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**Police Control: Order and Security
in the State of Exception**

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Introduction

During the last year, police control has shown its pervasiveness as never before in contemporary society. To be stopped by a patrol that asks the reason for our presence in the street and to justify, by a written document, every movement we make around the city, have become a normal routine. Words as “emergency”, “wartime”, “crisis”, and “pandemic” are now associated with “curfew”, “self-declaration”, “quarantine” and “control”. Undoubtedly, the role of police in supervising people’s behaviours has proven to be of fundamental importance to contrast the Coronavirus diffusion. The presence of this virus has highlighted, however, some structural problems of the world we live in. It is not just after George Floyd’s homicide that the racism of some police departments has hardened. There was no need to see the stark contrast to homeless people to recognize society’s problem with vagrancy. Anyways, forced lockdown, freedom limitations, and increase in individual responsibility have shown in the last year both values and weakness of people from every country around the world. Police abuses have been a constant for a very long time, Pandemic has only made them more evident. While I am writing these lines, police are brutally suppressing protestors in Colombia. 292 people have been killed by US police in the first four months of 2021. In Italy, the murder of Stefano Cucchi is finally finding its way to justice, after almost 12 years.

The following thesis aims to analyse, starting from the exceptional case, systemic issues of the society we live in. In particular, I will focus on police control and how much its action has become capillary. The underlining assumption is that policemen and policewomen are not different from the community they act in, but the possession of a certain authority and with the neoliberal values which permeates people, they can be more inclined to abuse their power.

My dissertation will start studying some aspects of the work of the German Jurist and Philosopher Carl Schmitt (1888-1985), particularly its understanding of the concept of “Political” and the “State of Exception”. In this way, I will outline the major characteristics of his idea on sovereignty and on how to act to face an emergency. Passing through the position expressed in an essay by Jürgen Habermas about the evolution of the concept of publicity, I will finally explain the Schmitt categorization of political actors into the two macro-groups of friends and enemies. Furthermore, I will use this twofold classification to examine a philosophical understanding of police action; this will be enabled by possibly considering the “Critical Theory of Police Power” by Mark Neocleous. This philosopher, currently professor of the Critique of Political Economy at Brunel University, provides an overview on the linkage between police action – both historically and conceptually – and the liberal and neo-liberal society we live in. He fathoms the contemporary request for security and order, by trying to find the origin of the people’s need for them. Afterward, will be with the study of the Italian sociologist Salvatore Palidda that will be clear the necessity for the police of the use of discretionary force, essential for an effective action. The author analyses the Italian police department, highly modified after the 1981 reform. He also highlights structural biases in dealing with some types of crime – such as little robbery or illegal immigration – than others with a higher economic and social burden, but with a lower visibility. The last subparagraph will deal with a case study taken from the early Italian history of police abuses, the G8 held in Genoa in 2001. In this way, the two previous analyses – the one on the state of exception and the spotlight on police action – will finally merge in a conclusion, where they will be wrapped up in a more personal consideration on the condition in which we are nowadays.

Chapter I

Sovereignty and State of Exception

1.1 Definition of Sovereignty

The end of the 18th century, and the beginning of the *Short Twentieth Century*¹, have marked a sharp re-examination of the ideas of “State”, “Government” and “Institution”. Interactions among several countries have shown internal weaknesses and the need to make latent or manifest alliances, based routinely on political similarities. As it happens also today, be on the loser side of a conflict could highly put into crisis the national independence. Carl Schmitt was a German conservative jurist and philosopher. He analysed this period as the loss, not only of the European centrality in world politics, but also of the previous awareness of the concept of sovereignty. The most important forfeiture, Schmitt claims, is the monopoly of the “political” by the state, a connection already theorized by 16th and 17th centuries philosophers. This marked a new categorization in the political realm, most of the time based on an uncritical faith towards novelty. However, the German philosopher continues asserting that, indeed, there is still no unity, not even in progress.² I will proceed with order, presenting Schmitt’s view of sovereignty and then moving to its perspective on political categories and state of exception.

The debate about sovereignty has numerous precedents in the history of political thought. In the Middle ages, the term was mainly used to define objects of immeasurable size. Just after the 13th century this word entered in the political discourse; nevertheless, the main reference of the term was the one made to God’s power. It is worth remembering, among the fertile philosophical production on this topic, Jean Bodin’s (1529-1596)

¹ E. Hobsbawm, (1994) *The Age of Extremes: the Short Twentieth Century, 1914–1991*, London, Michael Joseph.

² Carl Schmitt, (1972) *Political Categories*, ed. by Gianfranco Miglio & Pierangelo Schiera, Bologna, Il Mulino. pp. 21-6.

jurisprudential study on French Wars of Religion, for which he wrote the *Six Book on Commonwealth*. In this work, he proposed a famous definition of sovereignty, for which “[...] Majesty or sovereignty is the highest, absolute, and perpetual power over the citizens and subjects in a Commonwealth, [...]”³. This passage is quoted by Carl Schmitt’s essay “Dictatorship”, where Bodin is considered as a prominent theorist of the so-called “Commissary Dictatorship”. I shall later return to this subject, for the moment the interesting attribute in Bodin’s understanding of sovereignty is the nature of something transitory, the *puissance absolue* (absolute power) to make and abrogate law for a higher good: peace. Therefore, the main features are the unity of politics and independent use of power, reachable only by a fully empowered authority.⁴

Carl Schmitt followed a more legal path to understand the concept of Sovereignty, and he did it precisely by using the state of exception investigation. He started his analytical work at the beginning of the 20th century, but the most significant part of his inquiry on politics was produced in the interwar period. As a German citizen, he was highly affected by the consequences of the Versailles Treaty and the successive foundation of the Weimar Republic. This state officially came to light in 1918, with the loss of the First World War by Kaiser Wilhelm II and the subsequent institution of a democratic parliamentary republic. Moreover, on 11th August 1919 was enacted a constitution that, yet in the first two articles, declared the liberal nature of the German Reich (“a republic”), the democratic ownership of political power (“emanates from the people”), and the right of self-determination of the population.⁵ Schmitt thinks otherwise. Article 48 of the aforementioned constitution regulates the conduct to follow in case of extreme emergency and, in the second subparagraph, it allows the suspension of some fundamental rights: the

³ Jean Bodin, (1576) *Six livres sur la Republic*, I, 8 [Mc] 84.

⁴ Dieter Grimm (2009), *Sovereignty: the Origin and Future of a Political and Legal Concept*, trans. by Belinda Cooper, New York, Columbia University Press (2015), pp. 17-23.

⁵ Weimar Constitution, 1919, art.1, 2, 48, 114, 117, 118, 123.

habeas corpus (art.114), the secrecy of communication (art.117), freedoms of expression (art.118) or of assembly (art.123).⁵ It also permits to intervene through the army to deal with crisis. However, the article specifies that the political decision should be immediately accepted by the parliament and that the undertaken presidential action would only be a “factual” operation, so without touching the legislative or the judiciary spheres. Though, the form of the article leaves ample room for interpretation and does not clearly specify restrictions. According to Schmitt, the 48th has just to be intended in the wake of a number of other laws adopted in the previous centuries, as the *Martial law* by the United States (1795), *la Loi Martiale* (1789) and *l'état de siège* (1791) by France, handled and modified several times in following decades.⁶ The powers which the article 48 left to *Reich's* discretion are unprecedented. The President, even if not apparently, was left with a pure *pouvoir constituant* (constituent power), not so dissimilar to a commissary dictator. In this sense, the highest representative of (democratic) political power, had also the ability to suspend democracy to face an emergency.⁷ But which kind of emergency we are talking about?

Schmitt opens his essay “Political Theology”, a collection of articles first published in 1922, with the sentence “Sovereign is he who decides on the exception [...]”⁸. Therefore, even if starting by limit concept (the regularization of an anomaly), he has the intention to define the ordinary through the extraordinary. Given that the constitution cannot specify which are the precise features of the emergency, it can only determine who will rule in that state of affairs. The sovereign is, simultaneously, bound by the constitution – which assures him the power to decide – but he can also act freely. Depending on who has this power - if a party, a military autocracy, or a radical organization - it is possible

⁶ Carl Schmitt (1921), *Dictatorship, From the Origin of the Modern Concept of Sovereignty to Proletarian Class Struggle*, trans. by Michael Hoelzl and Graham Ward, Cambridge, Polity (2014), pp. 148-175.

⁷ Ivi, p. 178.

⁸ Carl Schmitt, (1922) *Political Theology*, trans. by George Schwab, Chicago, University of Chicago Press (2005), p. 5.

to know the concern of the citizenry about order and security. Before him, Schmitt argues, jurists tried to define the more frequent and indispensable characteristics proper of the sovereign, studying less its founding element: the ability to decide. This discussion was again reconducted towards the factual ground when the philosopher offers the argumentation around the independence of *Länder* (German federated states). The debate came to the fore already in 1871, when the German empire was materializing on the socio-political ground and arose the need to sharply define the power spheres of member states and the one of the central federal government. According to Schmitt, *Länder* are not autonomous as far as, in case of emergency, they have to subjugate themselves to the will of the sovereign.⁹

Nevertheless, even if suspending the rule of law, the state of exception should not be confused with anarchy, since the organ “State” survives, and the decision of the president remains the only meaningful act. Emergency, despite being undefinable for general terms, is still a juridical matter. It is just through the definition of the conditions of urgency that the norms acquire value, being them only applicable in time of normality. Without emergencies to face, the state would go on as a simple re-proposition of laws. The distinctive feature of the sovereign is the decision itself to stop this flow and declare the state of exception and, with it, the state authority itself. Schmitt proceeds, in this way, in the opposite direction with respect to the rationalistic view, impersonated by Kant and Kelsen. According to them, the exception says nothing more on the state of normality; while, for the German jurist, define the general is only possible through the deviation from the norm (“[...] The exception is more interesting than the rule. The rule proves nothing; the exception proves everything [...]”)¹⁰.

⁹ Ivi, pp. 11-12.

¹⁰ Ivi, p. 15.

Furthermore, Schmitt himself provides an overview of the different positions about sovereignty. For Kant (1724-1804), the law of necessity is not properly a law. Hans Kelsen (1881-1973), an Austrian jurist and theorist of the “legal positivism” doctrine, adopts a distinction between a sociological and a jurisprudential understanding of the concept of sovereignty, following the latter. He focuses on the legal system, in a reductionist attitude, providing an identity between the state and its constitution; he also asserts norms should be characterized by a sort of general unity, but there could be only a hierarchical organization among them. To sum up, Schmitt believes that this way of dealing with the problem of sovereignty is just the denial of the concept itself in the name of the law. One main limitation of this reasoning is its stagnation on the methodological ground, not considering that the jurist and the legislator are not totally “pure”, but they must also decide. Together with other theorists (such as Hugo Krabbe and Paul Preuss), Kelsen tries erroneously to make a subjective concept, as an objective one; for instance, he considers the commanding personality in the state activity just as an old historical concept. Previously, Hobbes (1588-1679) adds the element of the decision, opposing the figures of truth and authority¹¹. For him, if two powers are subjected between them, this shows that whoever possesses the higher one will command to the other.¹²

Schmitt proposes a different reading, identifying the jurisprudential concept of the state of exception with the theological one of miracle. Also Rousseau (1712-1778) does a similar action, when he associates the philosophers’ idea of God to one of sovereignty. Rationalistic Enlightenment totally ignores the exceptional and tries to find some broader truths. Kelsen finds a linkage between jurisprudence and theology: when he associates the state with laws, he subtly uses an identity between the law of nature and normative law, structuring metaphysics. In this sense, Metaphysics is the clearest expression of a

¹¹ “Auctoritas non veritas facit legem”, (T. Hobbes, (1651) *The Leviathan*, II,26).

¹² Carl Schmitt (1922), *Political Theology*, pp. 16-35.

historical period. Schmitt continues browsing philosophers which have connected sovereignty and theology: from Descartes (1596-1650), who believes that it is always better to be one legislator (as one God), to De Tocqueville's (1805-1859) description of American democracy, where the population possesses divine tasks. Then post-restoration theorists, as Proudhon and Bakunin, try to detach politics to any divine entity and to leave behind transcendentalism as a whole.¹³

Moreover, overcoming the lack of interest rationalists have for the state of urgency, the philosophers of the counter-revolution stress the role of decision. They are all romanticists philosophers, thus conservatives: Bonald (1754-1840) focuses on the role of tradition, for De Maistre (1753-1821) sovereignty is infallibility, and Donoso Cortes (1809-1853), starting from the Christian original sin, considers the liberal democracy as too directed towards discussion (even the metaphysical truth may be under debate following this doctrine), so dictatorship is more desirable.¹⁴

1.2 Dictatorship

The very acute political theory by Carl Schmitt takes on wrapped aspects when analysing the life of the jurist. He studied law at the Berlin and Strasburg universities, and he had a catholic education, at first embracing the neo-Kantian principles. As it was previously noted, he later adopted the decisionism theory, for which it is politics that shapes the law and not vice versa. Schmitt had a role in the last Weimar Republic government, the one of Chancellor Schleicher, for which he was consulted in the case of the use of article 48 by president Von Papen in 1932. Nonetheless, the contentious part of his biography started after 1933, when he joined the Nazi party, and he successively became a prominent member of the dictatorship of Adolf Hitler, until at least 1939. After 1945, he was imprisoned, and he risked being processed in Nuremberg. This is the reason why its study

¹³ Ivi, pp. 36-52.

¹⁴ Ivi, pp. 53-66.

about dictatorship and the state of exception has repeatedly been treated with mistrust and viewed through a natural bias.

He wrote an essay in 1921 titled “Dictatorship”, where he scrutinized the historical and conceptual evolution of this concept. In doing so, he structured also a very acute understanding of the political evolution of the concept of state. Through this work, two useful features of the thesis will be even clearer: the role of decision and the hallmarks of the state of exception. Hence, the following sub-paragraph will briefly summarize the two major types of dictatorship Schmitt studied: the commissary dictatorship and the sovereign one. He considered impossible to simply define this form of government just as the suppression of democracy: instead, it is a form of leadership aimed at a specific goal.¹⁵ It is a tricky concept to explain, because it can lead to the suppression of democratic or liberal rights in a state of siege. As any change of route from normality, is unsettling. According to Schmitt, dictatorship is not the complete abolition of the law, but “[...] the general possibility of a separation between the norms of justice and the implementation of law [*Rechtsverwirklichung*] [...]”¹⁶.

He started by noting that, historically, has been considered only the commissary dictatorship for several centuries. He first discussed the role of technicity (*arcana*) in the political theory of Machiavelli (1469-1527) and a basic feature of the Dictator’s power: the capacity to reduce the distance between the activity of deliberation to the one of

¹⁵ It is worth noting the debate, as presented in the premise of the essay, on the “Dictatorship of the Proletariat”, which will also be resumed later. Just as Kautsky (1854-1938) observed, the dictatorship cannot be the rule of a whole class, but only of a single sovereign. However, it is peculiar that communist theorists define this government as a transition towards the more solid centralised state. It is not necessary to suppress democracy; it does not matter that the proletariat represents the majority or the minority: this type of dictatorship is the best way to build up a stable communist apparatus. According to Marx, the path towards communism should be an “organic” procedure and arising from the will of the people with no external and political intervention.

¹⁶ Carl Schmitt (1921), *Dictatorship, From the Origin of the Modern Concept of Sovereignty to Proletarian Class Struggle*, p. XLII.

execution; he can act to solve an emergency, but he cannot permanently change laws of the state.¹⁷

Borrowing Bodin's theory, Schmitt described the rule of the dictator as something with a very specific and limited task: restore order and peace, conduct a war or face an emergency. Therefore, Bodin considers the Roman Dictator, appointed for six months to carry out some specific duties, not as an absolute sovereign, even only for the fact he can see its position revoked by the act of the monarch. For instance, also the Decemviri, ten people with the duty to institute a new constitution and equipped with a widespread faculty, are not actual rulers, because their power ceases with the expiry of their mandate. The problem is posed also by Hobbes, who finds a distinctive feature of liberty of assembly when being under a commissary dictator. The clear reference this English philosopher does is to the figure of Oliver Cromwell¹⁸, who led the newly formed republic of England after Glorious Revolution in 17th century. This leader is exemplary of the need, in case of civil war, to stop even democracy to win. He dissolved the parliament, claiming he was following God's order, and he ruled through appointed soldiers.¹⁹ Although, the main instance of a commissary dictator is the case of Albrecht von Wallenstein, to whom Schmitt dedicates a whole excursus. He was a general of the German Empire and a key figure during the Thirty Years War. In 1628 he was nominated the first "generalissimo" of history. Nowadays is considered a dictator, but he had mainly military competence. He could not infringe class rights of third parties, unless under an Imperial mandate.²⁰

The real innovation of Schmitt's work is the theorization of a different type of dictatorship: the sovereign dictatorship. In 18th century France, the absolute monarch

¹⁷ Ivi, pp. 11-12.

¹⁸ Ivi, p. 23.

¹⁹ Ivi, pp. 20-26.

²⁰ Ivi, pp. 65-68.

nominated some commissaries (*intendants*) to govern the whole state. They possessed significant power and responsibilities. At that time, the faculty of the monarch was considered just as a part of the state's sovereignty²¹, and the figures of the commissaries were a *trait d'union* between the king and the population. Montesquieu (1689-1755), among the first theorists of the separation of powers (legislative, executive and judiciary) as a way to contrast the abuse of one of them by state's representatives, also defends the *pouvoirs intermediaires* (intermediate powers). These would be essential even in a direct democracy framework. With the image of the balance, he specifies the need of this division in order not to fall in the overpower of one part over the others.²² Consequently, in absence of intermediation of power, we can have despotism. However, also Montesquieu foreshadows the need for an exceptional dictatorship regulated constitutionally, as the one in Rome and the permanent magistrate in Venice.²³

Somehow, Schmitt explains that every theorist, until at least the 18th century, has conceived only the dictatorship of commissary nature. This is a form of reaction and defence to a prearranged order, temporarily under attack. It suspends (part of) the constitution, just to preserve it. Sovereign dictatorship, rather, is applied to completely overthrow any previous governmental organizations.²⁴ Nonetheless, it is not the negation of the *pouvoir constituant* (constituent power), a type of power both essential and previous to the constitution itself. This is analysed by Emmanuel Sieyès (1784-1836), a prominent figure in the ridge event for Sovereign dictatorship: French Revolution. It is, for this politician, simultaneously, a constituent and constituted power, just as God is formless and donor of shapes. Any state representative should act as a commissioner of the state's

²¹ In the same years, the Pope had no more the *plenitudo potestatis* of Christianity, which belonged to the Church as a whole, and the German king had just a part of the *Majestas* of the empire.

²² The essay proposes the example of the uninterrupted Whig government in the 18th century England. A similar (and closer to the reader) instance may be the Christian Democrats almost fifty-years government in Italy.

²³ Ivi, p. 119.

²⁴ “[...] therefore dictatorship does not appeal to an existing constitution, but to one that is still to come [...]”. Ivi, p. 119.

power and dependent on the will of the people. Whoever possesses the power must be always detached from its substance. When what is described here does not occur, and the *pouvoir constituant* results dissimilar to the will of the people, thus the need for a revolution could arise. This is how can be instituted a sovereign dictatorship, without the need to receive a superior order to be applied, but entailing the *pouvoir constituant* even during the revolutionary times.²⁵ The difference between the two types of dictatorship is, therefore: “[...] the commissary dictator is the unconditional commissar of action of a *pouvoir constitué*, and sovereign dictatorship is the unconditional commission of action of a *pouvoir constituant* [...]”²⁶

By this reasoning, the French Constitution established in 1793, after the first years of revolution, should have represented the end of this dictatorship; however, this was not the case, also because this charter does not explicitly define the division of powers. The action of counterrevolutionary movements and the creation of the *Comité de salut public* chaired by Robespierre²⁷, which only apparently thrived on the principles of the Declaration of the Rights of Man and of the Citizen, marked the suspension of the Constitution and the creation of another dictatorship. This also worked through the nominations of some commissaries, chosen by the circle of revolutionaries of the committee. Just as in the previous cases of dictatorship, they declared to be working to safeguard the right translation of the will of the people into governmental responses. The agents of the Reign of Terror (as it will be successively called) from a simple supervisory role, completely acquired a form of executive power, even controlling public order forces and the army. They claimed to act to tackle threatening circumstances, but they discretionally used their facilities to suppress several personal rights with their *pouvoir illimités* (illimited

²⁵ Ivi, pp. 120-123.

²⁶ Ivi, p. 127.

²⁷ This moment also marked the passage from an eminently high-class public sphere to a more widespread one.

power).²⁸ Moreover, they violently repressed regional protests for autonomy, enacted by citizens who hoped to be able to freely appoint the commissaries. The central committee responded to these claims by condemning as enemies' whole sections of the population, often sentenced to death for failing to follow *pouvoirs et de l'esprit publique* (the power and the public spirit). The "discretionary power" will be crucial for the second part of the thesis. Schmitt described this framework as a sort of commissary dictatorship inside the sovereign one: a very strong centralised control. This survived both to the death of Robespierre in 1794 and it was picked up, only slightly mutated, by Napoleon in 1904.²⁹

This study on the state of exception organization will be very useful in the understanding of how the concept of sovereignty is considered, both in normal and exceptional times. To sum up, it results very difficult to decree a strict separation between the two types of dictatorships. They merge in contemporary times with the constitutional possibility of a state of siege as described before, but why the rule for a specific aim (of the commissary) ends to make way for the complete overthrow of the pre-established power (peculiar of the sovereign dictatorship) is undefinable. Sovereign form of dictatorship seemed to have been revived by the Communist "Dictatorship of the proletariat". Nonetheless, this is, according to Schmitt, very similar to the French regime instituted in 1793, as also Engels declared in a discourse to the Communist League in 1850.³⁰

1.3 Public Sphere and the Political Categories

Dictatorship research concerning the evolution of features proper the state of exception will lead this thesis towards the Schmittian idea of political categories as expressed in the essay *the Concept of Political*. Anyways, to clarify the path that will bring the reasoning towards the analysis of police control, it would be useful to examine the concept of

²⁸ Ivi, p. 139.

²⁹ Ivi, pp. 144-146.

³⁰ Ivi, p. 179.

publicity as studied by Jürgen Habermas. This German philosopher, member of the Frankfurt School, published in 1962 the essay “The Structural Transformation of the Public Sphere”, where he deals with the evolution of the concept of the bourgeois public sphere in the last three hundred years.

The notion of “*publicity*” has adopted different meanings during history. It has now assumed the connotation of “open to everyone”, the opposite of private. Nevertheless, it is a term mutated by the Greek, deeply studied by Aristotle: the *polis* was shared by free citizens of the city-state, and it was the contrary of the *oikos* (home), lived as an individuality. The human beings’ nature (to be a *zoon politikon*, a political animal) and virtues found their complete application only in the mutual relationships with fellow citizens.³¹ The private sphere was very important – one’s economic position also designated his social placement - but only “[...] the realm of necessity and transitoriness remained immersed in the obscurity of the private sphere [...]”³². In the Middle Ages, Roman Law regulated public and private, but the feudal organization hierarchically arranged patriarchal society in strict classes. The centre of the political life was no more the Greek *agora*, but the lord’s palace. Moreover, the private condition no longer found a direct translation in the position occupied in the public realm. This also designated the birth of the “good society”, and consequently of the “good taste”.³³ It has been with the late-German jurisprudence that the two concepts in analysis hired their modern shapes: *publicus* labelled what is common to every citizen, *privatus* represented something limited (as some privileges). The public was also the representative³⁴ sphere, referring to one’s status regarding the *res publica*; this was also shown by symbols, vests, or reverence

³¹ Jürgen Habermas (1962), *The Structural Transformation of the public sphere*, trans. by Thomas Burger, Cambridge, Massachusetts, The MIT Press, (1991), p. 3.

³² *Ibidem*.

³³ Ivi, pp. 5-8.

³⁴ It may seem inappropriate to use the term representation only by following the meaning we give to it today. The feudal system was in no way concerned with a fair representation, and the lord created a circle of people around him not acting “in-favour-of”, but only “before” the citizenry. Furthermore, representation is a prerogative of the aristocracy, bourgeois has the role to produce.

formulas. Anyways, with the evolution of absolutist monarchies, the terms have been subjected to a further evolution: public identified whoever worked for business of the state, private who was outside this sphere.³⁵

The turning point was the solidification of capitalism. This created a highly interconnected web of business relations with less strong hierarchies. With mercantilism, the state needed to sustain the private trade, without on the top of that allowing active members of this commerce to have a say in the political decision. Lordship became the public, intended as state power, and it also represented the private entrepreneurs. Only afterward, the great merchants would acquire some further privileges accorded by the sovereign. The major part of the population was “civil society”, and this also redefined services granted publicly. The house was no longer at the centre of economic matters and commerce gained prominence. People started to get informed through a new instrument: the press. A new social class, the bourgeoisie, surged. It was made up of new types of workers as well as intellectuals, and they both were active readers. In this way, in the newly formed “bourgeois public sphere”, the component’s private identities maintained a prominent role. The bourgeois’ political claim was not the entrance in the representative class, but the complete revolution of this category. Equality was accepted only outside the state, in the civil society realm.³⁶

A system of exchange of information got stronger. The city regained prominence in the proliferation of culture, which instead of developing in the lords’ palace, started to spread in coffee-houses. In the 17th century, French intellectuals moved towards new locations to spread a different culture³⁷, whereas aristocracy was relegated to empty ambitions of princely and hierarchical nature. This also led to a commercialization of culture,

³⁵ Ivi, pp. 10-12.

³⁶ Ivi, pp. 14-26.

³⁷ Diderot (1713-1784) claimed that French “Intelligentsia” wrote for a certain class (aristocrats) but produced discourses for everyone.

detaching it from the monopoly of the high class. The artistic exhibition became a product and was produced autonomously, without the commission of a patron. Art magazine spread, dealing with both literature and theatre. Successively, discussion evolved and also morality began to be a vital subject matter. In England, in journals as the “Tatler” and the “Guardian”, writers commented on new cultural and social tendencies.³⁸ Capitalism became dominant and, with it, the patriarchal family was assumed as a paradigm³⁹. The architecture of bourgeois houses changed, and several “rooms” were then placed outside: public libraries to study and teahouse to discuss, while meeting rooms inside the house disappeared to widen personal bedrooms of families’ components. Nonetheless, the family is where citizens can express intimacy and humanity, concepts better studied and strictly linked with the private correspondence. Also the diary took the form of a letter, considered the best way to express one’s own sentiments. Politics and the bourgeois public sphere remained split, but the debate about sovereignty took shape. Machiavelli’s *arcana*, mentioned above, were contrasted by the general need for publicity. The public opinion started to reclaim a “general” law based on common consent. The state was requested to adopt a fairer constitution, especially taking into consideration the nature of the citizen as both human and owner. This evolution of public opinion passed through different stages across Europe: in England, in 1834, a party published its political program⁴⁰, while in France the public sphere found a place in the 1791 Constitution.⁴¹ Publicity was finally regulated – opposed only by the longstanding bureaucracy – and the bourgeois public sphere entered in crisis only when it had to open the political access to

³⁸ Ivi, pp. 57-65.

³⁹ Sigmund Freud’s (1856-1939) theory on the paternal role in education (Electra or Oedipus complexes) is an example of the new patriarchal society. This idea will be developed by Freud’s disciples as coming directly from capitalism.

⁴⁰ Ivi, pp. 66-67.

⁴¹ Ivi, p. 70.

everyone, also to the wide uneducated people. However, the initial material conditions remained sharply different, also due to inner markets law.⁴²

The low-class workers would not gain actual prominence in the political discourse at least for the further century. For instance, Karl Marx (1818-1883) criticises the (only apparently) liberal public sphere, as a defender of the bourgeoisie's interests. Given the absence of social mobility, the capitalist revolution has only solidified the pre-existing class system which reproduces the power relationship between capitalist and employed. Therefore, it is fallacious to identify the whole population with only the bourgeois public sphere and erroneous to consider freedom among its constituent features (other people are contemplated only as a limit). Marx suggests that there is no factual linkage between the person as citizen and his or her individuality, being the bourgeois identity something completely constructed. Concerning the topic of suffrage, Marx goes even further than the simple enlargement of voting rights: it believes that the non-productive majority of the population should seize power. In the long run, people will only represent themselves because, according to the Communist philosopher, society will be classless; the public power will no longer reproduce social oppression. The proletariat will acquire the right to evolve an authentic private sphere or, more precisely, the notion itself of private will be useless: autonomy will develop in the public life. Social relationships will be disjoint with necessity. The patriarchal household will be not the only familiar form of human organization. The separation between workers and means of production creates subordination and a modification of private law, more biased towards the capitalists' interests.⁴³

⁴² Ivi, pp. 86-88.

⁴³ Ivi, pp. 122-129.

Anyway, the violent crisis of 1873, and the subsequent end of the first stage of liberalism⁴⁴, gave rise to a new accumulation of power in the private hands. Habermas produced a description of the new 20th-century citizen onward. From that moment on, what someone possess strongly defines his or her social position, and the subaltern layer demands political representation to see their rights implemented. These Countervailing powers - as J.K. Galbraith defines them⁴⁵ - between the working class's political claims and the capitalist's decisions helped to maintain an equilibrium and managed to avoid the swallowing of private needs over the public ones. Collective contracts are the main example of this tendency: they are needed to avoid that those who have more bargaining power (the capitalists) would decide all the terms of the employment contract, most of the time at the expense of workers.⁴⁶

With this historical passage, the police role will become crucial in controlling society. It assumes a defensive function for the maintenance of public order in a purely negative sense. The state enacts some laws only to secure a certain part of the population, acquiring political and partisan decision-making. Nonetheless, public law must come to terms with the private sector. With this shift, as also anticipated before, the intimacy sphere is transformed. During the 19th century, companies acquired the form of an institution, with all the relative benefits and status quo features. They built houses and schools; even education and spare time were shaped by the industry's activities. Psychologists defined the modern citizen as the *organization man*.⁴⁷ Later, in the 20th century, the family was no more the productive nucleus of society, rather the consuming one. Nowadays, the state has the role to protect the single worker in case of unemployment or workplace accidents. Even private relationships inside the family's borders lose their primary importance: the

⁴⁴With this event, the overwhelming power of the United Kingdom stopped and, with it, also its expansionary and colonial policies.

⁴⁵ Ivi, p. 146.

⁴⁶ Ivi, p. 149.

⁴⁷ Ivi, p. 154.

household mislays both protective and economic functions. The sharp division among families falls and the private becomes part of a larger group. Reading circles, kept before in coffee houses – then passing through a migration into bourgeois’ salons in the 19th century – are in the 20th century outdated. Discussions take place in cultural institutions, like the television or the radio, and they are transformed into consumer goods: the citizen has to pay to stay informed about news and artistic production. The debate is engulfed by the new star system with talk shows. The structure of art, both in the intuition and in the execution, follows consuming rules. The book assumes a pocket-size and topics are presented in a more accessible way, unavoidably simplifying deep concepts and theories. The distinction between cultured and popular classes fades away and, with it, the notion itself of a public sphere with a political task: justice is no more the direct translation of a shared truth. Furthermore, class interests do not shape the political agenda anymore, but private individuals coordinate their decisions away from public eyes to reach a compromise.⁴⁸ Also Carl Schmitt recognized this transformation in the Weimar Parliament, where the representatives did not have the role to discuss publicly, but only to confer decisions already taken.

The public sphere totally changes its role and, with the birth of public relations, is structured as a genuine engineering of consent through opinion-molding services⁴⁹. This transition is very important to better understand the forthcoming discussion on the contemporary concept of order, security, and the request for these by the population: feelings, thoroughly mediated by some opinion leaders, stiffen up. This polarizes further citizens, while the active and conscious part of voters progressively decreases. In addition, there are a lot of non-voters. Political propaganda takes on the tones of commercial spots and tries to direct the citizens ‘decision through the same expedients of consuming

⁴⁸ Ivi, pp. 154-157.

⁴⁹ In this way, conformism starts to permeate everything, and the public sphere seems to come back to the feudal system, where the public figure determined social credibility. Ivi, pp. 159-160.

marketing: “[...] to sell politics in an unpolitical way.”⁵⁰, as Habermas writes. Consequently, as happened with the art, politics as well empties itself of actual contents, guided by the ratings of popularity. This line of action makes democracy more similar to an illuminated despotism: before public opinion served to catalyse collective desires in order to make them reality; now political publicity directs citizens’ inclinations, de facto destroying public opinion.⁵¹

The notion of “fundamental right” has dramatically changed, and so it is now possible to reach the core of Habermas’ theory. The set of privates does not form an organized group, but it weaves individual commercial relationships. The welfare states which, at least theoretically, should ensure the right of every citizen’s participation, only deal with certain private organizations. The resolution of conflict in a bureaucratic way has scored the victory of some group interests against the general ones – before translation of publicity. Furthermore, parties represent only the faction of the population with the possibility to have an active attitude towards politics. They no longer speak for the community, but only for some members and mainly for the institution’s sake.⁵²

Finally, we can add the last gusset to this initial framework: Schmitt’s theory on political categories. For the German jurist, to define the concept of political is basilar for the state, as it is with the one of enemy concerning the study of the war. First of all, it is important to observe – as Habermas did in his historical study – the state as a unique organism: every part of it is profoundly melted with a political decision, even the bureaucratic and the administrative sides.⁵³ Moreover, it is possible to study the concept of political only by defining its constitutive elements. Just like the Aesthetic (with the ugly and the beautiful) and the Ethic (the good and the bad), also for Politics is plausible to find two

⁵⁰ Ivi, p. 216.

⁵¹ Ivi, pp. 217-219.

⁵² Ivi, pp. 228- 229.

⁵³ Carl Schmitt, (1932) *The Concept of Political*, trans. by George Schwab, Chicago, University of Chicago Press (2007), p. 19.

distinct extremes: friends and enemies. This categorization is, at least theoretically, detached from the others – the friend must not necessarily be good or beautiful. The only feature of the enemy is that it is a stranger and against the pre-established set of norms that the citizen complies with.⁵⁴ The enemy is not a competitor, as liberalism wants to make people think. However, from the psychological point of view, the categories overlap, and what is hideous and awful automatically becomes a rival. As it was stated in the first pages, this distinction is the original aggregating organ in communities' formation: to find a public enemy, an organized group, to contrast is the first activity to do altogether.⁵⁵ Also secondary political concepts - such as sovereignty, state, society, and class – are steeped in a polemical attitude, so they must define someone or something to fight against. Furthermore, the construction of politics as a dispute among parties is a representation of this conflictual framework. Schmitt asserts that war, so the complete negation of the enemy though the destruction of it, is among the highest forms of the political. Even an economic social construct, as class, entering in antagonism with another group of citizens, becomes political for its critical nature. Nevertheless, in everyday life people assume a pluralistic social attitude, taking part in several non-contrasting groups.⁵⁶

Therefore, also the concept of Sovereignty acquires a deeper layer of definition: this is unity in case of a conflict. To declare the “death of politics” due to the total enslavement of the state to the economy and its organs (on the one hand companies and management equipment, on the other workers and trade unions) reveals itself as a vacuum, given that as long as there is conflict, there is politics. The state, the highest form of unity (thus of sovereignty), has the role of taking decisions.⁵⁷ It has the power to establish when and

⁵⁴ Ivi, pp. 26-27.

⁵⁵ Schmitt consciously draws, at this point, the distinction between the Latin words *inimicus* (the private enemy) and *hostis* (the public enemy). In the bible translated quotation “love your enemy” is used the term *inimicus*. This is because of the intrinsic existence of rivals to define the religious group, as for Europe in the millenary conflict against Islam. Ivi, p. 29.

⁵⁶ Ivi, p. 37.

⁵⁷ Ivi, p. 44.

against who to start an armed conflict. The constitution, in this legal framework, occupies a peculiar position: the state undertakes a war to defend that, but it does so by its suspension. Who is in power can decide over life and death of subordinates, simply as a consequence of his or her possibility to choose when to undertake a war (just apparently conducted under the defence of a certain ideology or ethics). As a consequence, freedom is just the possibility to autonomously choose who is the enemy. It follows the ability to recognize anarchic theory as naturally biased toward an idea of human goodness (for which the state is, in fact, useless), while liberalism as an attempt to centrally solve human degeneration, with a very limited action by the state.⁵⁸ Notwithstanding the definition of some precise features, this latter ideology exists only as a contrast to limitations of personal freedom. It tries only to defend private property, up to legitimately seize the power and govern in favour of some individuals. When moving towards international politics, Schmitt shows all of his reactionary attitude. It is impossible, according to him, to entirely ban war: the sovereign state should not delegate its faculty to choose.⁵⁹ To assert the absence of a rival means to take its side, or to enslave oneself to the power of someone else. This theory harshly contrasts the contemporary possibility to create unity among all the states, because “[...] political world is a pluriverse and not a universe.”⁶⁰; in a universal league politics would not exist. Furthermore, whoever claims to tackle a war for “humanity” purposes lies, because in this way humanity should be the negation of the existence of an enemy. Differently from liberalism, which tries to submit the state power to the economy, politics must assume the evil nature of people. It is impossible, in this sense, to ascertain an anthropological optimism, as Schmitt also states in “the Dictatorship”. In the always latent conflict among people, the state must bring decisions

⁵⁸ Ivi, pp. 60-61.

⁵⁹ Schmitt wrote these lines in 1932. He directly criticized the Kellogg-Briand pact, signed in 1928, which formally eliminates the war as an instrument of resolution of disputes. Just in 1933, Hitler came to power in Germany and, shortly after, he brought out the old Weimer Republic from the League of Nations. Ivi, p. 50.

⁶⁰ Ivi, p. 53.

and regulate. The best moment for political history has been those in which who in power has been brave enough to recognize and wage war on the enemy. The end of politics is the statement to have no rivals.

At this point, the consideration of the German jurist passed through the aforementioned connection between the number of proprieties and the political power. This will be central in the second part of the thesis, because the request for security is mainly legitimized by the protection of private estates. The final aim of liberal politics becomes to defend personal freedom, as a right possessed by single individuals. Thus, in the political realm, war becomes “competition” and “discussion”, carried to the point of exasperation; the state is transformed into “society”, “humanity” in “freedom of exchange”; finally, the population, gathered against the enemy, become the “culture-oriented public” (as the Habermas bourgeois public sphere).⁶¹

Clearly, all these considerations must be ascribed to the historical period in which they were written. Even if Schmitt finally sidestepped the Nuremberg Trial, he has never reneged his theories⁶². Out of every political flavour, he brightly described modern society and, with it, the widespread concern for security, sovereignty, and public order.

It is now important to sum up the crucial concepts expressed in this first chapter. First of all, with the example of article 48 of the Weimar Constitution, immediately became clear the sort of “permanent state of siege” in which we live in. Later, the analysis of how and why dictatorship could arise, and the consequent need for protection requested by the citizen, helped to fortify the idea of sovereignty, and the important dilemma of who possesses it in the state. Through Habermas’ structural critique and study on the concept

⁶¹ Schmitt proposed a reinterpretation of the Versailles Treaty of 1919 under a new light, the one of liberalism: for instance, the loss of Alsace and Lorraine is not described as an “annexation”, rather like a “reparation”; in addition, the creation of the Polish State is considered a human act, mostly disinterested. Ivi, pp. 72-73.

⁶² On that occasion, he claimed that if he has been considered responsible for the perpetration Nazi crimes, similarly Rousseau would have been the theorist of the Jacobin revolution.

of publicity, the analysis focused on the changes in social and economic classes in the last centuries, and how it impacted the request for order and security, mainly concerning private property. Finally, with Schmitt's political categories, the social classification of the citizens acquires prominence. All these concepts will merge in the analysis of the following chapter, finding common ground in the study of police action.

Chapter II

Police Control

2.1 A Critical Theory of Police Power

It is barely impossible to summarize in few pages all the important aspects of state control and the idea of sovereignty. In the previous chapter, following Schmitt's theory on the State of Exception and Habermas' analysis of the public sphere, it has been feasible to outline the political (and human) request for more security in a time of emergency and the natural predisposition to find a common enemy. Nowadays, the request for more safety, both inside and outside the national borders, has been turned into a partisan claim. Worldwide, the cultural war serves as international protection, together with the construction of alliances and the consequent latent global conflict. When a war breaks out, however, it is up to the military sector to handle it. On the other hand, at the state level, the police department has the role to maintain order in the realm of society. While in the international layer, it is very easy to persuade the domestic public opinion of the threatening presence of an enemy, many times depicted in paroxysmal tones, at the national side it may be a delicate activity: this is due to both old ideological relicts and for the push of part of the politics to become the spokespersons of the new request for security (even if data suggest we live in a much safer world than the past). Mark Neocleous, currently professor of the Critique of Political Economy at the Brunel University, intervening in an international workshop in 2018 regarding the construction of a gas pipeline (TAP)⁶³, dealt with the topic of "pacification"⁶⁴: this is the unification of the ideas of "war and peace" operated by the capitalist powers, as a form of domination. Protestors, he claimed, declare themselves as enemies; opposing to progress, they dissent

⁶³ Mark Neocleous (2018) *What is Pacification?* "Policing Extractivism: Security, Accumulation, Pacification", International Workshop, 5-7 October 2018, Melendugno (LE), Italy.

⁶⁴ "Police Pacification Unit" was a project launched by the Brazilian police in 2008. It was used to violently reduce the illegality rate in Favelas in sight of the upcoming Soccer World Cup in 2012.

against the state. Besides, pacification is maximum when it is silent, and it persuades the population to happily welcome the principle of accumulation proper of liberalism. A basic component of pacification is the social profiling of a part of the citizenry, mostly made by the police department: who protests is the enemy and police must fight him or her in a permanent war.⁶⁵

Police gained a prominent role in the 15th century: back then, the social coercion passed in the hand of a centralized system, also as a result of the end of the feudal organization as political and economic dominance. Without the lord to submit them, the lowest class acquired awareness of their social condition, becoming a more cohesive group. Simultaneously, the moralizing Church was gradually losing its power and the “bad habits” (as gambling, drinking alcohol, etc.) started to spread around the citizens. Urban authorities, also in the form of police, gained the role to maintain “public hygiene”.⁶⁶ The main problem of this regulating activity was the almost complete absence of parameters on which base supervision action, which ranged from public health concerns to fanciful or excessive clothing. Police was not contrasting criminality but, rather, disorder. Moreover, education too fell under the jurisdiction of the police, meant to ensure loyalty to the right values of labour and family. This *modus operandi* gradually reduced festivals and public events, spreading undercover agents to monitor the private associations.

Neocleous wrote in 2000 an essay named “a critical theory of police power”, proposing an analysis of the police action through a Marxist reading. Due to the latest social development, the book has been recently republished. In the first chapter, he clearly states “[...] crime prevention has never been the *raison d’être* of police.”⁶⁷ It has always been not just a form of supervision, but of government. In this sense, police have assumed what

⁶⁵ *Ibidem*.

⁶⁶ Mark Neocleous (2000) *A Critical Theory of Police Power: the Fabrication of Social Order*, New York, 2nd edition Verso Book (2021), p. 55.

⁶⁷ Ivi, p. 58.

is the moral rectitude of every citizen in both the private and the public forum. It is possible to divide police history into three stages: the first one was the aforementioned reaction to the end of feudalism and the Protestant Reformation, as a model to conserve the threatened hierarchy of social estates. Social order was just a part of a wider framework, one of the celestial bodies and religious entities. However, during the second phase and after the Thirty Years War, police took action and started to construct a new type of society, more politically structured. This is also the period in which the concept of order started to coincide with the sovereign's decision. State, with all its institutions, became the creating power of the social regulation. Theorists on police power started to refer to this second phase as the era of the "Polizeistaat" ("police state")⁶⁸, a term closer to our contemporary idea of the welfare state. Bringing in analysis the etymology of the term, it should be considered as a state aimed at the right application of some "policies"⁶⁹ for the improvement of citizens' wellbeing. The third phase occurred when liberalism completely subjugated the issue of security. To fully understand the condition in which we are today, it is important to analyse the first two periods of the historical evolution of police.

Thus, the peculiar features of the first two stages were the police's ability to shape the population's needs and the task to satisfy them. Borrowing Habermas' distinction between public and private spheres, police had the role to control citizens' action both in exposed places and away from prying eyes, checking if their activities could contrast the common morality. Moreover, during the 18th and 19th centuries, cameralism was widespread, and hence the central management of the economy resulted in the controlling and operational role of the police department. This unbreakable linkage between political

⁶⁸ Ivi, p. 64.

⁶⁹ The Neocleous' essay reserves an excursus on the meaning and the translation of the words "police", "politics" and "policy" in different languages. Coming to the English, he noticed that the Aristotelean work "πολιτεία" was rendered "Politics", intended as "Commonwealth", while in French and German the translation was "Police".

economy and the police resulted in a form of supervision, mainly of commerce and private propriety. Later, the mercantilist ideology started to tie together capitalism and politics, sponsoring a general state of prosperity. In a nutshell, Police had a pivotal role in the maintenance and the growth of “The Wealth of the Nation”⁷⁰. To hold out this target, the market – and therefore citizens employed in it – must follow some rules: traders must be registered, products to be catalogued, the commercial intentions announced in advance, and the movements controlled.⁷¹ In a way, this prevented the possibility to incur in shortages and to assure tranquillity of a certain social class, the poor. Several police textbooks claimed the maintenance of the population over of a certain level poverty to better manage hypothetical disorders. Neocleous proposes once again Marxist idea for which the regulation of the proletariat and the trial to make it a cohesive class through police means has been, after all, the umpteenth action to speed up accumulation and production.⁷² For this reason, certain activities were considered a threat to the market. Vagrancy and any other choice of life that did not contemplate work, were considered as a conscious approach to the criminal world. Police acquired the role to force citizens to become first and foremost active workers. In France, for instance, those found in a condition of idleness were locked in workhouses. Whereas the first stage of police was sustained by the absolutist state, the second is marked by the regulation of the poor class. Therefore, liberalism deeply nourished the evolution of police action. In its theoretical framework on the role of the state in the economy, Adam Smith (1723-1790) proposes some main tasks for the police department, all concerning security, clearness and, especially, defence of the market. He believes that the poverty and transgression of the law were strongly connected and that the police have to limit as far as possible wrong conduct also by forcing them to work. On that account, police as the richness of the nation

⁷⁰ Adam Smith (1779), *An Inquiry into the Nature and Causes of the Wealth of Nations*, London, W. Strahan and T. Cadell.

⁷¹ Mark Neocleous (2000) *A Critical Theory of Police Power: the Fabrication of Social Order*. p. 75.

⁷² *Ibidem*.

falls among the government roles, together with justice and protection from international threats. In other parts of his essay, Smith refers to police with a negative connotation, as the trial to maintain prices artificially unchanged. However, the Scottish economist and philosopher has, according to Neocleous, the merit to have detached the debate about order from the simple critique of freedom limitation.^{73 74}

This debate assumed different tones with the 19th century, when the apprehension on individual happiness started to exceed the one on communal satisfaction. According to philosophers like Immanuel Kant, the rule of law should pass over the welfare states, as previously explained, and focus on the defence of personal freedom. The Police State has to be ascribed as a positive form of protection: the trial to prevent negative occurrences. Under the liberal point of view, this is negative, because too pervasive and frequently leads to some limitations. This was the widespread idea that arose from the American Revolutionary thinkers, concerned about security, but much more about the rule of law. This also represented a passage towards a softer presence of the state in personal economic activity. Police was finally detached from the idea of welfare, readdressing this notion towards the new liberalism, where decisions are taken from the civil society itself in a more horizontal and – at least seemingly – voluntary way. The problem of coexistence between liberalism and police was not its positive side (the maintenance of order), but the negative one, concerning preventive actions which inevitably limited personal freedom. Some fundamental passages led this philosophy up to a point: personal interest, in the liberal economy, was achievable only through full independence; this autonomy, anyway, could conduct to chaos and police has hence the role to ensure that the various private interests do not unfairly conflict among them.⁷⁵ The liberal myth eliminates the

⁷³ Smith arrived at this conclusion in a residence in France during the second part of the 18th century, when the country was struck by several grain crises and the debate on the freedom of circulation of goods was commonplace.

⁷⁴ Ivi, p. 76.

⁷⁵ Ivi, pp. 102-115.

hierarchical conception of order made during the first post-feudal phase of police. Property – primarily of oneself – was the principal element to uphold. Nonetheless, a sort of friction comes to light when the worker, in this structure, should find autonomy in the wage labour. As claimed before, police action should be aimed at assuring independence. Thus, for the proletariat the fiction is evident. Marx too claimed that workers are forced, without any say, to accept the conditions of the employment contracts. The property turns out to be hierarchical dependence where “[...] Capital had become the king.”⁷⁶ This means that the organizing role that police had in the past was assumed by the market, which possesses the same moralizing force.

Until now, in this historical treatment, two concepts have been found of fundamental importance: the first is order, as an exemplification of the idea of dependency and reproduction of centralized power; the second is security⁷⁷, of propriety and productivity. This latter feature will have a certain gravity during the third stage of police, when gained prominence the preventive power. Under liberalism, security started to coincide with freedom – so crucial for the process of accumulation of the bourgeois society – and it became fore and foremost a single class request.

G.W.F. Hegel (1770-1831) understood philosophy as a moment of civil society, a sort of intercession between the universal idea of order and the individual one of citizen’s action. He borrows the liberal concept of society. Poverty is, at the same time, generated as a requisite of the liberal society and among its main concerns. More precisely, the poor mass of people asking for more equity may be a trouble for the state.⁷⁸ Patrick Colquhoun (1745 – 1820), a very important public figure in 18th and 19th century Scotland, has been

⁷⁶ Ivi, p. 110.

⁷⁷ It is interesting to analyse the etymology and the meaning of this word: it comes from the Latin *Securitas*, a combination between *sine* (without) *cura* (attention or troubling). However, this can acquire the sense of “overconfidence”. Like “police”, it is both a noun and a verb: this is peculiar of the fact that it represents the condition as well as the process to reach it.

⁷⁸ Ivi, pp. 117-120.

for a long time of little or no interest in the philosophical debate on security. Just as Hegel, he considered private propriety as something insecure due to the silent enemies arising from the holding of a certain estate. Nevertheless, he believed that the police action should go further than the simple punishment of crime: it should be aimed at the prevention of the transgression:⁷⁹ for instance, also an efficient streetlight may ward off someone to go against the law. Moreover, the activity to remove people from indigence could act as a form of prevention. For Colquhoun, at first, the solution would have been the full utilization of the workhouse system, suitable to force the vagrants to work and proletarians to pursue a worthy lifestyle.⁸⁰ Afterward, he went beyond the concept of the workhouse, outlining a distinction between the two ideas of poverty and indigence: the former is a legitimate condition of workers with not enough surplus gained from their labour, the latter represents a burden for the society through and through. The mechanism of prevention should aim to ensure that people do not fall in indigence, thus the trial to avoid being poor by not accepting the wage labour. Indigence is considered the straightest way towards crime. Again, morality and excesses of modern cities fall under police jurisdiction. This represented the birth of the new “social police”, designed to ascertain “social security”. As we noted above, the insecurity is part of property concept: security, therefore, must be the trial to limit insecurity and to strengthen the dependency of the liberal society.

Stepping out for a while from the Neocleous’ discussion, it is possible, at this point, to make the first consideration on the contemporary situation. In the light of the debate about police role, it seems clear the connection between the actions of prevention and

⁷⁹ This idea of prevention was the central topic of the short essay “On Crimes and Punishments”, written in 1764 by the Italian theorist Cesare Beccaria (1738-1794). This work, which has become very popular in the following centuries in the field of criminal law, deals with the problem to commensurate the crime with the corresponding punishment, to satisfy the pivotal aim of the sanction: to prevent as much as possible that the transgression could happen again. The novelty of Colquhoun’s theory is the application of this philosophy of law idea to police action.

⁸⁰ Ivi, p. 130.

punishment with the one of poverty. The natural bias of some departments of public order towards minorities may be rooted in this linkage. As asserted in the introduction, 2020 has been the year of mass protests against police brutality, in the American case mainly directed towards African Americans. This is a longstanding US problem, and one of the most famous examples is the Ferguson Police Department Case of 2014⁸¹, which rose to prominence after the violent and unwarranted murder of Michael Brown. After that event, and the consequent protests arising from it (these marked the birth of the modern Black Lives Matter movement), the US Department of Justice found that the police was working to maximise the profit made by the fines. The research found that 88% of administrative stoppages were perpetrated against the black population (even representing only 67% of the citizenry) and they were also 93% of the whole detentions. The investigations found several others shreds of evidence of the deeply rooted racism of the department, as jokes invented or a series of emails to tease imprisoned black people. Furthermore, 16.000 citizens of Ferguson were targeted as potentially dangerous protestors, a little less than the entire population of the city. This case can lead to two important considerations (that will also be analysed later in greater detail): in Ferguson, the poverty rate is more than 10% higher than in the rest of the US. In 2019, the percentage of black people living under the poverty threshold, even if in decline, was 20.8% (in contrast with the 10.1% of white people)⁸². Albeit, generally, correlation does not mean causation, these data still get some perspective. Second, in the Ferguson case, most of the population was the “enemy”. This represents a problem for the concept of criminality itself, which should be the deviation from the norm.

⁸¹ Vox.com, “*The 2014 Ferguson Protests over the Michael Brown Police Shooting, Explained*”, <https://www.vox.com/identities/2015/5/31/17937728/ferguson-missouri-michael-brown-police-shooting-black-lives-matter> [visited on 20/06/2021].

⁸² <https://www.census.gov/quickfacts/fact/table/fergusoncitymissouri/IPE120219#IPE120219> Ferguson census data, <https://www.census.gov/library/publications/2020/demo/p60-270.html> US overall poverty census data. [visited on 20/06/2021].

Returning to Neocleous' treatment, its research subsequently tried to draw the connection line between poor law and the police action. The so-called Sus Law is the symbol of this linkage. It was a type of "stop and search" order, part of the English legislation since the 1824 Vagrancy act, that defined whoever can be considered a suspect, allowing the immediate halt. In this manoeuvre, also children playing on the street could be considered criminals. The Vagrancy act was later complemented, among the many, by the Highways Act of 1835 (to fine whoever stop on the street for a certain period) and by the Metropolitan Police Act of 1839 (increasing the discretionary powers of London agents). These contrasted every unjustified street activity. Therefore, police became the means to contrast poverty (because vagrants, considered criminals, were characterized by being poor) and not the crimes. As Marx noted, the wage labour had overtaken the legitimate appropriation of the fruits of work, and police oversaw that workers do not receive more than their salary. The fastest way to prevent crime is to boost the wage labour. Riots made by the lower class – interruptions to the normal economic productivity cycle - arose as the major concerns of the modern state, often suppressed through military action. Upheavals are immoral acts against capitalism.⁸³ In the end, the criminal and the claimant classes (corresponding to the workers asking for more rights) were both seen as the trial to avoid the wage labour system, so of idleness. Social police became like a "[...] border patrol: the policing of the border of citizenship; that is, the policing of the borders of the categories defining those who are to come under the greater control, surveillance, and administration by the state"⁸⁴. The working class assumed criminal features. However, crimes committed by the bourgeoisie – usually producing more negative externalities – are often bypassed. Making people work in highly dangerous places or put on the market unsafe products are instances of lawbreaking activities made by the capitalists⁸⁵, but

⁸³ Ivi, pp. 147-166.

⁸⁴ Ivi, p. 171.

⁸⁵ At this point, Neocleous proposes some data coming from the English working market. The Italian case is no so dissimilar: only in the first four months of 2021, the percentage increase of people who died in the

considered as simple organizational failures. The issue of criminalization of poverty was also implemented by the assumption that lower-class members presented some hygienic problems, at the time considered among the main cause of illnesses.⁸⁶ Dirtiness was an example of disorder. Consequently, the clearness was for police the organization of an ordered working class. In the ordinary police activity, this was expressed in a structural bias towards untreated people, maybe with long beards and hairs. This is the reason why policemen were also known as “pigs” (domestic animals during the Victorian Era), being always on the edge between the civilized and the uncivilized worlds.⁸⁷

To conclude, it is just a myth to assert that the police is involved with crimes, and several data support this theory. Left-wing politicians do the wrong critiques because they still deal with transgressions. Inevitably, this is not so: more than the police force, it should be adequate to talk about police service. It must only make the rule of law fully respected, being concomitantly limited by it. Nonetheless, this is rarely the case, and policemen and policewomen try to gain *de jure* those rights they already assume *de facto*; most of the time, they reach the goal to act in the most convenient way for them, even if against the legislation. They do so either with the tacit agreement of judges or with a complete change in the rule.⁸⁸ For instance, while in the past the arrest was possible only after an authorization, now the warrant is barely requested.⁸⁹ Citing Neocleous: “[...] the principle operative criterions of pacification are the same of police power: ‘order rather than law, accumulation rather than justice’”⁹⁰.

workplace was 9.3%, more than twice a day. This does not consider the labour related diseases: only in Steel Mill of Taranto (producing 50% of the whole dioxin emission in Italy) causes around 1650 death every year, and three times more shelters.

⁸⁶ Ivi, pp. 174-181.

⁸⁷ *Ibidem*.

⁸⁸ Ivi, p. 188.

⁸⁹ As normed in the Criminal Law Act of 1967 or, during the Italian case of Tangentopoli in the nineties, when was authorized the “preventive arrest”.

⁹⁰ Mark Neocleous (2018) *What is Pacification?*

2.2 Discretionary power

After the previous historical-critical treatment of police power, it is now useful to analyse some key aspects of its action, still very present also nowadays. At the end of this short excursus, will be possible to understand deeper the foundation of the contemporary mythology of “law and order”.

Police was born with an ambiguous task, and this vagueness still resists. This institutional body is free from a precise collocation between the three powers (legislative, judiciary, and executive). In police action, as was noticed before, the temporary derailment from the reproduction of the rule of law is pivotal. This method materialises in the “discretionary power”. It is the application of the aforementioned analysis on the personal judgment of when an officer can act “beyond the law”. The leftist critique to this resides on the causal link which emerges between discretion and discrimination. This connection is particularly evident, for example, to the detriment of the working class. However, abuses of power must be considered both in the bypass of legislation that with the non-application of it - thinking about the nonchalance in facing a certain type of discriminations, as the ones against the queer community or for women reporting violence received by their partners. In these cases, the lightness with which some problems are treated favours the public opinion to discredit some serious warnings. In this regard, the police, through its discretionary power, strengthens the idea for which even law is just a part of the maintenance of order, somehow positing policing and administration outside the political sphere. Police acquires a quasi-judicial power, having the freedom to decide on the innocence and guilt of every citizen arbitrarily stopped on the street.⁹¹

There is (rule of) law and order, two sides of the same coin. It is possible to understand them as enforcement – with the predominance of discretionary power – or as equity –

⁹¹ Mark Neocleous (2000) *A Critical Theory of Police Power: the Fabrication of Social Order*, New York, 2nd edition, Verso Book (2021). pp. 195-205.

following their natural role. However, the two possibilities are mixed in the [...] myth of police enforcement of law (and maintenance of order) to be presented and understood as a defence of the rule of law”.⁹² This is also a consequence of liberal legislation, apparently concerned with justice, but intended only in the conservation of social order. It is easy to notice that officers abuse their power mainly against people unable to sustain a discourse (as mentally ill or alcoholic) or protestors, representation of an indistinct mass of people.

The equivalence is drawn among justice, law, order, and police. The legislation is only a principle to legitimize social ordering actions. This could be also one of the origins of the abuses: given the discretionary nature of their power, officers feel free to adopt any method to regulate offences, even if previously unknown.⁹³ Neocleous concludes its essay with a straightforward consideration: the contemporary trial to denounce an undercover “police state”, does not contemplate the structural connection that elapses between police and the state itself.⁹⁴

2.3 The Italian police department

When approaching the topic of police control, a consideration arises spontaneously: the bibliography, at least in Italy, produced on this subject is very narrowed. The only things around are judicial treaties or studies directly funded by the police department, texts that need to be approached with a certain respect.⁹⁵ This lack has been one of the stimuli leading the sociologist Salvatore Palidda to write two essays on the Italian police department, which could be useful as a more practical example on the topic in analysis.

In Italy, social sciences have been more attentive to the party system and the political structure than to police action, considered as part of the state administration. In addition, public opinion and mass media tended to compartmentalize politics, for which the US

⁹² Ivi, p. 209.

⁹³ Ivi, p. 210.

⁹⁴ Ivi, pp. 217-218.

⁹⁵ Salvatore Palidda (2000), *Post-modern Police*, Milan, Feltrinelli, p. 22.

was the foreign defender, Church took care of social assistance and trade unions dealt with working-life problems.⁹⁶ An issue arose from the academic research on police department: the unavoidable analysis about the relation between the socially accepted actions of security forces and their illegitimate (not to say illegal) practices, as previously presented. The criminalization of social claims has been a deep wound of the Italian case, with a widespread condemnation against who at the margin, newly urbanized workers and political militants – Palidda notices the similarity between the conduct reversed to people coming from the South of the country or rural places, and the contemporary attitude towards migrants.⁹⁷

In the first years of the last century, protests were usually suppressed with the use of the army. Worldwide, Modern polices were born out of this need: to eliminate social control from military hands and to increase the distinction between the “working class” and the “dangerous class”. This would have been possible only through an intense practical study of society. Police was assisted by other corps, with the role to implement a new knowledge about social changes, making fruitful its coercive power.⁹⁸ This awareness is realized with the personal profiling and classification of citizens through, for example, the application of streets’ names and numbers. In Italy, police was the main tool to handle post-unitary disorders, when it hardly distinguished between criminals and victims resulting from the unification of the state (as for the case of the “Southern Question”).⁹⁹

Locally, mayors and administrators usually impose stricter responses in favour of the application of the so-called doctrine of “zero tolerance”. This *modus operandi* has been still adopted in a period when crime rates were yet gradually decreasing. The empirical analysis has shown an increase in the polarization of the centre-periphery problem and

⁹⁶ Ivi, p. 17.

⁹⁷ *Ibidem*.

⁹⁸ Ivi, p. 30.

⁹⁹ Ivi, pp. 28-29.

the violence of the police action. The request for more security is emblematic of the post-modern society.¹⁰⁰

The Italian case presents several peculiarities. In this country, the police department has been completely reordered by a reform dated 1981. Briefly, Police was demilitarized and was transformed into a civil body. This new legislation also detached this institution from the direct domination of Christian Democrats that, with its uninterrupted thirty years rule, has actually possessed an unconventional power for a democratic party. Even when other factions were admitted into the Govern, the Ministry of the Interior (secretary of state of the police department) remained under the CD ascendancy until 1994.¹⁰¹ After the reform, the division among penitentiary officials, public security guards, and women (employed for the control of common decency), all previously grouped under the general term “police”, was completely rearranged. Furthermore, they were allowed to form trade unions, spreading a new relationship between police and community, well represented by the slogan “police service of the citizen”¹⁰². Another result of the 1981 reform has been the official’s rejuvenation, exemplification of a higher commonality between policemen or policewomen and their peers: among law enforcement officials there are no more racists or violent people than in the rest of the population.¹⁰³

Pallida proposed in 2000 a deep analysis of the reform, also including several testimonies. Twenty-one years later, he published another essay to reconsider the condition in which the police department is nowadays, with an insight on the political role of security. The Italian sociologist dwells much on the contemporary role of illegal work: this is, according to some estimates, about 32% of the GDP. This kind of labour lies among the tolerated unlawful acts, even if the regularization of these workers would highly increase

¹⁰⁰ Ivi, pp. 26-27.

¹⁰¹ Ivi, p. 56.

¹⁰² Ivi, p. 62.

¹⁰³ Ivi, pp. 74-83.

government revenues. Besides, environmental crimes, among the major cause of severe illnesses and deaths, are also permitted transgressions. Not to mention the condition of indigence in which falls an enormous part of the global population, for which in 21st-century people live more, but under highly unequal conditions.¹⁰⁴ All these elements are rarely under the attention of police action. Taking into consideration the COVID-19 pandemic, and the generalized response to it, a contradiction becomes clear: if this unprecedented emergency has been possible to stop the economic cycle, putting health first, what about the enormous number of deaths which everyday are caused by erroneous management of society? Palidda suggests this is due to the capitalist-liberal ideology, which shadows everything threatens the process of accumulation: “[...] if the common citizen asks to police for protection from an employer who mistreats and does not regulate him, he will receive protection only if he addresses fair and diligent operators and, above all, that is not colluded with the employer himself.”¹⁰⁵ Giving the decisive role of health defence in the constitution, it seems a contradiction that environmental crimes are often not even considered as transgression, though more as accidental errors. Conversely, prisons are full of people arrested due to trivial offences (as petty theft)¹⁰⁶. Pallida noticed the reduction in the preventive actions: among the main example of this lack is the progressive decrease of attention on peripheries, in expansion on the whole national territory, where police officials enter mainly to arrest or to suppress riots.¹⁰⁷ Supervising bodies have been severely reduced.¹⁰⁸ Forty years after the 1981 reform, police trade unions seem to follow corporate requests; they have never monitored the abuses, indeed they try to defend police reputation every time is questioned.¹⁰⁹

¹⁰⁴ Salvatore Palidda (2021), *Police, security and insecurity*, Milan, Meltemi, p. 32.

¹⁰⁵ Ivi, p. 46.

¹⁰⁶ Ivi, p. 68.

¹⁰⁷ This consideration is supported by the evidence that 42% of the arrests are targeted as “mild”.

¹⁰⁸ Ivi, p. 66.

¹⁰⁹ Ivi, p. 188.

2.4 Police and state of exception

Finally, after this brief overview on the major features of the police action, it is time to apply the notion of the state of exception to the concrete case. The discretionary power granted to the police (and to all formal institutions) is, in itself, the possibility to suspend the democratic rule – and the traditional rule of law – to facilitate the resolution of an issue. This is the same premise which makes possible the “right wars” and that obliterates the distinction between a violent reaction with the pacific intent. The question about who decides about the state of exception, that for Schmitt represented the possession of sovereignty, finds here a linkage with the discretionary power.¹¹⁰

Police usually follows, in its everyday practice, a dual path: on the one hand, it obeys the central political authority, on the other to local requests, through patrolling and blitzes. This is the role of the police: to enforce the social categorization acquired during the training. Most of the calls received by the emergency numbers are simple remarks about the suspicious presence of “atypical” people, a result of the satisfaction of local requests for security. It is now possible to make a point about the effects of this discretionary power – therefore on the possibility to autonomously decide about the exception – given to police. The vast majority of abuses perpetrated by police forces is a consequence of an unrestrained misuse of discretionary faculties, somehow legitimized also by the impunity socially assured. This latter tacit authorization is regularly incremented by the camaraderie proper of the group of peers, function as a sort of “moral recognition”. Several times, the high productivity of some police districts is pleasantly praised by the central authority and the public opinion, without really questioning the fairness of their activity.¹¹¹ As for other violent abuses, when they are committed by who should be responsible for the control of social order, the justification usually is: “the victim had it

¹¹⁰ Ivi, pp. 127-128.

¹¹¹ This is the case of the Carabinieri barracks of Piacenza, which rose to prominence in July 2020 due to the discovery of the terrible abuses committed there by officers.

coming”. This apology takes the form of a norm, which if respected would never lead to unpleasant outcomes. Besides being a form of interiorization of the liberal idea of dominance (thus of dependence), it is completely and utterly a degeneracy of the democratic (and reactionary) modern state, a sort of perpetual “state of exception”. These are, according to Palidda, “[...] post-modern oxymorons (humanitarian war, defence of democracy sacrificing freedom, etc.)”¹¹². In this way, who tries to oppose the system is considered the enemy, at least by institutions. The trial to subvert the order of things is adversary, even though the methods adopted are peaceful.

Salvatore Palidda wrote the first of the book quoted, “Post-Modern Police”, in 2000. Just one year after, the world -and the study on police control - were turned upside down by two major events: internationally with the Twins Tower terrorist attack of 11 September; at the Italian level for the G8 held in Genoa between the 19 and the 22 July¹¹³. This latter case has profoundly marked the public opinion due to the violent repression of no-global protests, which lead to the killing of a demonstrator (Carlo Giuliani), and abuses of several people, who arrived in the Italian city to express their disapproval against the neo-liberal order. 2021 is the twentieth anniversary.

As a premise, it is important to specify that this is a very tricky subject: on this occasion, as happens very often for topics like this one, there is no sharp right and wrong distinction. Furthermore, it is impossible to deal with this subject exhaustively in this thesis; it is however feasible to analyse some peculiar aspects of the story. The event was anticipated by the fake announcement of two terrorist attacks, that have never taken place. They incremented police officers’ fear and hate (directed towards the protestors) during their training. Meanwhile, a widespread mediatic and institutional criminalization of the no-

¹¹² Ivi, p. 199.

¹¹³ After this event, no other G8 meeting has been held in a big city.

global movement, already violently contrasted in Naples and Seattle some months before Genoa, was taking place.¹¹⁴

That in Genoa, even if in a smaller proportion, has been the real institution of a “state of exception”. Not to make clash the protestors (coming from all over the world, including 800 associations which clustered 300.000 people) and the political delegations of the most industrialized countries, control organs organized in detail the routes of the two groups. There have been limitations in the freedom of movement, the closure of tribunals and universities, together with a huge deployment of police officers, 20.000 according to some estimates. It is singular linkage, even if not direct, the division in coloured zones of the city during the G8 and what happened in Italy throughout last year. When the handling of the manifestations was a runaway, also due to the presence of black blocks¹¹⁵, police has made extensive use of its discretionary power, resulting in the massacre at the Diaz school, the murder of Giuliani, and the violence in the Bolzaneto barrack, for which Italy has been condemned by the European Court of Human Rights. After July 2001, two judicial processes had been established for the events happened during the G8: one against the police and another against the protestors. Anyway, immediately (and still nowadays) part of the police department and the public opinion tried to ascribe the abuses as singular and individual acts, not linked with the wider organization of security forces. Many officials have kept their position and some of them have also been promoted. Palidda ascribes the event in the neo-conservative turn inaugurated by the Clinton’s US – and then promoted by Bush – to use violent means instead of pacific negotiations, based on the supremacy of certain powers over dominated actors. Even torture is justified in this

¹¹⁴ Salvatore Palidda (2008), *Research Notes on the Police Violence at the Genoa G8*, “Studies on the Criminal Issue”, new series of “On Crimes and Punishment”.

¹¹⁵ Group of vandals, with no political ends, who meet on the occasion of protests to clash with the police and deface the city.

perverse management, caused by a re-militarization of both international and local police forces.¹¹⁶

¹¹⁶ It is peculiar the case of the Tuscania Battalion, taking part in several international military operations (most importantly the one in Somalia) and requested for the maintenance of order in Genoa.

Conclusion

When the G8 of Genoa case was taking place, I was only two years old. I clearly cannot remember anything about that event, but I have often felt the need, during my education, to get informed on what happened, trying to think about the reasons that have caused that violence. It is very difficult to analyse personal intentions and predispositions leading people to abuse their power; it is possible - and dutiful - to study the structural problems which, in an overall vision, can create the “perfect storm” so that these abuses take place.

It is obligatory to make a premise, and I knowingly place it at the end of the thesis not to make a bogus impression: police control has become a very polarizing topic, for which every kind of critique is perceived as a factious consideration. When talking about police, it seems everyone ought to position himself or herself “in favour” or “against” its work, failing in providing a complete and objective consideration on the topic. This thesis has been the trial, synthetically, to propose a certain perspective towards which analyse police action and control, as a debate included in the wider theories of sovereignty, order, and security.

To conclude, I believe it is possible to make two major considerations. The first one is about our contemporary condition. Protestors who legitimately carry on some revolts (as the one against the major infrastructure projects – NO TAV or NO TAP in Italy) are criminalized in the bud. During the last twenty years, the strategy used to quell the uprising has been, instead of focusing only on violence, to use banalization of claims as an instrument of pacification. This is a form of social control even harder to fight, because it dissuades participants to protest, making them believe the comfort they live in is all they can aspire to.

Moreover, after the problematization presented in the essay, it is fair to also deal with some solutions. In response to institutional abuses, the usual reply is that representatives

of police forces or political power are still human beings: everyone can do something wrong, and that in a wide group of people there must be a “rotten apple”. However, this form of justification (caused by the aforementioned polarization) fails to grasp a pivotal aspect: the study of the structural “glitches” of the state system. Palidda proposes some solutions to make more effective prevention to stop power misuses: to monitor crimes committed among the ranks of the police; the analyses of those transgressions; to promote the *whistleblowing*, so the reports of the illicit behaviours; to put an end to judicial impunity assured to officers who commit abuses; transparency on data and granting to an external authority (not politically aligned) the possibility to judge the police conduct.¹¹⁷

¹¹⁷ Salvatore Palidda (2021), *Police, Security and Insecurity*, p. 185.

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