

THE
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FALL 2015

POLITICAL SUBLIME
AND THE DAEMONOLOGICAL ORIGIN OF MODERNITY.
*SAYING ADIEU TO POLITICAL THEOLOGY
AND ITS MODERN EPIGONES*

Pier Giuseppe Monateri

VISIONI A 'OCCHI CHIUSI':
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EMOZIONI E SENSO DI REALTÀ

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ABITARE IL NOMOS:
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Review of:

*Frankenberg, G., **Political Technology and the Erosion of the Rule of Law. Normalizing the State of Exception**, Cheltenham: Edward Elgar, 2014, pp. 320.*

Looking at “the Law” as a social and widespread phenomenon, we might surely emphasize its cultural heritage, philosophical substance and even theological origin. On the other side, observing it as a simple product of man’s will, that is, a device released by any consideration about basic moral concerns, then the Law itself will soon appear in its dark and disturbing side. This is not simply a semantic trouble affecting magniloquent words. The same ‘Janus-effect’ marks many other political terms that are frequently employed to describe ‘good’ practices of government as totally informed to democracy and peace. “Security”, “legality” and “public policy”, for example, are notions that show the ambivalent face of political practices linked not necessarily to a request of justice. Every expression used in a specific political context, indeed, endures a conceptual amphibology that leads in turn to paradoxical results and logical overturns. This aspect is even enhanced nowadays, if we consider the increasing terrorism alarm that fosters the principal headlines, in this sense stimulating a change of conception about law from ‘the guardian of personal liberties’ to ‘the law of fear’.

The last book written by the distinguished Prof. Günter Frankenberg and recently published by Edward Elgar hits the reader’s attention properly on this simple but decisive fact. The research starts with a series of pivotal questions, which are at the same time the core of the overall analysis: How it happened that brutal practices like torture, massive surveillance and general violations of human rights turned out to be the secret allies of rule-of-law and democracy? How ‘pure violence’ became the twin brother of security? And, finally, how ‘state of exception’ and emergencies measures succeeded to drastically dismantle the civilized framework of consolidated democracies? The first insight that Prof. Frankenberg provides is that not every concept we usually conceive as inherently ‘good’ retains its goodness.

Quite the opposite, political notions are captured within an unresolvable ambivalence that reflects in our days all its cruelty. In fact, ‘political technology’ – a term which refers to the exercise of political power – has progressively become a mindset of everyday use, based fictitiously upon the claim of neutrality of expertise knowledge. But democratic regimes “*equip the rationale of political technology with its respective meaning and direction in two areas of conflict: the legal prevention of abuse and the prevention of dangers under emergency law*” (p. 4). In this vein, Frankenberg argues, law-rule and state of exception become twin brothers just in order to achieve stability and preservation of political unity. Legal technology – dismantled by any democratic consensus – is “*directly intervening in the social sphere and economy or regulating individual behavior*” (p. 8) concurring to create an ensemble of Orwellian measures under the pretext of safety and security. Only through this path, Frankenberg says, is conceivable that our societies – usually believed inhabited by civilized powers and law constraints – reveal suddenly the reign of terror. By dint of emergency, the security paternalism (already diagnosed by Foucault) concurs to *normalize* exceptional circumstances: “[n]ormalization means that the instruments and ideology of emergency law are step by step wrapped in a cloak of regular normativity, are perpetuated and become part of everyday life through their juridification, their emergence as *topoi* under emergency law as well as their inclusion in the doctrines of regular law. In short: the exception is integrated into the norm” (p. 27). This scenario might recall the Hobbesian model: the State was conceived as a peace machine, empowered by a network of reciprocal contracts, with the central political goals of protection of life and reassurance of peaceful existence. The sovereign (*Leviathan*) detained both the ‘sword of war’ and that of ‘justice’, diminishing personal liberties but granting security and stability. Anyway, the actual situation is even worse: “*political technicians’ operations follow the logic of the undeclared state of exception and the assumption that threats emerge primarily out of the middle society, emanating not only from ‘sleepers’, ‘dangerous elements’ and other incarnation of ‘evil’ but also from those who do not deviate from what is considered normal behavior. Therefore, society has to be kept under constant monitoring, screening and surveillance.*” (p. 29). A brief consideration might clarify this passage: law is not ‘good’ or ‘evil’ *per se*. In the ‘state of exception’ law is conceived as a pure instrument – in Greek, a *techne* – employable in the most various conditions in order to achieve the desired effects. Notoriously, Marx called this phenomenon as the

conditioning practice of capitalistic forces over the legal forms, which were conceived as ‘superstructures’, that is, entities passively shaped by conflicts of interest. In the contemporary political situation, law turns out to be a particular measure, oriented to an exceptional situation, which is discretely but incisively integrating into the texture of law-rule. In other words, law detains its terrible majesty not because detached by violence, quite because is its *product*. A product, it needs to say, able to transform its substance in a new form of *effectiveness* capable of digging from the inside the constitutional framework of a nation. As prominent thinkers like Schmitt, Benjamin and ultimately Agamben have explained, the legal measures that pretend to exclude absolute force and violence from political actions rather *absorb* them. Then, in the political condition known as ‘state of exception’ law exhibits all his strength, remaining nevertheless ‘legal’ in its shape. As Frankenberg brilliantly notes, ‘state of exception’ has just been ‘reinvented’. Under the aegis of ‘protected democracy’ what is occurring is the radical destruction of every form of justice: “[u]nder the umbrella of a broadly defined protection of legal interests, state responsibilities increase in number and are reinterpreted. They now include the production of security in general. Accordingly, the apparatus of the security agencies and the military, with the help of pre-emptive strategies and measures, expands in accordance with the effective prevention risk. In turn, civil liberties are restricted, sometimes with the approval of the courts: yet in cases of extreme interventions, they distance themselves from the claim of powers and the hunger for data of the security bodies” (p. 95). The great merit of Frankenberg’s account, then, is to bring a renewed attention about the progressive erosion of rule-of-law and of essential human rights: spied communications, political extremisms, mass surveillance, detention without minimal due process – not to mention torture – have become dramatically the horrible mirror in which modern societies are looking.

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