq, the ex-criminal and informer who rose up to be the mythical chief of police in early 19th-century France, and who is credited to have introduced ballistics and record-keeping to policing: “A figure had haunted earlier times, that of the monstrous king, the source of all justice and yet besmirched with crime; another fear now appeared, that of some dark, secret understanding between those who enforced the law and those who violated it. The Shakespearian age when sovereignty confronted abomination in a single character had gone; the everyday melodrama of police and of the complicities that crime formed with power was soon to begin”.

Notes

1. The German term used by Benjamin, *Gewalt*, has been translated simply as “Violence”, but it also signifies

legitimate power or justified authority.

2. As signalled by Benjamin in the famous first line of this essay: "The task of a critique of violence can be summarised as that of expounding its relation to law and justice".
3. For a recent anthropological treatment of the "uncertainty of legal rules", see essays by Veena Das and Talal Asad in (eds.) Veena Das and Deborah Poole, *Anthropology in the Margins of the State* (School of American Research Press, 2004). Asad points out that the acts of a state functionary routinely require abstracting from one context and applying it to another – a decision that "is always, in a sense, uncertain" (p. 283). As he explains, the everyday form it takes is the series of questions that a bureaucrat asks: "whether a particular rule applies to a particular case, and if so, how should it be applied to practice? Does the rule conflict with other rules, and if so, how can they be reconciled? Where does the authority of laws lie?" (p. 287). Asad gives an unambiguous answer: that the authority always lies beyond the written rules. This alien authority, and not the written rules, would therefore, for him, be the law of the state.
4. "That which threatens law already belongs to it... to the origin of law" (p. 989).
5. Italics mine.
6. Schmitt here echoes Søren Kierkegaard's argument from *Repetition*: "The exception explains the general and itself. And if one wants to study the general correctly, one only needs to look around for a true exception. It reveals everything more clearly than does the general" (p. 15).
7. As summed up by Pierre Bourdieu: "The predictability and calculability that Weber imputed to 'rational law' doubtless arise more than anything else from the consistency and homogeneity of the *legal habitus*". See "The Force of Law: Toward a Sociology of the Juridical Field", *Hastings Law Review*, p. 833 (July 1987).
8. Italics mine.
9. Giorgio Agamben. "Sovereign Police". In *Means without End*, p. 103. He also notes an "embarrassing contiguity between sovereignty and police function" as "expressed in the intangible sacredness that, according to the ancient codes, the figure of the sovereign and the figure of the executioner have in common" (p. 104).
10. See Ferdinand de Saussure, *Course in General Linguistics* (McGraw Hill, 1959, New York). In French linguist Ferdinand de Saussure's methodology, *langue* denotes the abstract systematic principles of a language, without which no meaningful utterance (*parole*) would be possible. *Langue* represents the "work of a collective intelligence", which is both internal to each individual and each collective, in so far as it is beyond the will of any individual to change. *Parole*, on the other hand, designates individual acts, statements and utterances, events of language use manifesting each time as a speaker's ephemeral individual will through his combination of concepts and his "phonation" – the formal aspects of the utterance. The study of *parole* would be entirely focused on individual utterances, using all the available resources of formal and empirical study to analyse actual statements, usually within a specific language. The study of *langue* would be focused instead on generally applicable conditions of possibility. There would be no coherent and meaningful utterance without the institution of norms that Saussure calls *langue*.
See <http://www.litencyc.com/php/stopics.php?rec=true&UID=662>
11. See Emile Benveniste, *Problems in General Linguistics* (University of Miami Press, 1973, Miami). The French linguist Emile Benveniste emphasises the need to make a distinction between what he calls the subject of the *énoncé* and subject of the *énonciation*. He focuses on the role and implications of the ubiquitous first person pronoun (and its reciprocal second person), used at least implicitly in every language known to humans. In his essay "On the Nature of Pronouns" he notes that the first person, "I",

operates in a way quite unlike other pronouns because it is essentially linked to the *exercise* of language. The sign *I* links Saussure's two dimensions of language, the collective intelligence of *langue* and the ephemeral individual acts of *parole*: "[...] it is this property that establishes the basis for individual discourse, in which each speaker takes over all the resources of language for his own behalf". *I* and *you* are instances of signs empty of meaning, lacking even the possibility of material reference. These signs "do not assert anything; they are not subject to the condition of truth, and escape all denial". For Benveniste, "Consciousness of self is only possible if it is experienced by contrast... I use *I* only when I am speaking to someone who will be a *you* in my address. It is this condition of dialogue that is constitutive of *person*, for it implies that reciprocally *I* becomes *you* in the address of the one who in his turn designates himself as *I*".

See <http://courses.nus.edu.sg/course/elljwp/enunciation.htm>

12. Walter Benjamin. "Theses on the Philosophy of History". In *Illuminations*, p. 257.
13. Michel Foucault. "About the Concept of the 'Dangerous Individual' in Nineteenth-Century Legal Psychiatry". In (ed.) James Faubion, *Power: Essential Works of Foucault 1954-1984, Vol. 3*, pp. 176-200. See also Pasquale Pasquino, "Criminology: the Birth of a Special Knowledge", in (eds.) Burchell Graham, Colin Gordon and Peter Miller, *The Foucault Effect*, pp. 235-50.
14. Giorgio Agamben, op. cit., p. 105.

References

- Agamben, Giorgio. *Means without End* (Minnesota University Press, 2000, Minneapolis).
- . *State of Exception* (University of Chicago Press, 2005, Chicago).
- Benjamin, Walter. "Theses on the Philosophy of History". In *Illuminations*, trans. Harry Zohn; edited/Introduction by Hannah Arendt (New York: Schocken Books, 1968), pp. 253-64.
- . "Critique of Violence". In *Reflections* (Schocken Books, 1978, New York), pp. 277-300.
- Bourdieu, Pierre. "The Force of Law: Toward a Sociology of the Juridical Field". In *Hastings Law Review*, pp. 814-53 (July 1987).
- Derrida, Jacques. "Force of Law: The Mystical Foundation of Authority". In *Cardozo Law Review* 11, pp. 921-1045 (1990).
- Foucault, Michel. *Discipline and Punish* (Vintage Books, 1977, New York).
- . *The History of Sexuality: Volume I* (Penguin Books, 1978, New York).
- . *Society Must Be Defended*. Lectures at the Collège de France, 1975-1976 (Picador USA, 2003).
- . "About the Concept of the 'Dangerous Individual' in Nineteenth-Century Legal Psychiatry". In *Power: Essential Works of Foucault 1954-1984, Vol. 3* (New Press/Penguin, 2000, New York).
- Pasquino, Pasquale. "Criminology: The Birth of a Special Knowledge". In (eds.) Burchell, Graham, Colin Gordon and Peter Miller, *The Foucault Effect: Studies in Governmentality, with Two Lectures by and an Interview with Michel Foucault* (University of Chicago Press, 1991, Chicago), pp. 235-50.
- Schmitt, Carl [1922]. *Political Theology* (MIT Press, 1985, Cambridge).