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PANEL 11 – TRANS-IMPERIAL CIRCULATION OF MODERN POLITICS

ORGANISER: François Godicheau, University of Toulouse (France)

## WORKING PAPER N.º 7

### ***PUBLIC ORDER AS AN ANTI-POLITICAL DIMENSION (18th-19th CENTURIES)***<sup>1</sup>

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#### **Abstract:**

Public order, as a notion, is not yet a history object. It's more something like dead corner of historical research. Part of my interest for it is that it's studying unifies the 2 periods (early and modern history) but not from the supposed result of all of it, the so called liberal state, but starting from the necessity for the governments to be obeyed or to obtain obedience. It's like if, behind the front scene of the story of liberties, behind the reality of normal life, of normal rules, of normal times, stand another dimension, the Public order dimension, you can step in using the back door of the legal system. This dimension connects the extraordinary circumstances of the survival of the whole society, the sacred defense of the common identity or values, to the day-to-day defense of the social order and the day-to-day efficiency of the obedience system. The name of this dimension is Public order.

The proposal starts with the french revolution debates, where Public order is referred as an absolutist notion. Actually, it had been forged by the work of Jean Domat at the end of the 17<sup>th</sup> century and used in several types of circumstances. It served as an affirmation of the natural verticality of power. The travel of this notion to the Spanish monarchy started with very special circumstances and with a very special man who recognize in the Public order what he called “the fundamental constitution of the monarchy”, after the 1766 and the 1772 riots.

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<sup>1</sup> Editors' note: Working papers from the V CHAM International Conference are preliminary research drafts intended to stimulate discussion and critical comment. They are not peer-reviewed. Authors are responsible for the accuracy of the contents and for any errors. Conclusions should also be considered provisional. Comments and suggestions are welcome and should be directed to the authors.

So, when the revolutions of the end of the century repeated and worsened the polemicisation that opened worldwide politics to the appropriation of all men, from freeborn to slaves, it seems that the theory of people's will, sovereignty of the nation and legal system built on it were contrary to the absolutist notion of Public Order. Nevertheless, the Public Order has survived and, actually did more than just survive: it has apparently become a kind of spinal cord of the liberal state.

## **Keywords**

Public Order – Politics – Revolution – Administrative Power – French Monarchy – Bourbon Spain – Absolutism – Police

## *Introduction*

Today, we are brought together by the idea of crossing the borders between empires in order to better address a fundamental chronological step in the configuration of our relationship with the political. We are also concerned, as we pointed out in the invitation to the panel, to take advantage of the contributions of various historical perspectives, in particular the cultural history of law, to forge operational categories for a history not only contrary to state and national teleologies, but also capable of analysing social configurations in the dynamic manner required by the agitated times that interest us.

In this perspective, my proposal to work on public order by submitting this reflection to debate stems from the desire to have an observation post for political and governmental institutions that allows us to attend both to the evolution of conceptual frameworks and to the processes of political equipment of territories (Barriera 2019, 218-219). The reflection will begin with a characterisation of the notion of public order as it was affirmed during the 18th century, using its circulation as a means of revealing its main features. Then, I will examine how this notion was affected by the explosion of the political voluntarism of the French Revolution and underwent a highly functional recomposition for times of unlimited polemicisation (cf. text by Pablo Sánchez León). In this way, I will try to show the interest of this vantage point to address the relations between institutions, polemicisation/politicisation and social order in the historical scenario that interests us and where dichotomies such as traditional/liberal, private/public or society/state are not very operative.

## *Methodological Prolegomena on the Notion of Public Order*

Before I begin, I would like to make a short, general, reflective exercise on the interest that this object of research represents for me. The notion of public order has not, to date, been constituted as an object of history. It is a very uncomfortable notion. It seems to be located in a dead corner of historical research, which means most of the time that it is invisible as a historical problem, its naturalisation, although there is no lack of research that includes the expression in its title, present as a false evidence.<sup>2</sup> It interests me perhaps partly because of its inadequacy with respect to several of our traditional ways of conceiving historical objects.

First, its deployment as a political resource - and its very naturalisation by the historical agents who use the expression - took place between the late seventeenth and mid-nineteenth centuries, straddling a chronological boundary that supposedly separates two 'regimes' of the political; two such distinct 'regimes' - and there is no doubt that they are - and in which it nevertheless seems to occupy an important, if not central, place. In this respect, it challenges our mental schemes about periodisations. The notion has been described as a "transmission belt" between the "Ancien Régime" and "liberal modernity", a metaphor that finally illustrates the extent to which our conception of the rupture/continuity binomial depends on the categories forged by the actors themselves: we think of continuity on the basis of a conception of rupture coined precisely to signify a historical frontier (Martín-Retortillo 1983). The proposal developed here contemplates public order as a dimension, a parallel and yet present dimension, in the classic sense of the sixth dimension of the *Twilight Zone*, recently rejuvenated by the *Stranger Things* series.<sup>3</sup>

Secondly, the very evolving or unstable nature of its semantic content is problematic, not only because it is central to two very different systems and at the same time a "transmission belt". The jurists who have reflected on the subject agree in fact in saying that "no one has ever been able to define its meaning, everyone underlines its obscurity and everyone makes use of it" (Maurie 1953, 3). This almost mysterious quality closes off the prospect of a history of concepts oriented towards the production of definitions. However, it opens up another, perhaps more interesting one. Two separate efforts by jurists to tame the notion have come up with formulas that are of interest to us. The first qualifies it as a functional, rather than conceptual, notion, because its use is more important than its content, which is almost

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<sup>2</sup> In university works devoted to the history of institutions - such as the history of the police or the history of the state - or to the social history of "phenomena" variously categorised as social protest.

<sup>3</sup> For the first reference : <https://www.youtube.com/watch?v=yjLs8wAXoOE> ; and for the second: <https://www.youtube.com/watch?v=Np5KfdMSsXg>

impossible to translate into positive terms (Pelieu 2000). The second refers to the "public order clause" (De Bartolomé Cenzano 2002). A clause for action on the one hand, and on the other, a notion which, being functional, is necessarily articulated to a conceptual grammar and a political configuration, to a historical context. We would then have in the notion of public order an object, a resource for legitimising discourse and action that forces us to consider the cultural substratum in relation to social and political uses.

Third, this plasticity of the notion of public order, which multiplies the difficulty of understanding it, has two consequences. On the one hand, it orients the analysis towards language as an act and, in fact, its enormous legitimising force can be analysed in terms of illocutionary force (the simple affirmation of its existence). On the other hand, it forces us to rethink the usual way of approaching the circulation of ideas or concepts, not only between imperial settings, but also between geographical scales: its characteristics make any comparative approach much more fragile, as the contexts of use become perhaps more important than an uncertain conceptual content. In reality, its functionality as a political resource rests on a combination of shared culture and contexts or configurations that give meaning to its use. This can be summed up in one formula, that of a *joint history*: that of both imperial and local settings sharing a cultural substratum from which the meaning of expression can be activated in particular contexts. These contexts can be seen as problems that arise together in the different spaces. The comparison of appropriations and uses of the expression of public order can be made insofar as these uses are elements of solutions to shared/joint problems.

#### *Immanence and transcendence: tying the public to the absolutist project*

On 27 November 1790, Adrien Duport, rapporteur of the bill on the security police, criminal justice and the institution of popular juries in the French Constituent Assembly, identified public order as an absolutist notion, "which had been so abused" that it was necessary to wrest it from despotism and turn it into a banner of liberty.<sup>4</sup> The revolutionary gesture consisted precisely in taking a reality that was regarded as unavailable, as both immanent and transcendent, and bringing it down to the realm of the politics of the will: it was not only a question of debating public order, of making it polemical and thus politicising it, but also of

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<sup>4</sup> *Choix des rapports, opinions et discours prononcés à la Tribune Nationale depuis 1789 jusqu'à ce jour ; recueillis dans un ordre chronologique et historique. Tome IV, années 1790 et 1791*, Paris, Eymery et Corréard, 1819, pp. 202 *et sq.*

re-founding the institutions of justice and government in accordance with the new principles - the new heaven - of the rights of Man and of the citizen. The radical nature of this rethinking actually went beyond the bill in question and would later be embodied in the redefinition of the values of the *res publica* carried out by Robespierre and his allies, the conquest of the heaven of values and even the new cult of the supreme Being. Order and all its keys became available to the sovereign will; the public could define order and it would thus cease to be immanent. Instead, the definition of the limits of the public became central, as we shall see below.

The birth of public order as a key element of the absolutist project dates back to the end of the 17th century and in particular to the elaboration of the jurist Jean Domat in his great work in which he founded a delimitation of "public law" (Domat 1989). This brought together the duties of all members of society towards the organic unity of society and in particular obedience to the sovereign, which was essential for the maintenance of order and peace. Public order was "the work of God Himself, to provide for the government of all states, to give to kings and princes all their power, and to provide for its use in the society of men of which they are the heads". This adjectivisation of the order of the society of men insisted on the necessary hierarchy of all its constituent bodies and on the principle of obedience and unity around the royal head.

The principle immediately and for years served Domat's best disciple, Chancellor d'Aguesseau, one of the major architects of the absolutist project of the French monarchy between 1690 and 1750. He was at the heart of Louis XV's assertion of power in March 1766 in the face of an attempt by two parliaments to control his prerogatives, the famous speech "de la flagellation". The king invoked public order as the "fundamental law of the State", a public order which, in his own words, "emanates entirely from me", and was attacked by the claim of these parliaments to associate in a "confederation of resistance", an "imaginary body" which would break the harmony and unity of the monarchy. This speech was to have an important echo in the Spanish monarchy, after its translation was published on 25 March in the *Mercurio Histórico y Político*, at the height of the Esquilache mutiny.

I would like to focus on two moments that highlight the parallel use of the notion of public order in both monarchies, in 1766 and 1774. The latter is the date of the "Pragmática sanción preventiva de bullicios y conmociones populares", which was to ensure "punctual obedience to royal laws and providences". Its drafting was coordinated by the Count of Ricla, Secretary of War, who made public order, an unusual expression at the time in the Hispanic monarchy,

"the fundamental constitution of the State". This work was in line with the measures published after the Mutiny of Esquilache, on 5 May 1766, which had seen the first appropriation of the expression "public order" at the top of Spanish politics. The reason for the pragmatic measure was that two years earlier, in 1772, some Barcelona craft guilds had set themselves up as a board, sending a procurator to Madrid and establishing themselves as interlocutors with the authorities and coordinators of the opposition to the *quintas* (Garriga 2017). These corporations had been unhappy since 1766 at having been excluded from the election of the procurators of the commons in application of the reform aimed at perfecting the corporate organisation of the monarchy, following the Esquilache mutiny. In acting in this way, the Barcelona artisans were repeating the *enormous crime* of the Madrid plebs of March 1766: the latter, by drawing up constitutions and sending a deputation to the king, had self-instituted or self-constituted themselves in a "monstrous" manner from the point of view of Catholic *iusnaturalism*. This pretension was of the same nature as that which Louis XV had discursively flagellated a few weeks earlier in the parliaments and bordered on the atrocities of crimes of *lèse majesté* and *lèse majesté divine*.

A few days after the riot in Madrid, one of the censures echoed the figure in order of all the bodies of the monarchy that occupied the acts and writings of atonement organised in May (García López 2006). This "Discurso histórico de lo acaecido en el alboroto de Madrid", firstly, denied the "army of vagabonds" the status of the People, recalling that it was "a respectable body, authorised in every way by the Magistrates, Town Councils and other Members of their high character"; secondly, he differentiated this "headless body" from the Public, defined in passing, synthetically, as "a whole Kingdom, a whole Republic or a whole Lordship, with competent Judges who can formalise certain Laws, which the Sovereign must then authorise with his approval". The self-organisation of the mutineers highlighted in the survey carried out at the request of the authorities, as well as underlining the defect of representation that the municipal reform would attempt to remedy, ultimately questioned the very dynamics of constituting and defining the public, the traditional *iusnaturalist* and corporative dynamics.

This problem was not confined to Madrid in March 1766, and we can read it in terms of polemization/politicisation, starting from the same proposal made by Pablo Sánchez León in this panel: the attempt to make the public something debatable, polemical, was *absolutely* unbearable. The idea of public order, affirmed as the fundamental constitution of the Monarchy, could function as an anti-political fence by reminding us of the immanent and

transcendental character of the institutional order itself, that is, of its unavailable character for the human will. The sacredness of public order was an indispensable quality for its invocation to function as a means of containing politics within its traditional limits. It was at the heart of two successive assemblies of the French clergy in 1770 and 1775, whose warnings were disseminated in all the parishes of the kingdom, and represented a major counter-offensive against certain ideas of the century, particularly those of Baron d'Holbach (Peronnet 1985). It was also present in the hierarchy of crimes in Gaetano Filangieri's *Science of Legislation*: in this work, which was immediately successful in several languages, the Neapolitan juriconsult closely linked crimes against public order to *lèse majesté* royal and divine (translated into Spanish between 1780 and 1792) (Godicheau 2013). We will see later that this point is important insofar as it is part of the relationship of force that lies in the depoliticising function of public order.

#### *The availability of order and its moderation: revolutions*

Duport's proposal in November 1790 was based on the most radical legicentrism: justice was the "sole foundation of public order" and no power could be legitimised outside the convention or contract freely consented to by men, and on a new conception of the law as equal for all, public, general, and of obligatory application. Public order was the guarantee of rights by the application of the law, all the law and only the law. This made the "public" coincide with the individuals of the nation and the "public sphere" with the rule of law. This conception saw in any imposition not based on law - including the abuse of authority, with suspicion towards any holder of institutional position - the main danger to public order: despotism. Arbitrariness was violence and did not allow the union of peace and freedom, the true content of a public order based on law.

Eleven years later, in the Civil Code of 1801, art. 6, public order was defined by default by returning to a formula of Domat: "On ne peut déroger par convention particulière aux lois qui intéressent l'ordre public et les bonnes mœurs". The association with good morals opened up a vast field of vagueness that was to cause headaches for many of the French jurists who, during the 19th century, cultivated the narrative of the "rule of law". This surprising development is confirmed and explained by the common opinion of the Napoleonic prefects, analysed by M.N. Higounet on the basis of an analysis of their numerous correspondence. The prefects realised the importance and ambivalence of the customary order of the peasants, a factor of resistance and disorder, but also a set of customs, prejudices and opinions that are



articulated with the laws in the functioning of society. According to the historian, they discovered that "public order is not the law, but the translation into positive law of the moral and social state of the nation" (Bourguet 1985).

However, this does not mean that the drafters of the civil code ceased to profess legicentrism. On the contrary, Domat's formula could be a powerful resource for making the law the only source of obligations, in order not only to centralise normative power but also to eliminate the normative pluralism characteristic of the Ancien Régime, just as the pluralism of rights had been eliminated. However, the key is given by the association made by the prefects of the moral state with the social state and even with what we would call today economic productivity: "It is not enough to consider them [the laws] from the point of view of their relation to natural law, they must be considered from the point of view of the relations they have with agriculture and morality". It thus represents a naturalisation of inequality which would be consolidated in the following decades, with a radical distinction between the social order considered as a *de facto* reality, the object of a new science of society to come, and the order of law, the object of the will of the public, of the sovereign nation.<sup>5</sup>

This distinction, if we understand that it was facilitated by the social upheaval of the revolutionary years and the push of the plebs to claim the status of the people and to participate in the definition of public affairs, nevertheless has its origins in the first debates of 1790. The ideal of guaranteeing rights was opposed to the need to protect property first and then "the security of individuals", which made it advisable to entrust the *Maréchaussée* - a military troop that was transformed into a *Gendarmerie* - with security police missions, in competition with - or as a guardian of - the justices of the peace. The aim was to prevent "crimes favoured by a momentary deviation of local opinion", support for smuggling, resistance to taxation, violence in assemblies, and for this reason "men independent of the people" were needed. Moreover, the Revolution had to prove that it could protect the constitutional guarantees of the "good citizens" against the "disorderly liberty of the bad" and prevent "anarchic upheavals and popular agitation".<sup>6</sup> Six months later, during the debate on the draft penal code, the rapporteur, Le Pelletier de Saint-Fargeau, mentioned "social order" several times when he pointed out the indispensable complement to the penal code, namely a "good police force" capable of preventing crime. The qualities of the *Gendarmerie* to

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<sup>5</sup> Indeed, a little later, this *de facto* reality of the social order would be observed as an object of knowledge, in order to formulate its "laws", like the "laws of nature" of the physical sciences.

<sup>6</sup> Same debate, 30 December 1790, *Choix des rapports...*, p. 274 et sq. The issue of the capacity of the new institutions to guarantee social order and the controversy surrounding the intervention of military power in this was reproduced in Cadiz in 1811-1813.

"frighten crime without alarming liberty" made it possible to repress "the abuses of begging" by eliminating "vagabonds and strangers, beings always hiding to do evil and always wandering to avoid punishment for the evil they have done". The naturalness of the social order rested on the natural distinction between, on the one hand, the individuals of the nation and good citizens and, on the other hand, the bad ones, whose habits revealed their moral condition. In reality, this distinction was produced by politically and socially situated discourses, issued from certain institutions that represented the [re-establishment of] order; this distinction was worked out in moral terms from the practice of agents such as the Napoleonic prefects, and in general from the police agents, whose role as producer of a narrative of order is crucial.<sup>7</sup> The imagination of social order thus rested on the moral figuration and institutional categorisation of disorder.

The consequence of making the "bad" (vagrants, etc.) dangerous beings was to place them outside the space of rights and the protection of constitutional freedom. In fact, crime or simply their moral condition placed them outside. The famous tension between freedom and security is not such if we realise that we have to ask "for whom" one and the other are conceived. The pivotal nature of property, which comes first and to which security is articulated, is an indication that would lead us to examine the French case following the analysis proposed by Bartolomé Clavero regarding the first Hispanic constitutionalism (Clavero 2013). Without examining this hypothesis in detail, it should be noted that the first distinction between the good and the bad in order to enable the gendarmerie to intervene and protect property and security more quickly led twenty years later to the institution of the Napoleonic "Haute Police".<sup>8</sup> In the explanatory memorandum to the second penal code in 1810, Count de Berlier justified entrusting the gendarmerie with the surveillance of those sentenced to afflictive penalties who had served their sentence, i.e. "malefactors", on the one hand, and of beggars and vagrants, i.e. also day labourers who did not have their workman's passbook up to date, on the other. Then, the mention of the dangerousness of these people, of the particular threat they represented to "public order" came right after the subject of attacks against the agents of authority, the higher in the hierarchy, the worse, in a general design where Filangieri's influence could be read. The institution of the High Police was not to "unsettle good citizens" but to reassure them because "society" had to "take precautions" and

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<sup>7</sup> I agree very much with Bourguet (1985. 704) when she writes: "Caught up in a network of oppositions, which makes him an instrument manipulated by the enemies of order or a social agent incapable of a reasonable use of his rights, it is thus the people who, in the last analysis, are the stake of the whole description of disorder. On him rests the whole question of order".

<sup>8</sup> On the evolution between the first two French penal codes, see Lascoumes Poncela Lenoël 1989.

the restriction of the individual rights of the convicted "completed the social guarantee". That is why "legal supervision" was detached from the judicial authority and referred to "the administrative authority". To a deputy who protested that a person accused of begging might have to prove his innocence, Berlier replied that "the quality of the person justifies this presumption". He concluded by asserting: vagrants "are not members of the *civitas*".<sup>9</sup> These distinctions between types of authorities and types of subjects, in relation to the protection of public order, were then systematised by one of the most influential jurists, one of the pillars of French legal doctrine since the 19th century, Jean-Baptiste Sirey, throughout those founding decades of "liberal" French law.

This evolution, almost immediately with the affirmation of the availability of the coordinates of political society to the sovereign will, set limits to this availability that lay in the quality of the subjects. The problem with this availability was precisely that it had no limits. The dynamics of polemicalisation as politicisation pointed out by Pablo Sánchez León in his paper has been strongly related by Pietro Costa to the circulations between the French and Haitian revolutions (Costa 2019). The universalist formulation of rights played an important role in the rhetoric of the Haitian revolution because it opened up a space of conflict in which and thanks to which actions and claims to recognition by subjects who appropriated the language of rights emerged. The debates around the rights of free people of colour - who is the "all" in the expression "all equal in rights"? - and the prompt vindication by them brought home to white owners the danger of this availability of rights, both as an object and as language. To their unlimited appropriation and the politicisation it entailed, the colonists opposed the "naturalness" of the races and the danger to the social order. The self-institution of subjects who were thought of as objects represented the climax of politicisation and the demonstration of the henceforth available character of the category of the public. This dynamic of radicalisation so evident in the Caribbean case - and which went through the war - also existed in the case of the Parisian suburbs; the naturalisation of the social order, with the sacralisation of property, was articulated with the legal exclusion of certain categories of subjects by virtue of the public order. Public order, instead of being the product of the laws as Duport proposed, became, through its association with a moral order and a social order that were understood as unavailable, a para-constitutional notion whose close relationship with *salus pública* allowed the relegation of subjects to a legal limbo, a limbo where their claims could turn them into "enemies of society".

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<sup>9</sup> The grouping of convicts, vagrants and "labourers or day labourers" in the same pole of dangerousness is confirmed by their association in the definition of the crime of rebellion (art. 219).

### *Public Order as a Parallel Dimension and the Dynamics of Depoliticisation*

Pedro Cruz Villalón (1984), in his thesis on legal exceptionality in contemporary Spain, proposed the idea of a "double constitution" to illustrate the coexistence of a constitutional space of rights with an exceptional space that could be opened up by a declaration of a state of siege or emergency, and could mean, for some or for all, the loss of citizen guarantees present in the state of normality (Cruz Villalón 1984). The initial problem was the incorporation into the legal system centred on the constitution of the legal means used for the extraordinary defence of the "State", which in reality, under the label of public order, encompassed much more than the defence of the legal-institutional framework organised by the constitution. We have just seen, in fact, that from the beginning and even in the midst of the French Revolution, the naturalness of order and its sacralisation, evacuated by the radicalism of the constituent power, returned in the form of "social order" and "good morals". This meant, on the one hand, the formal articulation with the constitution of institutions "widely considered as incompatible with it, having to be excluded from it and confined, if at all, to the world of necessity" (Cruz Villalón 1984, 13). On the other hand, it implied the real coexistence - from the very moment the constitution governed - of two normative spaces, or rather, of two dimensions, that of normality, governed by rights, and that of exceptionality, governed by the law of necessity, with the scale from one dimension to the other being made on the basis of the invocation of public order.

The legal articulation between these two dimensions, the separating membrane of this "double constitution" system, which allowed the passage from one dimension to the other, was called in the Spanish constitutional agenda the "Law of public order" and was only adopted in 1870. Prior to that date, a law of 17 April 1821 was made to operate under the same name. This law incorporated English innovations (the riot act), but above all French ones (martial law and state of siege), into the extraordinary defence, not only of the constitution, but also of social order, since it covered the fight against certain types of people, the same ones targeted by the Napoleonic High Police: vagrants and bandits. The context in which it was adopted shows that it was indeed a law of social defence against a plebeian population that was to be kept at the gates of public order, strengthening it by linking it to the sacredness of royal power (Blanco Valdés 1988). In fact, the wording of this law coincided in some paragraphs with that of the draft Penal Code of 1822, which adopted the same hierarchy of Filangieri's crimes,

placing offences against public order at the top of the list, along with offences against religion and the royal family.

Speaking of the *dimension* of public order rather than of *space* makes it possible to understand that this clause operates not only in the *extraordinary* mode - declaration of a state of siege for a given time and a circumscribed space - but also in an *ordinary*, everyday mode, linking *exceptionality* to the quality of the subjects because of the danger they would represent for the social/moral order, allowing certain categories of people to fall into this limbo depending on the context (vagrants, bandits, workers, free people of colour, blacks, Indians, colonised people - and today immigrants or descendants of immigrants), making it extremely difficult for them to claim their rights. In effect, in this dimension, the language of order replaces the language of rights and opposes the force of the demand for rights - which are both the object claimed and the language of its claim, with the intrinsic politicisation effect that it entails - with the force of institutional categorisation as “dangerous”, a force that rests on the mobilisation of the fundamental moral values of the community and on the immediate mobilisation of a physical force, that of administrative - and often military - power, which does not allow for any appeal to be made to anything but armed resistance.

What gives public order its quality as a parallel dimension into which one can fall almost inadvertently is linked to the construction of this *exceptionality from everyday life*, through the capacity of administrative power, a new incarnation, precisely on a daily basis and on multiple scales, of an *oikonomic* power, to arrest and qualify at the same time, or *arrest qualifying*. It is a power to preventively deprive of guarantees by decisions taken on a micro scale and endorsed by the existence of the dual constitution system on a macro scale, and at the same time to deprive subjects of a voice, making them fall into the pit of morally condemned categories. This everyday life characteristic mixes institutional, social and moral incarnation of public order in a way that must be studied in depth, without separating the analysis of institutional logics from that of the construction of the figures of disorder (Castellanos Rubio 2019). Obviously, this daily pulse, which requires a great deal of research, is also a permanent pulse, since the attempt to depolemicise that the anti-political affirmation of public order represents does not escape the logic of polemicisation itself. To put it another way, administrative reason can be fought by people who reason and who elaborate other categorisations, another order, not only in books, like Joseph Proudhon, but also with weapons like the Spanish revolutionaries of 1936-1937 (Godicheau 2004).

## *Conclusion*

The concrete construction of administrative power, and in particular of police institutions, took place during the 19th century to the rhythm of a refrain that said "more administration, less politics". The approach opened up by this understanding of the notion of public order allows the joint study of this institutional construction and the analysis of the phenomena of radical exclusion from the political community which, when collectively responded to by those concerned and when they succeed in constituting themselves as an imagined community, can lead to civil war. It makes it possible to link the questions of identification and categorisation of subjects to the construction of the social and political order, incorporating the legal order, precisely during a period in which these three fields become autonomous, between the 18th and 19th centuries; this, without depriving this construction of its processual character, since it allows the study of the phenomena of decomposition/recomposition of this order, even if they are violent and definitive. Indeed, if the force of the invocation of public order in the exclusion of subjects and the repression of attitudes rests on its mobilisation of the fundamental moral values of the community, its contestation calls for a greater force and involves a reformulation of values that leads to *absolute war* - using a category from Pizzorno - whether it is called civil or religious.

The history of public order allows us to understand this depoliticising visage and completes the understanding of the dynamics of polemicisation pointed out by Pablo Sánchez León in his contribution. In his text referred to above, Pietro Costa reintroduces into the idea of these processes of polemicisation/politicisation the experience and the relationship of forces that make politicisation a dynamic based on the appropriation of rights, that is, on self-categorisation as subjects who are bearers of the rights claimed. But this is only one of the poles of the balance of power: everyday administrative action and the exclusionary political mobilisation of the public order represent another dynamic, with its own language and its own type of performativity. That is why it seems to me that the approach to public order outlined here is useful for understanding the political-institutional dynamics of the period that interests us, based on multiple concrete situations located in the Spanish-Portuguese space that shares conditions of transit between the Ancien Régime and the state-legal regime, and considering the conceptual and institutional circulations within the vast inter-imperial cultural space to which we are considering.

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