The epidemic of collective violence, a manifestation of disorder and complexity

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Man differs from other animals in that he is the most capable of imitation.
Aristotle, Poetics, 4 [1]

Abstract. While organised crime, terrorism and now war are the focus of academic and political attention, the riotous violence of informal groups and gatherings of people who simply rise up in protest against social injustice receive only occasional attention, even though they are a recurring phenomenon. Usually dealt with on the spot by the public authorities, the security forces and the justice system, these epidemics of collective violence are a fascinating subject of study, whose clarity and simple mechanisms contrast with the seriousness of their social and financial costs. In this presentation, the author illustrates the banality of the phenomenon and analyses the kinetics of this type of disorder before showing the difficulty of taking it into account in law, drawing on his personal experience as a police officer and legal expert.

Note to the reader: the following text reproduces the content of an oral intervention that took place on June 19, 2023 during a seminar devoted to issues of complexity and disorder at Paris-Cité University. Eight days later, following a police intervention that led to the death of a young man of 17 in Nanterre, a violent riot sequence swept through two-thirds of France's departments and over 500 cities for a week. In a separate, short appendix, we compare this new riot episode with the material from the June 19 intervention, to identify similarities, developments and future avenues of research for academics.

Beyond the forms of ritualization that enable us to tame their effects, the aim of this presentation is to highlight the contrast between the banality of disorders giving rise to collective violence and the complexity of their consideration by the jurist. Whatever the attachment of the French to the "demonstration" object and the French specificity of a "street democracy", it will be possible to show that the mechanisms are recurrent and that the spread of this violence is not specifically French: it doesn't care about borders like prison walls.

The collective violence that will be discussed is very diverse, and involves much more than possible excesses after "La manif" or on the occasion of major sporting gatherings (hooliganism), political gatherings (summit and counter-summit), festive or religious events. It also involves clashes between gangs, riotous violence, collective violence against representatives of the authorities...

Over the course of time and in different countries, the forms and reproduction of epidemics of disorder have taken two distinct forms. On a general level and over a long period of time, we see forms of collective disorder that become part of the culture of a population, a country or a continent, and are reproduced from one generation to the next. This is the case, for example, with the French demonstration, which corresponds to a ritualized expression of discontent that limits the use of violence. It's also the case with carnival culture, which ensures a punctual, time-limited overthrow of the social order. In this long-term modality, variations in the repertoire of collective action, such as casserolades and violence in effigy, appear, disappear and reappear [2]. In the short term, or more precisely, in the time of action, this behavior is more a matter of imitation, mimicry or even the pressure to conform from one person to another, or from one group of people to another, for which advances in neuroscience can provide relevant scientific insights [3]. Among the wealth of these disorders, it's the contagion of collective violence that our development will focus on, in the form of a limited-format presentation at a new session of the “Complexity and Disorders” days organized by Université Paris-Cité.
More specifically, the aim is to use specific examples to highlight the basic mechanisms behind the spread of certain forms of collective violence.

Drawing on the work of several historians and confirming the plausibility of hypotheses based on the author's practical knowledge of riotous violence, this exercise in style then sets out to highlight the difficulty of dealing with this particular form of disorder - epidemics of collective violence.

It is most likely the political dimension of all social conflict that explains the difficulty and prudence of the law in responding to this particular form of protest, which is violence of expression [4], sometimes mobilizing, for want of a better term, what sociologist Thierry Sauvadet calls "warrior capital" [5]. It should also be stressed that the ability to understand the spread of a phenomenon does not necessarily guarantee the ability to anticipate and manage it satisfactorily, particularly when riotous violence is triggered by an event whose occurrence is strictly contingent. The fact remains, however, that an understanding of the mechanisms involved limits surprise and makes it easier for players to manage. This opens up new avenues of research in terms of preventing unrest and improving the responsiveness of public authorities. It also leads us to question legislation and jurisprudence in order to respond to collective behavior without calling into question the principle of the individual criminal responsibility of each member of the collective.

To give concrete expression to these issues, an approach based on the history and kinetics of disorder (1) will help us better grasp the complexity of the way in which the law deals with riotous violence in the age of social networks and digital lightning (2).

1. Riot Violence and the kinetics of disorder

Without making any value judgements about their underlying nature, their validity or their legitimacy, the aim of this first part of the development is to demonstrate, on the basis of specific facts, the contagiousness of certain types of disorder in the context of protest movements. The aim is not to focus on the question "why?" and the just or unjust nature of violent collective behavior and the social response of the authorities, the government or the state. It's about trying to answer the question "How does it work?" Put another way, our analysis is not concerned with the cause and responsibility of collective disorder, but with the study of its spread in space and time.

After a great deal of hesitation about how to present this talk, the choice was made to start again from the astonishment of the police officer confronted with empirical practical data, and then to follow the questioning at the origin of a return to university, which today enables me, thanks to you, to deepen or complete a doctoral course.

It was the three weeks of urban violence that shook the country in Autumn 2005 that led to the formulation of the "concept of repercussion identification" (CRI) and the hypothesis of a contagion of disorder based on the dissemination of information (1), before highlighting the recurrence of contagion mechanisms (2) thanks to a historical and transnational perspective.

1.1 The spread of disorder and the dissemination of information

At the end of October 2005, faced with an unprecedented phenomenon of urban violence, the headquarters of the central public security directorate organized the statistical reporting of vehicle fires within its jurisdiction. Every morning, the data for the previous day and night were aggregated and sent to the top echelons of the Ministry of the Interior, providing an overall picture. It was in this capacity that I was able to perceive and feel in very concrete terms the spread of the shockwave of riot violence (1.1.1) and gradually enrich my personal analysis to gain a deeper understanding of the spread of riot violence (1.1.2).

1.1.1 The shockwave of rioting violence

Based on data on vehicle fires in each department over the three weeks of unrest, it is possible to multiply the graphs. Beyond the general curve, with the calendar on the x-axis and the volume of vehicle fires on the y-axis (fig. 1), the geographical spread of the phenomenon from the Paris region to the provinces can be seen by examining figures 2 to 5.

A morning reading of last night's events highlights the phenomenon of diffusion, with the particular case of the Loire department, which took six days to cross the 500 kilometres separating it from Seine-Saint-Denis before the troubles began (fig. 2).

Examination of the data in the days that followed showed that, once the prefecture had been affected, it was the smaller towns in the department that were in turn "contaminated" (fig. 3). Quite literally, I think it was this surprise that prompted me to start thinking about the contagion of disorder!
A properly intuitive theoretical model of dissemination known as the "psycho-emotional model of collective violence" or the "Repercussion-Identification Concept" (RIC), in which the propagation of the shock wave is assessed as a function of the repercussion of the circumstances of a triggering event (death or other trigger) and the identification with the victim (in the generic sense) that it provokes [6]:

\[
\text{Shock wave} = \text{Generating event (R x C + I x V)}
\]

If we seek to validate the hypothesis of a shock wave spreading from Paris to Saint-Etienne, the geography that places Lyon to the north-east of Saint-Etienne would justify the Rhône curve being between the two curves in figure 2. Graphically, this hypothesis is confirmed in figure 4.

Another unprecedented graph showing trends in the Rhône and Loire departments alone is also troubling in terms of the consistency of the time lag and the similarity of the shapes. The rebound in the fire phenomenon linked, in our view, to a late decision by the Rhône prefecture to implement the state of emergency also seems to be reproduced in the neighboring department on a smaller scale, in line with figure 3 (intra-departmental diffusion) and the image of the diffusion of a wave that attenuates as it moves further away from the initial shock point.

1.1.2 From imitating behaviour to sharing emotions and feelings

Based in particular on the observation that in 2005 riot violence spread even though there was no displacement of rioters, the authors of an article entitled "Epidemiological modelling of the 2005 French riots: a spreading wave and the role of contagion" published in January 2018 [7] set out to build a mathematical model analogous to those used to describe contagion phenomena: a compartmental epidemic model of the Susceptible-Infected-Recovered (SIR) type. Unlike the previous author, who only highlighted the chronology of raw incidents of vehicle fires in France, this subsequent work uses mathematical support to analyse riot-related violence over the same period, adding together the following incidents: 5 vehicle fires, police assaults (throwing projectiles) and assaults on firefighters. The authors thus constructed a model of incident occurrence (grey dots •••••) based on an epidemic model, the results of which (red line) corroborate the spread of a wave of riot violence from Seine-Saint-Denis.

The diagram below shows the remarkable fit between the model results and the data for the 12 most affected departments.

The discussion of the results confirms, for 2005, a riot dynamic comparable to that of an epidemic, and uses in particular the words and expressions "propagation", "wave", "progressive wave", "contagion". The authors conclude that "the modelling approach introduced here provides a generative framework, different from the statistical/econometric approach, that can be adapted to the detailed description of the spread of collective uprisings from a main triggering event [...] our SIR model can be modified to include delays (information propagation time), to take into account the temporal integration of past events, or also be based on non-geographical criteria (e.g., cultural, ethnic, socio-economic similarity characteristics)."

From this open conclusion, since the "shockwave" metaphor seems to respond to the empirical experiential knowledge of the professional, and the expertise of the sociologist and mathematician, we need to ask ourselves about the nature of the shockwave that spreads. There's no such thing as a car fire virus, and the rioters of 2005 were not displaced. So what happens in practice to explain the contagion? In this respect, the simplest hypothesis, and the one most consistent with what we know of previous episodes of collective violence and disorder, is that what spreads is quite simply information (be it unproven), and that this circulation of information is the condition, in particular, for shared knowledge and identification based on the similarity of conditions, of social characteristics of populations that concern people who do not necessarily have any direct link between them. Shared information and the process of identification can help us to understand and even explain
the shared emotions and feelings that fuel collective protest and anger. Indignation, anger, resentment and the ordinary vindictive mechanisms linked to resentment can then find expression as the initial information is disseminated, corroborating the importance of geographical proximity and the importance of inter-acquaintance networks, particularly within the natural incubators of the collective constituted by educational establishments and social networks, which we'll come back to later.

The shockwaves produced by the information transmitted directly or exchanged via one or other communication tool (radio, television, smartphone, etc.) provide a clear understanding of the sharing of emotions and the commonplace contagiousness of disorder in the past and elsewhere [8].

1.2 Recurrence of contagion mechanisms

Whether we're talking about riotous disorder, simple imitation phenomena or more elaborate disorders with more structured transmission mechanisms, contagion is omnipresent in space and time.

1.2.1 Permanence in time

It's an understatement to say that the expression "epidemic of collective violence" is likely to offend Mr. Everybody, the sociologist striving to identify the "social construct" and the philosopher [9] behind our individual and collective behaviours. However, there is not necessarily a contradiction between social constructs and the contagion of social facts. In this respect, the examples that illustrate the developments of this contribution should not be seen as value judgments on the actors of the phenomena described, nor on their conduct. The aim is simply to highlight the way in which certain phenomena unfold and to describe the facts.

Historians have made a tremendous contribution to this field, as exemplified by Yves-Marie BERCE and Jean NICOLAS, authors of particularly enlightening works on several categories of recurring collective unrest in France.

Yves-Marie BERCE's long-term research, following a thesis on popular uprisings in the 17th century, focused on social movements over a wider time-span. He is not afraid to use the expressions "epidemic of collective violence" or "urban violence", without any particular connotation. In particular, he describes the dynamics of peasant uprisings and the differences between town uprisings and rural uprisings, which should prompt us to be very modest in our analysis of today's urban and rural unrest. The historian invites us to confirm the phenomena of contagion and collective emotion, while emphasizing that the speed of contagion differs from one territory to another: In truth, the differences between uprisings in the cities and those in the countryside are simply a matter of topography, of how places are used.

In towns, assemblies are easier, violence more swift, riots bloodier [...] This is why, in towns, collective violence takes the form of riots, frequent and short, while in the countryside it takes the form of peasant wars, rarer but more serious. All that said, the motives behind most of the popular uprisings of the time were the same, whether they were urban or rural movements"[10].

The permanence and accuracy of BERCE's comments are illustrated by the fact that mobilizing issues such as taxation are part of the culture: "A primordial myth of insurrectionary ideology is that of the remission of taxes, of the blessed time when the king gave up taxing his subjects. The tax-free state, the king who wants no duty from his people, is the great expectation that is constantly reborn, a permanent belief that from time to time becomes a burning hope in the course of a revolt" [11]. Fiscal issues that we'll see again, accompanied by collective violence, at the beginning of the 21st century with the "Bonnets rouges" (red caps) and the "Gilets jaunes" (yellow jackets): "In many towns and villages, the sudden arrival of this news (the 1848 revolution) gave rise to an immense anti-tax hope : a moment of vertigo when people believed they were realizing the utopia of a tax-free state, of peasant freedom where each community would live, quite modestly and traditionally, as it pleased, escaping orders from the chief town and laws invented by Parisians"[12]. BERCE emphasizes that it is the arrival of information that sparks mobilization.

For our purposes, and before we go on to talk about "fake news", Yves-Marie BERCE addresses the clash between rumor and culture with the dissemination between March 29 and June 21 1868 in Guyenne and Périgord of "an epidemic of collective violence that occurred in the spring of 1868 [...] an illustration of Bonapartism's attachment to the current of peasant anti-statism, and an example of the long survival of forms of behavior, organization of space and representation of society"[13].

Another historian completes BERCE's look at "revoltology" in France. He is Jean NICOLAS, author of a formidable work entitled "La rébellion française", subtitled "mouvements populaires et conscience sociale 1661 - 1789"[14]. The format of this contribution does not allow for a multitude of examples to pay tribute to the richness of Jean NICOLAS's work. Only one example is borrowed from the 8528 rebellions skilfully researched by his team.

After the winter of 1709, the author recounts a year of frumentary unrest linked to the "shortage-harvest-riot" cycle, with a precise example of the spread of disorder between Rouen and Caen: "In Rouen .../... thousands of people took to the streets on July 3, 1709...there were nearly ten thousand the next day...word of the riot spread throughout Normandy and reached the town of Caen, where eight days later, two thousand individuals attacked the house of an officer suspected of having made hoards."[15] Eight days to go from Rouen to Caen (130 km), whereas in 2005, we saw that it took 7 days for the emotion to spread from the north of the Paris region to the Loire department (530 km) [16].
1.2.2 Continuity in space

Space, in the broadest sense, is either enclosed or open. In the case of enclosed spaces, the adoption-contagion of identical behaviors seems more understandable, as evidenced today by the soccer stadium with its hola and clapping, and, as Elias CANETTI evoked "the masses in a ring"[17] with Saint Augustine on the occasion of the circus games [18]. Information is shared immediately, and proximity facilitates the sharing of emotions and, if need be, the dissemination of violence.

Aside from historians, the persistence of the contagiousness of violence can also be illustrated by borrowing from René GIRARD, who put it this way: "If we look back, we will see that violence, from the outset, has revealed itself to us as something eminently communicable. Its tendency to rush towards an alternative object in the absence of the one originally intended, can be described as a kind of contamination. Long-suppressed violence ends up spreading to its surroundings [...] We all know that the spectacle of violence has something "contagious" about it. It is sometimes almost impossible to escape this contagion. [...] There always seems to come a time when violence can only be opposed by another form of violence, and it doesn't matter whether you succeed or fail, it's always the winner. Violence has extraordinary mimetic effects, sometimes direct and positive, sometimes indirect and negative. The more men strive to control it, the more food they provide it; it transforms into means of action the obstacles we think we put in its way; it resembles a flame that devours everything you can throw at it."[19]

The image of fire reinforces the continuity of contagion mechanisms, with two revealing illustrations: a historical example in open space, and a recent example from enclosed space to open space.

In chronological order, we begin with the consequences of the Francisco FERRER affair. Francisco FERRER was a Spanish national, pedagogue, founder of the Modern School and libertarian thinker. At the end of August 1909, in Spain, after popular protests against conscription and the war in Morocco had been fiercely repressed, Francisco FERRER was accused of instigating the unrest. Arrested and hastily brought before the courts to prevent the protests from spreading, FERRER was sentenced on October 9 and shot on October 13. His execution sparked a wave of indignation in several European and South American cities.

The very next day, tempers flared in Paris, as detailed in this account and in the photos that Anne STEINER recounts in her book on the taste for rioting in the belle époque: "I can still see men on café terraces, reading newspapers with accounts of the crime. I see faces pale and stunned, then suddenly flushed with the rush of blood through the arteries; the bullets that had just laid FERRER to rest in the Montjuich moat wounded every free conscience. The ardent breath of the suburbs, the powerful breath of Paris, the brain and heart of the world, passed through the great boulevards. A great thrill of horror and anger, of horror and justice, shook all generous hearts, and I understood how a revolution can be born. » [20]

After the international repercussions of a highly political execution in Spain, the second example demonstrates the impact that suicides in closed environments can have. In September 2015, the suicide by hanging of a 19-year-old from the Saint-Eloi district of Rodez in a cell at the local prison provoked urban violence. A few years later, in April 2018, a surge of anger set the Mirail district of Toulouse ablaze after the death of a young adult from this neighborhood behind the walls of the Seysses prison. These violent deaths illustrate the spread of emotion and demonstrate that it is indeed the circulation of information that transmits and enables the production or reproduction of identical behaviors.

To conclude this section, it is important to emphasize that the information that triggers epidemics of mass violence need not be true or verified, which is easy to understand with the "work" of rumors, and can be frightening in the context of propaganda and disinformation campaigns. All in all, the banality of contagion and the simplicity of its mechanism - provided we accept the "Repercussion-Identification Concept" (RIC) - stand in stark contrast to the difficulty of managing collective violence in law and practice.

2 Complex management in law and practice

Having attempted to show how simple, rapid and effective are the mechanisms for propagating epidemics of collective violence, we now turn to the legal response to these disorders, without forgetting that our technical approach does not make any moral judgement on the merits or otherwise of these collective movements, nor on the actors involved. Our only postulate, which is of course open to challenge, is that the collective violence we are concerned with is expressive violence. This position allows me to suggest that part of the difficulties faced by public players is linked to this characteristic, which has a direct impact on the principle of freedom of expression. In the following section, I will look first at how to reconcile the exercise of public freedoms with the maintenance of law and order, and then at the question of penalizing collective behavior in the face of the cardinal principle of individual responsibility.

2.1 Public liberties and the maintenance of law and order: a delicate balancing act

One of the reasons for the difficult reconciliation between the exercise of public freedoms and the maintenance of public peace, in its more police-like version "maintenance of public order", is the properly political or proto-political dimension of social movements. Before Gérard MAUGER commented on 2005 [21], Jean NICOLAS wrote: "But the repetition of events and the upsurge in protest are difficult to explain if we don't recognize the emergence of an awareness that encompasses the social and prefigures the political. Even the most physical, least conceptualized refusals already refer to the feeling of a right independent of the law." [22]
2.1.1 Choosing the right moment: administrative or judicial policing

Public authorities have two options for dealing with collective disorder: they can anticipate it if it is foreseeable, or they can react when it occurs. This immediately raises the first difficulty when it comes to the exercise of a public freedom, and freedom of expression in particular: how to prevent disorder without obstructing that freedom? Any anticipatory measure is potentially read, rightly or wrongly, as an infringement of freedom, hence the irrefragable political dimension of managing public disorder.

When it comes to public freedoms, there are two main options: the repressive system, which prohibits nothing but punishes, a posteriori, behaviour that constitutes an offence; and the preventive system, which - to avoid disturbances - regulates the exercise of a given freedom (for example, by creating a highway code to avoid excesses in the freedom to move about freely). The repressive regime calls for judicial police measures (and the intervention of magistrates), while the preventive regime calls for the intervention of the administrative authority (the prefect who prohibits or modifies the modalities of a sporting, cultural or religious event...).

The preventive regime is intellectually and practically satisfactory for maintaining public peace, and consequently the most prejudicial to civil liberties. France has therefore opted for a "mixed" system, requiring only a prior declaration, and allowing precautionary measures to be taken if necessary, up to and including outright prohibition. In France, therefore, there is no authorization for demonstrations, but some are banned from time to time.

It's easy to imagine the embarrassment of managing a demonstration that is both undeclared and unbidden! This is one of the reasons why, over the last ten years or so, there has been a call for the judicialization of public order, so that those involved have a clear, effective and protective legal framework within which to act, with the endorsement and under the control of the judicial authorities. What can be considered a guarantee, however, implies intervening during or after disturbances, with all the risks that this entails. Hence, then, the search for and creation of specific offences such as obstacle offences, in an attempt to reconcile a solid legal framework for action with preventive effectiveness.

The ability to model the kinetics of certain forms of collective behavior opens up new possibilities for anticipating the reactions of this or that fraction of the population. There is, however, a limitation and a paradox. One limitation is that the trigger for riotous violence is frequently a contingent event, the occurrence of which is itself difficult to anticipate. Put another way, it's possible to anticipate the consequences of a fact, piece of information or decision, but predicting the initial cause is trickier. A paradox, because while preventive measures are particularly effective, the State and public authorities are exposed to a mechanical legal risk, even in the absence of disorder, for having implemented potentially disproportionate infringements of freedom of expression and/or freedom of movement.

Having highlighted these contradictions in the context of timing, we now turn to the question of means.

2.1.2 The choice of means: use of force and tolerance of disorder

"In a society where custom and tradition reign, where written and state law have not yet been put into practice, collective violence occupies a primordial place. This place is even enshrined in law... The bell rings in the event of a fire and the volunteers come running, because it is their duty to come to the community's rescue" [23]. Yves-Marie BERCE's quotation provides an opportunity, well before the French Revolution, to question the status of collective violence in our surprising country, where insubordination is advocated by members of parliament, not without a link to the revolutionary constitution of 1793 and, more to the point, the Declaration of the Rights of Man.

In 1793, Article 9 of the constitution stated that "The law must protect public and individual liberty against oppression by those who govern", Article 33 that "Resistance to oppression is the consequence of the other Rights of Man" and Article 35 contained the famous statement "When the government violates the rights of the people, insurrection is, for the people and for each portion of the people, the most sacred of rights and the most indispensable of duties".

In 1789, Article 2 of the Declaration of Rights stated that "The aim of every political association is the conservation of the natural and imprescriptible rights of man. These rights are liberty, property, security and resistance to oppression".

In order to re-establish order, positive law is first and foremost concerned with prevention: "The purpose of maintaining order is to prevent disturbances so that they do not have to be suppressed; it includes above all preventive measures, the importance of which must never be lost sight of. If order is nevertheless disturbed, it also includes measures designed to restore it" [24]. This position is logical. The administrative nature of public order management follows from it [25].

Legally, to meet both the objective of anticipating disorder and that of restoring order, the law states that "An assembly within the meaning of article L 431-3 of the Code of Internal Security may be dissipated by the police after two summonses to disperse have remained without effect, addressed by the prefect, the sub-prefect, the mayor or one of his deputies, any judicial police officer responsible for public security, or any other judicial police officer, wearing the insignia of their position. [26]" In practical terms, however, there are two specific cases in which the use of force can be used without prior summonses [27].

In addition to legal constraint (the prohibition imposed by the law), it is sometimes necessary to use force, open force or brute force. However, the use of public force only leads to the legitimate use of violence, an expression I borrow from Raymond ARON [28], when
the legal constraint imposed by the law is not enough. Basically, without being angelic or glossing over any professional misconduct, the rule of law does indeed require the use of legal coercion, if necessary just the use of force within the framework provided by the law. Similarly, it is legitimate to prosecute those whose behaviour falls foul of the law because they do not respect the defined legal framework.

The fact remains, however, that the choice to use force is not a mechanical one. It responds to a legal diagnosis and a subjective analysis of opportunity in context. In France, the criminal law governing assemblies, as set out in the Penal Code and the Internal Security Code, has long been a model of flexible law, with a subjective dimension that gives the civil authority responsible for the decision to use force the opportunity to decide whether or not to use force, even when the legal conditions for its use have been met. This is also the reason for the existence of a specific system of liability, which will be discussed in greater detail later in this article.

In doctrine, this practical dimension of assuming, if necessary, damage to property in order to limit damage to persons is known as “patrimonialisation”. The very existence of this derogatory regime reflects both a form of tolerance of disorder [29] and the difficulties of taking into account the violent collective behaviour to which the collective expression of ideas and opinions can give rise. The source of these difficulties is undoubtedly linked to the irrefragable political dimension of the search for a socially acceptable balance between the maintenance of public order and the practical exercise of civil liberties [30]. The cardinal distinction between the civil authority, which decides on the use of force and assumes responsibility for it, and the public force commander, who implements the use of force, reflects the political nature of public order management. In the field and in practice, these difficulties are obviously of an operational nature, in terms of distinguishing between peaceful and violent actors in a crowd, but they are also of a legal nature.

2.2 Individual responsibility versus collective action: the legal quandary

The individualisation of criminal liability is a hallmark of the rule of law, and we all remember the unjust and retrograde nature of collective punishments or exemplary punishments such as the decimation evoked by Roman historians and writers. Today, Article L-121-1 of the French Penal Code states that "No one shall be held criminally responsible except for his own actions". The fact remains, however, that when it comes to responding to the social risks associated with collective action, French law has for a long time had two liability systems coexisting.

In the case of violent behaviour committed in the exercise of public freedoms, a system of extra-criminal legal liability can be found alongside the traditional forms of punishment for criminal participation. So before reviewing the efforts made by the legislature and the courts to provide a better response to collective behaviour that constitutes an offence, it is worth mentioning the specific system for compensating victims “for damage and injury resulting from crimes and misdemeanours committed with open force or violence, by armed or unarmed gatherings or assemblies, either against persons or against property”[31].

2.2.1 A specific extra-criminal liability regime to compensate for the risks associated with popular protest movements

The search for liability for damage linked to protest movements is marked by the historical legacy of the relationship between the central State and local authorities. Once again, a retrospective look is instructive. It allows us to confirm the permanence of the major categories of "disputes" linked, for example, to tax or food issues. It also shows that our culture is changing slowly and little. Jean-Nicolas' research shows, for example, that 55% of the 8,528 acts of rebellion he recorded between 1661 and 1789 concerned taxation and the State's judicial or police apparatus. These studies also highlight the popular tradition of "rescuing", which demonstrates the solidarity of local people in the face of outside authority. The rescue mechanism is a variation on the tocsin's call for help in the event of danger, fire or other calamity. In the eyes of public opinion, tax collectors, in the broadest sense of the term, naturally fall into the "calamity" category. Coming to the rescue also involved very young people, long before there was any talk of urban violence in the suburbs: "In the street, young people are marvellous when it comes to resisting arrest or seizure. Building site labourers, schoolchildren and other rascals have the art of stirring up a neighbourhood, swinging their fists and posing as victims at the slightest threat"[32].

In the same vein as the rescue, and not unconnected with the mythology of the tumultuous relationship between the state, the citizen and local authorities, the uprising of "La Commune" also constitutes a marker of collective action, with a representation both real and fantasised of the legitimacy of indignation and collective anger against an unjust power embodied in repression. This is not the place for a detailed analysis, but we can certainly see similarities between the lifting of "communes" in the past and certain uprisings today around a roundabout or a « ZAD » ie a zone to be defended. In the event of a rescue or the lifting of a commune, it is in the face of more or less organised groups that the public authorities must react. So it is to the vehement exercise of freedom of expression by people using their collective public freedoms that the State reacts by using, over and above a criminal law whose principles are more suited to the repression of criminal associations than to the stormy gathering of angry citizen-demonstrators, a specific system of liability, directly inherited from the Middle Ages and formalised in 1795 during the post-revolutionary period!
Symbolic of the relationship between the central State and local authorities, including in terms of maintaining public peace, the revolutionary provisions aimed to make communes liable for compensation for damages and interest resulting from "offences committed with open force or violence on its territory, by armed or unarmed gatherings or assemblies, either against individuals or against national or private property"[33]. Article 2 of the same text of An IV clearly proves that the aim was not only to give victims the right to compensation, but also to force communes to "control" the excesses of their population: "In the event that the inhabitants of the commune have taken part in the offences committed on its territory, by assemblies and gatherings, this commune will be obliged to pay the Republic a fine equal to the amount of the main reparation". In addition, article 5 of the Vendémiaire decree provides for the possibility of joint liability on the part of several communes and a form of collective liability on the part of the commune's inhabitants: "when, as a result of an assembly or gathering, an individual, whether domiciled in a commune or not, is looted, mistreated or killed there, all the inhabitants will be required to pay damages to him or, in the event of his death, to his widow and children". A century later, the law of 5 April 1884 (known as the Municipal Law) and the law of 16 April 1914, which amended articles 106 to 109 [34], perpetuated the creation of a system of liability for social risk and, in our opinion, also political risk, by stipulating in article 108 "However, if the municipality has failed in its duties through inertia or collusion with the rioters, the State may take recourse against the municipality for up to sixty per cent (60%) of the sums". Today, the specific liability regime is set out in article L 211-10 of the French Internal Security Code. The first paragraph of this article states that "The State is civilly liable for damage and injury resulting from crimes and offences committed, by open force or by violence, by armed or unarmed gatherings, either against persons or against property".

Thus, throughout history, the legislature has recognised the social cost of exercising public freedoms, while at the same time endeavouring not to fall into the trap of an insurance-type system that provides systematic compensation that is convenient but costly for the State's public finances [35]. It is therefore understandable that traditional criminal law retains a legitimate and predominant place in responding to the behaviour of angry citizens during episodes of collective violence.

2.2.2 Recent developments in positive law and case law relating to collective violence.

In the face of collective outbursts, the legislature, the courts and legal doctrine have reacted in various ways, without being able to avoid the recurrence of polemics on the occasion of this or that news item featuring the violence of gangs or hooligans, and today the behaviour of "black-bloc" demonstrators.

In the context of criminal law and, consequently, the principle of personal liability, collective violence is dealt with technically by all the provisions relating to criminal participation (complicity), by a particular modus operandi characterising the material element of an offence (action, concerted manner or plan, provocation), by specific aggravating circumstances (grouping, multiple persons acting as perpetrators or accomplices, organised gang) or by autonomous offences or offences-obstacles (criminal conspiracy, participation in a group or an agreement established with a view to ..., participation in a combat group, participation in an armed group, etc.), participation in a combat group, participation in a violent group, which we will discuss below). Certain forms of collective violence are now also treated as part of the concept of organised crime or terrorist offences.

As far as the law and the legislator are concerned, the issue is still marked, in France, by the figure of the "Casseurs" [looters or rioters] and Law 70-480 of 8 June 1970 designed to repress certain new forms of delinquency, known as the "Marcellin Law" after the Minister of the Interior at the time, then the "Anti-Casseurs Law"[36], which stipulated in particular that "When, as a result of a concerted action carried out with open force by a group, violence or assault has been committed against persons or destruction or damage has been caused to property, the instigators and organisers of this action as well as those who voluntarily take part in it will be punished, without prejudice to the application of the more severe penalties provided for by law, by imprisonment of between one and five years...". Drafted and promulgated in the post-1968 context, this law was intended to crack down hard on collective behaviour attributed to extremist groups and to provide for joint compensation for personal injury or material damage caused by such behaviour. Criticised as a "legal monstrosity" or "police law", the law was repealed shortly after François MITTERAND came to power in 1981[37].

History is stuttering. In response to "the increasing number of acts of violence committed by gangs" and "the gaps in our repressive arsenal"[38], Act n°. 2010 of 2 March 2010 strengthening the fight against group violence and the protection of persons entrusted with a public service mission[39] introduces a new offence in Article 222-14-2 of the Criminal Code, making it a criminal offence "for a person to knowingly participate in a group, even if formed on a temporary basis, with a view to preparing, as evidenced by one or more material acts, deliberate violence against persons or destruction or damage to property, is punishable by one year's imprisonment and a fine of €15,000".

History is still stuttering. In the context of the Yellow Vests conflict, the proposed law aimed at reinforcing and guaranteeing the maintenance of public order during demonstrations, known as the Retailleau law, which seeks to introduce an administrative ban on demonstrations along the lines of the provisions relating to administrative stadium bans created in 1993 [40], once again raises the spectre of the 1970 anti-breakers law. Referred to the Constitutional Council, the text was partially censured [41], but the parliamentary debates following the pension reform in 2023 once again raised
the question of the appropriateness of criminalising violent collective behaviour. In addition, and in parallel with the development of positive law, legal doctrine and case law have long sought to respond to the difficulties by broadening the notion of complicity or by creating, as early as the 19th century, concepts such as co-respective complicity and the single scene of violence, to which we will return later. The scope of complicity has been broadened to include indirect complicity, also known as second-degree complicity, which most often disappears behind the notion of aid or assistance, the theory of participatory abstention or passive complicity,[42] complicity in an offence even in the absence of intentional fault on the part of the principal perpetrator,[43] and unintentional complicity in cases where certain professionals fail to control or verify operations committed by principals or employers.[44]

The concept of co-respective complicity appeared as early as the 19th century,[45] in particular to be able to punish acts committed collectively where the circumstances in which they were committed made it impossible, for example, to precisely identify the perpetrator of fatal blows. However, the concept now most widely used in this area is that of a “single scene of violence”, i.e. a scene “which must be assessed as a whole, without it being necessary to specify the actions of each of the participants”.[46] This jurisprudential construction was recently judged to comply with the Constitution on the occasion of a “question prioritaire de constitutionnalité” rejected in the following terms by the “Cour de cassation”, which affirmed that “personal participation in indivisible violence caused by several perpetrators. This assessment of individual behaviour does not, therefore, undermine the presumption of innocence, and does not imply either a reversal of the burden of proof or a disregard for the principle of individualisation in the application of criminal law.”[47]

To conclude provisionally on a subject that will undoubtedly be developed further, it is worth noting the unique use, as far as our research is concerned, of the concept of “a single scene of destruction or damage”[48] on the occasion of a collective operation against the cultivation of GMOs, which gave rise to an appeal that was rejected by the French Supreme Court, confirming in particular that “in a democratic society, there are means other than the commission of criminal offences to prevent a possible danger...”[49]. The treatment of mob violence is still divided between preventive and repressive measures. Beyond the recurrent polemics often dictated by political posturing, the difficulty of dealing effectively with the preventive aspect remains, particularly when the risk of violence is concomitant with the exercise of a constitutionally protected collective public freedom, since any preventive measure will necessarily and legitimately be analysed as a potentially disproportionate interference. The path to a fair balance will remain narrow in this area.

At the end of this presentation, in the course of which each of the concepts evoked would be likely to provide material for several symposia, seminars or scientific publications, it is perhaps worth drawing attention to two specific points regarding the treatment of violent collective behaviour. On the one hand, the richness and lack of guaranteed effectiveness of our legal tools, which could or should lead to the creation of new rules or the codification of certain concepts such as "a single scene of violence" and "a single scene of degradation". On the other hand, there is an interest in preserving, for the benefit of litigants, the flexibility of ad-hoc jurisprudential creations so as not to fuel the inflation of legal standards. The debate remains open. For example, at the end of the trial into the terrorist attacks of 13 November 2015, criminal law professor Julie ALIX deplored the "lack of effort to conceptualise this issue". This trial could have been an opportunity to note that our law is not adapted to the imputation of mass crimes and that something new had to be built”[50]. Efforts under international law, in particular Article 25 of the Rome Statute of the International Criminal Court, combine the principle of individual criminal responsibility with certain forms of group crime by extending the scope for prosecution to those who order, solicit, encourage [51], contribute [52] or incite [53] criminal activity. More recently, in France, the pensions dispute and opposition to certain infrastructure projects [54] led to the creation of a new parliamentary committee of enquiry chaired by Patrick HETZL, MP for Bas-Rhin. For six months, the members of this committee of enquiry looked into "the structure, funding, resources and methods of action of the small groups responsible for violence during the demonstrations and gatherings that took place between March 16 and May 3 2023, as well as the way in which these demonstrations and gatherings were conducted"[55], noting in particular "the hysteria of the public debate surrounding the violence, between saturation and caricature", "the uninhibited legitimisation of the use of violence", and the semantic and legal approximations surrounding the notions of violence and damage. The list of 36 recommendations contains few technical proposals in criminal matters (formal or substantive law) apart from extending the scope of the ban on demonstrations and the inevitable increase in the quantum of the penalty for violating the ban. Of course, this may give rise to further speeches illustrating the complexity of responding to the world's disorder while endeavouring not to undermine civil liberties.

Appendix:

On 27 June 2023, the death of a young man of 17 following the use of a firearm by a police officer in Nanterre led to a week of rioting. It is therefore interesting to compare the kinetics of this new crisis (speed of spread and duration) with the developments of our intervention on 19 June. Two key elements seem to be emerging:

- Confirmation of a further acceleration in the spread of the crisis, in line with the historical trend already observed, with information circulating ever faster
and more effectively among teenagers and young adults, thanks in particular to the use of social networks: the phenomenon reached Lyon on 28 June and set Marseilles ablaze on 29 June (figure 4 showed a much greater time lag between the suburbs of Paris and the Rhône in 2005).

- An acute phase of crisis lasting around a week, which is comparable to the duration of the 2005 crisis if we look at the phenomenon on a local scale. Indeed, while the 2005 riots lasted three weeks at national level, this was due to the slower spread of the phenomenon across the country. The graphs in the first part of this paper illustrate the time lag from one department to another, which extends the total duration of the cycle of violence (cf. figures 2 & 4).

Two other points require in-depth research in order to accurately analyse data which, to date, are not necessarily available or exactly comparable:

- With regard to the geographical extent of the phenomenon (66 departments and 516 cities according to the joint report by the Inspection Générale de l’Administration and the Inspection Générale des Services judiciaires [56], it seems necessary to take a step back in order to avoid over-hasty analyses that may underestimate the number of departments actually affected in 2005 and consequently overestimate the change in scale between 2023 and 2005. In its summary report published in 2007, the French “Centre d’Analyse Stratégique” mentioned a total of 531 cities affected by urban violence, including 66 with fewer than 10,000 inhabitants and 328 where more than 5 vehicles were burnt [57].

- With regard to the nature of offences and collective behaviour recorded in 2023 compared with 2005, future analyses will have to verify that 2023 is characterised by more crime of opportunity (shoplifting and looting) and that, as such, more places located outside collective housing areas are concerned.

- Finally, the possibility of modelling "epidemics of collective violence" should encourage us to continue in this direction in order to anticipate, train and inform those involved in public peace in order to limit the occurrence and intensity of future crises.

References


2. In 2023, social unrest has seen the resurgence of medieval effigy violence against representations of French President Emmanuel MACRON and Spanish Prime Minister Pedro SANCHEZ. In Japan, effigy violence is also used in certain companies today.

3. Cf. the notion of "mirror neurons".


6. Aforementioned thesis


A_Model_Of_Riots_Dynamics_Shocks_Diffusion_And_Thresholds, last consulted for verification on March 18, 2024.


11. Ibidem p. 53

12. Ibidem p. 213

13. Ibidem p. 266


15. Ibidem p.361


17. Elias CANETTI, Masse et puissance, Gallimard, Paris, 1966

18. Saint-Augustin, Confessions, VI, 8, 13 quoted by Hélène MENARD, Maintenir l’ordre à Rome 16ème siècles après J.-C., France, Champ Vallon, 2004, p. 21
23. Yves-Marie BERCE, aforementioned book, p.60
26. Article L 211-9 of the code de la sécurité intérieure
27. Article L 211-9 of the “Code de la sécurité intérieure”, second last paragraph, provides that “the representatives of the police force called to dissipate a crowd may make direct use of force if violence or assault is committed against them or if they cannot otherwise defend the land they occupy.”
29. A well-known judgment of the European Court of Human Rights confirms that there can be no concrete exercise of civil liberties if the authorities do not demonstrate the “necessary tolerance that should be adopted” (ECHR Case of Barraco v. France, 05/03/2009, Application n° 31684/05, § 47)
30. On these issues, one can be referred to two authors: Carl SCHMITT, who highlights the primacy of the political order over the legal order, and Walter BENJAMIN, who points out the hypocrisy between the affirmation of formal rights and social reality.
31. Current drafting of article L 211-10 of the Code de la sécurité intérieure
32. Jean NICOLAS, aforementioned book, p.136
33. Decree of 10 Vendémiaire An IV (2 October 1795), article 1. Despite the passage of two centuries, the similarity of the wording with the current text is remarkable.
34. Journal officiel de la République française(JORF), Laws and decrees, n°. 0105 of 18/04/1914
35. Every period of large-scale social protest and every episode of urban rioting gives rise to disputes between the State and the insurers of local authorities to determine whether or not the damage falls within the specific scope of liability for gatherings.
40. Law n°. 93-1282 of 6 December 1993 on the safety of sporting events, known as the Alliot-Marie law.
41. Conseil constitutionnel, n° 2019-780 DC of 4 April 2019
43. Chambéry, 8 March 1956 for a bobsleigh accident.
45. IGNEUX decision, Cass. crim. 9 June 1948, Bull. crim. 1848, n°178
47. Priority Question on Constitutionality (QPC) Single scene of violence, 16 February 2022, Cass. Crim. no. 21-90.043
48. Cour d’Appel de Grenoble, 14 March 2003, n° 02/00619
49. Cass. crim, 28 April 2004, n° 03-83.783
51. Article 25 of the Statute of the International Criminal Court, 3, b)
52. Article 25, 3, d)
53. Article 25, 3, e) for the crime of genocide
54. Creation of a « mégabassine » at Sainte-Soline (79)
consulted for verification before publication on 23 March 2024 à 12h15.
