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Sovereign Police

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One of the least ambiguous lessons learned from the Gulf War is that the concept of sovereignty has been finally introduced into the figure of the police. The nonchalance with which the exercise of a particularly devastating *ius belli* was disguised here as a mere "police operation" cannot be considered to be a cynical mystification (as it was indeed considered by some rightly indignant critics). The most spectacular characteristic of this war, perhaps, was that the reasons presented to justify it cannot be put aside as ideological superstructures used to conceal a hidden plan. On the contrary, ideology has in the meantime penetrated so deeply into reality that the declared reasons have to be taken in a rigorously literal sense — particularly those concerning the idea of a new world order. This does not mean, however, that the Gulf War constituted a healthy limitation of state sovereignties because they were forced to serve as policemen for a supranational organism (which is what apologists and extemporaneous jurists tried, in bad faith, to prove).

The point is that the police — contrary to public opinion — are not merely an administrative function of law enforcement; rather, the police are perhaps the place where the proximity and the almost constitutive exchange between violence and right that char-

acterizes the figure of the sovereign is shown more nakedly and clearly than anywhere else. According to the ancient Roman custom, nobody could for any reason come between the consul, who was endowed with imperium, and the lictor closest to him, who carried the sacrificial axe (which was used to perform capital punishment). This contiguity is not coincidental. If the sovereign, in fact, is the one who marks the point of indistinction between violence and right by proclaiming the state of exception and suspending the validity of the law, the police are always operating within a similar state of exception. 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. Benjamin rightly noted that: "The assertion that the ends of police violence are always identical or even connected to those of general law is entirely untrue. Rather, the "law" of the police really marks the point at 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."

Hence the display of weapons that characterizes the police in all eras. What is important here is not so much the threat to those who infringe on the right, but rather the display of that sovereign violence to which the bodily proximity between consul and lictor was witness. The display, in fact, happens in the most peaceful of public places and, in particular, during official ceremonies.

This embarrassing contiguity between sovereignty and police function is 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. This contiguity has never been so self-evident as it was on the occasion of a fortuitous encounter that took place on July 14, 1418: as we are told by a chronicler, the Duke of Burgundy had just entered Paris as a conqueror at the head of his troops when, on the street, he came across the executioner Coqueluche, who had been working very hard for him during those

days. According to the story, the executioner, who was covered in blood, approached the sovereign and, while reaching for his hand, shouted: "Mon beau frere!"

The entrance of the concept of sovereignty in the figure of the police, therefore, is not at all reassuring. This is proven by a fact that still surprises historians of the Third Reich, namely, that the extermination of the Jews 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 recognizes the genocide as a decision made by a sovereign organ: the only document we have, in this regard, is the record of a conference that was held on January 20, 1942, at the Grosser Wannsee, and that gathered middle-level and lower-level police officers. Among them, only the name of Adolf Eichmann — head of division B-4 of the Fourth Section of the Gestapo — is noticeable. The extermination of the Jews could be so methodical and deadly only because it was conceived and carried out as a police operation; but, conversely, it is precisely because the genocide was a "police operation" that today it appears, in the eyes of civilized humanity, all the more barbaric and ignominious.

Furthermore, the investiture of the sovereign as policeman has another corollary: it makes it necessary to criminalize the adversary. Schmitt has shown how, according to European public law, the principle *par in parem non habet iurisdictionem* eliminated the possibility that sovereigns of enemy states could be judged as criminals. The declaration of war did not use to imply the suspension of either this principle or the conventions that guaranteed that a war against an enemy who was granted equal dignity would take place according to precise regulations (one of which was the sharp distinction between the army and the civilian population). What we have witnessed with our own eyes from the end of World War I onward is instead a process by which the enemy is first of all excluded from civil humanity and branded as a criminal; only in a second moment does it become possible and licit to eliminate the enemy by a "police operation." Such an operation is not obliged

to respect any juridical rule and can thus make no distinctions between the civilian population and soldiers, as well as between the people and their criminal sovereign, thereby returning to the most archaic conditions of belligerence.

Sovereignty's gradual slide toward the darkest areas of police law, however, has at least one positive aspect that is worthy of mention here. What the heads of state, who rushed to criminalize the enemy with such zeal, have not yet realized is that this criminalization can at any moment be turned against them. There is no head of state on Earth today who, in this sense, is not virtually a criminal. Today, those who should happen to wear the sad redingote of sovereignty know that they may be treated as criminals one day by their colleagues. And certainly we will not be the ones to pity them. The sovereigns who willingly agreed to present themselves as cops or executioners, in fact, now show in the end their original proximity to the criminal.