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The Power of Thought

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This special issue emerged from a one-day symposium held on the work of Giorgio Agamben at the School of Law, Birkbeck, in July 2007 titled 'Between Language and History: on the work of Giorgio Agamben'. The impetus behind that gathering, as with this publication, was the narrowness of the secondary criticism that had emerged on the work of Agamben in the Anglo-American academy in particular. The reception, in its haste to draw Agamben into narrow disciplinary fields such as political philosophy, law or Holocaust studies, at best denied the philosophical manner and range of his thought, at worst comprehensively misread it. Agamben has described his own critical approach to philosophy as a 'mosaic', having 'no specificity, no proper territory, it is within literature, within art or science or theology or whatever, it is this element which contains a capability to be developed' (Agamben 2002).

Any engagement with Agamben's thought needs to take seriously the potentiality of thought, searching beyond the staid articulations of 'law' or any other area. The articles gathered here share as their interest the study of law, but that is hardly in a narrow disciplinary sense. If 'law' is indeed understood as a system of decision-making that draws a line between what is of juridical relevance and what is not, the juridical and the non-juridical, it grounds on this distinction its systematic contour and its internal rationality (and the study of the latter is crucial). Yet legal theory, and more generally thought, cannot and should not remain within the enclosure of the internal rationality of law. That would simply be a bad idea. Thinking about the law more generally or legal theory in particular has as its object possibility (potentiality). Between the traditional and important questions of 'what is law?' and

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what 'should be the law?' lies the question 'what *can* the law be?' It is this latter question that forms the ground of thinking the law, where thinking searches for 'escape routes', 'potentialities', 'ways of being' and so forth (see Schütz 2000). If thought is not to be narrowed down into one discipline or into the normative or merely positive questions of the legal system, then thought can be reconceived as the experience, for it is an empiricism, of potentiality or power against the perpetual temptation in Western thinking to confine itself within 'law' or 'politics' as well as the equally frequent temptation to posit itself as a law as such.

Law and thought, and philosophical thought in particular, share a long history of mutual irritation as well as attempts to fuse the two into one. In the latter case, law is often portrayed, explicitly or implicitly, as 'more than law', as 'wisdom' or social knowledge and normativity, while 'philosophical thought' is frequently portrayed as entailing a normative content or a juridico-political 'responsibility'. Instead, it is argued here that law and thought can and must maintain themselves separately and avoid fusion and, above all, it is suggested that apart from showing the exposition of each other's manoeuvres, any attempt to turn law into a responsibility or knowledge-centre at large or equally any attempt to turn philosophical thought into a trans-legal, trans-regional domain, are misplaced.

One of the key problems in legal theories of late modernity, but also much earlier, is the juridification of thought as such. In such juridification the model of thought becomes judgement and a legal understanding of responsibility. Instead, with Agamben's work in mind, thought and life, more generally, are to be understood as distinct from the law's realm of triumphant self-consecration. The fact that Agamben does not juridify thought, reducing it to judgement about this or that, a weighing of pros and cons, a problem-solving technique, is the main reason why the, by now, increasingly juridified legal and non-legal theorists, cannot appreciate the gesture of his work without feeling threatened conceptually and perhaps, let us say it, professionally also.

Agamben's work ultimately forces us to observe law-making within a larger apparatus of a state of exception that has become the rule, permanently, and that attempts to regulate legal decision-making, politics, economics and social life in general. Agamben's recent work exposes a network of neo-governmentality acting 'in the name' of constant crises and survival, which seeks to control our ways of being and which is grounded in the institutional integration of life as such. Ultimately it is this attempt to rethink the law in relation to being, that is, to think law (also) as an ontological problem that forces Western liberal distinctions and criteria of responsibility into question, which gives Agamben's thought its efficacy in a world where, for example, legal rights are consistently eroded in the name of those very rights.

The method of 'philosophical archaeology' he outlines in his contribution to this volume is demonstrative of an attempt to engage thought for the present, to take a contemporary problematic—let us say spurious accusations of terrorism—and to see them not as a new, knee-jerk response to global politics, but as a symptom of a juridico-political system that is based upon forms of 'exclusive inclusion'. That is, a system that is based not simply on a distinction between those included and those excluded (who can then demand to be included), but more crucially on the production of waste, dehumanised beings that are reduced to survival or that are

killed as biopolitical, crises-managing, collateral casualties. Hence the focus of Agamben's work is with what is left behind social and legal care-taking, crises-managing procedures, the evidence of which can be located both in discourse as well as in action. Political, economic and legal artifact-relationships, in this manner of understanding, condition a particular mode of existence as waste. Hence, as Anton Schütz has argued, the point at which the parallels of diverging rationalities in charge of conduct and meaning intersect is 'located in the experience of historically manufactured versions, side-version, diminutions, of human life' (Schütz 2000, pp. 120–121).

This archaeological method is a consistent feature of Agamben's thought. From early works such as *Language and Death*, Agamben has sought to explore foundational tensions in Western thought. Since the 1970s Agamben has preoccupied himself with such closure of thought in terms of so-called foundational paradoxes that define being and action only negatively and which regulate power as 'fruit to pick'. Yet this has never been a process of dull historicism, instead it has always been an attempt to encounter the structures of 'our situation' through the past in order to demonstrate their ultimate contradictions and 'inoperativity'. The structural inoperativity of these formations plays itself out in the contemporary in ways which should never be seen as 'new' or 'unprecedented' but as indicative of social, legal and political forms that have been emptied out of any value through their inherent contradiction. This diagnosis, the declaration that 'politics has entered a lasting eclipse' has been misread by those who see themselves, whether knowingly or not, as apologists for liberal democracy, as a form of nihilism. Yet if Agamben's own thought is read correctly it appears as nothing less than a joyous attempt to profane the inane spectacular nature of our own culture.

The spectacularisation of 'our' culture and social life, as well as of our legal and political subjectivities, has resulted in everything taking the form of a representation. *Praxis* or action is reduced, in this sense, to a world separable from our everyday lives and in this world, whose liturgy is performed by the mass media, neo-governmental *oikonomia*, operative in politics and law as much as in the modern economy, render neo-governmentality as an absolute and irresponsible sovereign power governing the social or life more generally, as if from an invisible thread, compromising every thing with everything else. The continuing references to the sacrality of human life, the so-called trans-regional universality of human rights and so forth, are mere confirmations of the spectacularisation of legal and political categories as such. Jurists and political theorists tend to find hope in the so-called transcendence of the humanity implied in human rights, while for us things are less hopeful in this manner. What fills us with hope is the extent of how devastating our current situation is.

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