

A STUDY ON PUBLIC ORDER AND JUSTICE IN TOTALITARIAN EUROPE

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It is widely known that Historical Memory plays a crucial role in any nation that wants to be regarded as democratic. A reflection on our most recent annals contributes to promoting constitutional values and advocates the construction of a dialogue between the past and the present. At the same time, it provides us with an opportunity to avoid the repetition of the serious mistakes made in other periods that cost the lives and freedom of thousands of citizens. This was advocated by Marc Bloch, among others, during the second world war, when he affirmed that: "(...) la historia quiere aprehender a los hombres. Quien no lo logre no pasará jamás, en el mejor de los casos, de ser un obrero manual de la erudición. Allí donde huele la carne humana, sabe que está su presa"¹. This is, in essence, the aim in our overview of this work: **Represión y orden público durante la II República, la Guerra Civil y el franquismo. Una visión comparada, Aranzadi, 2019, 453 pp. (Pérez Juan, J.A y Moreno Tejada, S.)** *Repression and public order during the Second Republic, the Civil War and Francoism. A comparative view, Aranzadi, 2019, 453 pp. (Pérez Juan, J.A. y Moreno Tejada, S.)* In the words of its coordinator, "pretende hablar de personas, hombres y mujeres que fueron víctimas de la represión, de la radicalización, de la intolerancia, y de la intransigencia". To this end, this work provides a complete cross-sectional "análisis del marco jurídico y político vigente en España durante la primera mitad del siglo XX, y en particular, de las acciones de represión desplegadas en la época para el mantenimiento del denominado orden público".

Carefully and clearly structured, this monograph is divided into two main parts, both of which include extensive research by recognised jurists

and historians. The first section is devoted to the study of 'Derecho, Orden público y Justicia en la II República, la Guerra civil y el Franquismo'. Through its multidisciplinary method, the reader is afforded a global vision of the legal system for each period that closely examines key questions, such as the coercive measures adopted by the different political Executives. In this sense, Alejandro Martínez Dhier addresses the repression of the "homeless population" from the monarchy of Henry III to the law of Vagrants and Criminals of 1933. Special attention is given to the latter ruling and to the different security measures it stipulates, which included internment in labour camps or in agricultural colonies for a period of no more than three years. This rule "continuará vigente durante el régimen franquista, junto a su Reglamento dado en 3 de mayo de 1935". Focusing on this latter historical period, Carmen Losa Contreras and Antonio Sánchez Aranda reveal the ins and outs of its oppressive policy. The first author makes a thorough analysis of the academic trajectory of Blas Pérez González, a key figure in the consolidation of national-Catholicism and one of the architects of its sanctioning system. Such was the case that he was regarded as the 'Valido de Franco' (Franco's favourite), because of his "enorme poder como Fiscal del Estado y luego como ministro de la Gobernación" (p. 27). Also noteworthy is his interference in the doctrinal development of Civil Law at that time through different publications such as *El método jurídico*, *El requisito de viabilidad del nacido*, or *La extensión de la hipoteca a la indemnización por siniestro* (pp. 44-53). For his part, Sánchez Aranda illustrates the repression suffered by important actors of the republican regime during the Civil War and Francoism. This is the case of the jurist and political

¹BLOCH, M., *Introducción a la historia*, translation by Pablo González Casanova and Max Aub, Fondo de Cultura Económica, electronic edition, 2011, s.f.

scientist Joaquín García Labella, who undertook intense cultural, political, and institutional activity in Granada (p. 223). Our author devotes a large part of his work to closely examining the details of the post-mortem criminal case against the distinguished professor before the Regional Tribunal of Political Responsibilities, whose defence fell to Juan Ossorio Morales (pp. 235-261). In the same line, Ruiz Resa meticulously recounts the manipulation and misrepresentation that legal categories underwent during the dictatorship, such as the right to employment. Through the alteration of their defining elements, they took on a punitive and redemptive hue (p. 187). This was a 'solution' that "permitió a las autoridades franquistas canalizar el exceso de presos para paliar la falta de mano de obra en la reconstrucción de un país en ruinas tras la guerra" (p. 191). Orza Linares addresses a similar issue in relation to the legal application of amnesty and reprieve from the indicated historical period to the transition. In this sense, in his contribution, he analyses the regulations enacted in this respect, and examines their jurisprudential interpretation in-depth. The importance of these institutions compelled him to exceed the publication deadlines, since, as he himself affirms, their effect and legal consequences continue to foment intense debate today (p. 119).

This section also encompasses other major issues, such as the recognition of rights and freedoms, the mediatisation of justice, or the protection of public order during the Second Republic. Santacreu Soler has invested considerable effort into the study of the latter subject. Specifically, he analyses the church and its metropolitans in the political and social disputes that took place between April and June 1931 as well as the Executive's response. In this respect, he highlights the activity of the papal nuncio Federicho Tedeschini, in Madrid, or that of the cardinal primate of

Toledo, Pedro Segura Sáenz. The latter "representó al sector integrista y monárquico del episcopado español opuesto al nuevo régimen republicano", which finally brought about his expulsion from the country (pp. 263-264). Undoubtedly, the republican leaders were faced with numerous difficulties throughout their mandate. As Alcalá-Zamora affirmed in *Los defectos de la Constitución de 1931*, the passion of the moment prevented a spirit of harmony that would guarantee respect for the fundamental constitutional principles, such as the Independence of Judicial Power. Hence, we come to the research by Payá Poveda, who points out that "los gobiernos de ambos bienios, y el del Frente Popular, hicieron cuanto pudieron para controlar la Administración de Justicia (p. 169)". This intervention is made evident in the different provisions enacted during that time. An example of this can be found in the decree of 23 August 1932, which created an inspection of the Courts and the Tribunals responsible for informing about the judges and prosecutors worthy of a sanction-retirement (p. 171), while that of the 2 June 1933, regulated the removability of the magistrates (p. 174). Of particular interest is the detailed examination that he makes of the "Casaneuva" law of 11 July 1935. In the opinion of this researcher, this law, approved by a right wing majority in the Congress and applied by the Frente Popular, constitutes "un medio de amenaza latente a quien pretendiera enfrentarse al Gobierno desde los juzgados" (p. 185). Another demonstration of the latent dissension between the provisions established in the constitutional regulation and the legal-political reality of the time can be found in the area of the recognition of rights and freedoms. Moreno Tejada sheds light on this division in the context of women's suffrage. In her work, she makes an analysis of the elections held in 1933 in order to find out to what extent the female population participated in them. That is to say, she

looks into “cuántas mujeres se integraron en las listas electorales y qué peso tuvieron en la confección de las candidaturas” (p. 94).

The second part is devoted to ‘Justice and Dictatorial Regimes in Europe during the first half of the 20th century’. The contributions included in this part focus on a comparison of the totalitarian governments that existed during this period in different territories of the old continent. In this sense, Canale Cama highlights the common features between the dictatorship of Primo de Rivera and the one imposed by Benito Mussolin. In the author’s opinion, it is undeniable that both countries responded in parallel to the political crisis of liberalism, constructing a new form of State, which, however, produced different results in each country (p. 315). From this point, she then moves on to reflect on how fascism interfered in the Francoist regime. Of course, under the warning of not falling into the trap of considering this as merely evidence of the success of the former (p. 331). The research by Patrizia de Salvo is framed within the same context and focuses on tracing the presence of fascism in the Spanish press, radio and cinema, and more specifically that of Salamanca, through a study of the documents conserved in the *Archivio Centrale dello Stato di Roma*. To achieve this, first of all, an examination is made of the reorganization of cultural policy at that time by the ‘ministero della cultura popolare’ (pp. 351-352). Once again demonstrating its multi-disciplinary character, the monograph also includes a sociological and a political review of Italian authoritarianism. With respect to the sociological aspect, Angelo Zotti, aims to reflect on the different determinants that led individuals to adhere to the ideology of the Partito Nacional Fascista, making its fundamental values their own, acknowledging its symbols, and accepting its regulations (p. 432). The leadership of the above-mentioned

camarilla also depended on other resources, such as violence, propaganda, or even electoral law. Vittoria Calabrò makes an in-depth study of the reform of the legislation in force during this historical period, during which it evolved “del fascismo ‘parlamentario’ a la total abolición del Poder Legislativo”. In her opinion, it is a key issue, since it led to the eradication of other political groups, and thereby the Executive was guaranteed that there would be no opposition (p. 290).

In the work we are reviewing, a large section still remains for the investigations into German National Socialism. More specifically, Ignacio Czeguhn looks into Third Reich, whose interest transcended the rights of individuals, and its penal reform directed at ‘protecting the national community’. After his rise to power, Criminal Law became an instrument for the Führer, who was entitled to criminalize any member of the population for their convictions or way of thinking (pp. 339-341). Professor Czeguhn recounts this phenomenon, highlighting how although criminal and civil legislation, consolidated and guaranteed since the end of the 19th Century, was still in force, its content was reduced to simple formulas, becoming the superior moral expression of race, that is to say, “la ley es lo que es útil para el pueblo alemán” (p. 343). After the fall of this political system, Germany reconstructed its rule of law. To achieve this, it took its inspiration from the Weimar republic, redeeming its principles. Martin Löhnig explains this transition in detail, highlighting the difficulty that prevailed, since until 1949 there was no legislative power that could be responsible for enacting the new regulations. This fact determined the need to reinterpret the provisions in force. For example, this is what happened with the labour legislation, whose content had to be readapted by the Tribunals to protect the rights and freedoms of the population. Finally,

the contribution by Tébar Rubio-Manzanares, addresses the policies of Transitional Justice applied in France, Germany and Spain during the post-war period. His research not only provides a brief description of the repression carried out by the indicated governments, but it also synthesises the different politics of memory from Nuremburg to present day, making a special mention of the Spanish model of impunity.

In this epilogue, it is necessary to underline the prominent place that should be kept aside for this monograph among the studies of Historical Memory. It is undoubtedly, a reference work which sheds light on issues that have unfortunately remained buried until now, and which are indispensable for laying the solid foundations of a real and effective democracy. It is justice, therefore, to congratulate the co-authors of this book, who have completed their work with rigour; the tangible outcomes of which have been strengthened by the accurate and careful editing carried out by the coordinators.