

# Soft Power

Revista euro-americana de teoría e historia de la política y del derecho

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Volumen 9, número 2, julio-diciembre, 2022



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Impreso por Xpress Estudio Gráfico

y Digital S.A.S. - Xpress Kimpres

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© Penguin Random House Grupo Editorial, S. A. S., 2022

Carrera 7ª No. 75-51. Piso 7, Bogotá, D. C., Colombia PBX: (57-1) 743-0700

Primera edición: julio-diciembre de 2022

ISSN: 2389-8232

Revista certificada por la *Agenzia Nazionale di Valutazione del Sistema Universitario e della Ricerca* (ANVUR).

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El editor agradece a la Universidad Católica de Colombia, Maestría Internacional en Ciencia Política; a la Università degli Studi di Salerno, Dipartimento di Scienze Politiche e della Comunicazione y Dipartimento di Scienze giuridiche, y a la Fondazione I.S.I.A. per gli Studi Latinoamericani Salerno – Bogotá el apoyo institucional para la edición de esta obra.



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## EDITORIAL

# ANOTHER STATE OF MIND: RETHINKING THE STATE TO UNDERSTAND THE ‘RETURN OF THE STATE’<sup>1</sup>

Damiano Palano

*Università Cattolica del Sacro Cuore - Milano*

‘But Gentlemen’, Don Gaetano said to the Minister and the Director, ‘I hope you’re not going to distress me by saying that the state still exists...Considering my age and all the trust I’ve always had in you it would be an unbearable revelation. I was so sure it didn’t exist anymore...’

L. Sciascia, *Todo Modo* (1974)

As Don Gaetano, one of the characters in Leonardo Sciascia’s novel *Todo Modo*, sarcastically was, many scholars of political phenomena could today be surprised by the news that the state is not dead yet. In fact, the whole of the twentieth century was marked by a series of recurring diagnoses that heralded the disappearance of the state, or at least its ‘crisis’. It re-emerged in the era of globalisation, the belief that the state was affected by an obsolescence destined to lead it to death cyclically spanned

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1. This research was supported by grants from the Italian Ministry of University and Research [PRIN 2017 Cultures of sovereignty, transformations of democracy and dynamics of power in the global age—Prot. 2017C5FE9T].

the entire twentieth century, even if, from time to time, the accents changed and the causes were seen in different phenomena.

In 1907, in the pages of *Le Mouvement Socialiste*, Edouard Berth —a supporter of revolutionary syndicalism and follower of the philosophy of George Sorel— emphatically greeted the death ‘of this fantastic, prodigious being who had such a colossal place in history’ — the state (quoted in Schmitt, 1972, p. 123). This diagnosis was shared by many scholars at the time. In 1908, for example, Léon Duguit wrote that ‘the personal and sovereign state is dead or is about to die’ (Duguit, 1911, p. 144). The following year, in his famous inaugural address on *The Modern State and its Crisis*, Santi Romano presented —albeit with different accents— a largely similar reading. After retracing the historical events that had led to the formation of the modern state, the Sicilian jurist formulated a rather gloomy diagnosis of its destiny: the state ‘which emerged from the French revolution,’ wrote Romano, was ‘too simple’ (1950, p. 318), and the parliamentary system built during the 19th century, due to this genetic limit, was totally inadequate in the face of the need to guarantee the representation of new economic and social groups.

In the two decades between the First and Second World Wars, the idea that trade unions constituted ‘new’ corporations destined to tear down the edifice of the modern state was in fact shared by a crowded group of observers of political transformations. Giorgio Del Vecchio, retrospectively examining the main stages of this long discussion, even concluded in 1933 that the statement on the ‘crisis of the state’ was now a truth so often repeated as to have become a ‘commonplace’ (Del Vecchio, 1933). The ‘crisis’ that the jurists of the first decades of the century were talking about did not concern the economic role of the state but mainly the image that nineteenth-century legal doctrine had built: social conflicts, the pressure of civil society, the rise of mass parties and the diffusion of ‘new corporations’ (i.e. workers’ unions) put into question the idea that the state was a monolithic entity and, furthermore, the belief that the law was the manifestation of the ‘unitary’ will of the state. The main cause that prompted the jurists of the early twentieth century to welcome the ‘crisis,’ and in some cases even the ‘death,’ of the state was the proliferation of economic and social groups and their claims, a proliferation that became even more evident in the time after the First World War, coinciding with the cycle of collective mobilisation that affected a large part of the Western world. The novelty that suggested the idea of a ‘crisis’ was provided by the fact that —as Del Vecchio summarised— ‘effectively autonomous collective organisations, whether of an economic or religious nature, or of any other nature’ internally elaborated ‘a order or a system of rules that are neither coherent nor harmonizable with those of the State, in-

deed even—in extreme cases— directly contrary to them' (Del Vecchio, 1933, p. 691). Furthermore, after the First World War, the creation of the League of Nations also deeply affected one of the characteristic aspects of the principle of state sovereignty because it seemed to create a superior constraint on the will of the state, especially regarding the 'right to wage war'. Additionally, as a reaction to this 'draining' of state power, Carl Schmitt proposed distinguishing the 'political' from the 'state' (1972).

If, at the beginning of the century, the state had appeared close to disappearing, starting at the end of the 1920s, this trajectory seemed to reverse itself: the pendular movement of history gave back to Hobbes's 'mortal God' its primacy over society and its citizens. Even if the jurists continued to reflect on the 'crisis of the state', the trends of world politics actually seemed to proceed in the direction of a massive 'return of the state', as Karl Polanyi acutely captured in *The Great Transformation*. The projects of a new corporate order gave way to the reality of regimes in which central political authority, far from vanishing, was significantly strengthened. Furthermore, the crisis that exploded in 1929 and the New Deal strengthened protectionist pressures and led to a contraction of international trade; in different ways, therefore, the state began to have an unprecedented driving role in the economic field. Finally, from the point of view of interstate dynamics, the difficulties of the League of Nations revealed the fragility of post-war illusions in the face of a growing conflict destined to fuel nationalism and culminate in the Second World War.

The discussions of the 'crisis' of the state did not end after the Second World War but returned with force, especially in the 1970s. Again, many saw the cause of the 'crisis' in the explosion of social conflicts, but the main issue did not concern the legal status of the state but rather the relationship between the state and the mixed economy of the post-war era. Indeed, many scholars, especially many neo-Marxists, argued that the Keynesian state (defined, for example, as an 'interventionist state' or a 'planner state') was no longer able to maintain its structural contradictions under a controlled market economy: the growing social complexity, spread of conflicts and growth of claims by a civil society in ferment had led to the growth of public spending, but the extraction of fiscal resources from society risked halting the process of capitalist accumulation and eroding the legitimacy of the political system among citizens (Altvater, 1973; Braunnhül, 1973; Clarke, 1977; Hirsch, 1974; Miliband, 1969; Negri, 1977; Offe, 1984; Poulantzas, 1968, 1969). While the cornerstone of this hypothesis was represented by the structural contradictions of the economy, other explanations concentrated instead on the cultural change that had taken place in Western societies and, in particular, in the

'silent revolution' that had invested the younger generations. In this case, therefore, the 'crisis' (which was, rather than a crisis of the state, a 'crisis of governability') had been caused directly by the explosion of social conflicts and of the requests sent by society to the State: this had caused an 'overload' that could have disastrous consequences if no corrections were made (Crozier, 1975). Between the seventies and eighties, there was also a lively discussion on the need to bring the state (and its autonomy) back to the center of theoretical reflection on political transformations (Block, 1980; Evans, 1985; Krasner, 1984; Lindblom, 1982; Mann, 1986; Mastropalo, 1981; Mitchell, 1991), but the outbreak of globalization and the beginning of the neo-liberal era changed the landscape very quickly.

The 'crisis of the state' that was discussed a few decades later, in the 1990s, had characteristics that were different from the previous ones. The entire 1990s seemed to be marked by the undisputed victory of the economy over politics and, above all, by the triumph of the market over the state. The thesis of the 'crisis' was naturally articulated from a multiplicity of different perspectives. Some analysts saw in the 'death' of state authority something like the announcement of a liberation of the forces of the global economy. Other observers, much less enthusiastically, saw in it the cause of a degradation of the living conditions of individuals and of society. Beyond specific assessments, the discussion on decline involved at least four different aspects of 'statehood' that seemed to be called into question by the globalisation process: i) the monopoly of legitimate force, ii) the 'sovereign' nature of the state institution, iii) the 'national' basis of the state, iv) the control of economic and financial flows. Under the first profile, many scholars argued that the state's monopoly on legitimate force was undermined by the growth of organised violence attributable to non-state actors (such as transnational criminal and terrorist organisations) (Kaldor, 1999; Van Creveld, 1999). On the second front, several observers argued that the role of the state was threatened by the authority of new supranational actors. In other words, a transformation was taking place in the Westphalian international system that took away from the state a part of the 'sovereignty' it had held in the past (Beck, 1998; Hardt & Negri, 2000; Robinson, 2001; Shaw, 2000). The third 'crisis' factor instead brought attention to the nexus between the nation and state: starting at the end of the 1970s, the emergence (especially in Europe) of claims brought forward by ethnic, linguistic and national minorities triggered processes of devolution, decentralisation and regionalisation that have involved almost all the countries of the European Union. The emergence of the 'meso-level' of government, also favoured by transformations in the productive structure of Western economies and by the redefini-



tion of the criteria for disbursing public expenditures, has thus fuelled the idea that the transfer of functions from the centre to the periphery also entailed a crumbling of state sovereignty to the advantage of sub-state bodies (Keating & Loughlin, 1997; Keating, 1998; Ohmae, 1995).

However, the debate was dominated above all by the fourth declination of the debate on the crisis of the state: in this case, the main threat to the sovereign state was seen in global flows, and especially in economic and financial flows. In this sense, although the idea of the erosion of the 'economic sovereignty' of states was often evoked, the principle of sovereignty operating in the interstate system was not, because the problematic aspect was actually related to the capacity of the state to exercise control over its own citizens, economic activities, transnational actors and, above all, its ability to extract resources capable of financing services and transfers. A similar thesis has even been articulated with notable differences in accents. However, at the basis of many positions that emerged above all in the 1990s was the basic idea that the set of processes brought under the effective (albeit equivocal) formula of 'globalisation' had come to challenge—in an almost inevitable way—the contemporary state, whose instruments of action are incapable of harnessing, controlling and regulating the flows of goods, people and capital. In this direction, Susan Strange has, for example, described the process of the 'retreat of the state' in an extremely effective way, focusing in particular on the extension of the real power of transnational economic actors (Strange, 1996). This dynamic implies, on the one hand, the disappearance of the foundations of the post-Westphalian interstate system and the emergence of an increasingly marked asymmetry between states and, on the other, the senescence of the instruments through which the state has been able until now to control and regulate the economic dynamics (Held, 1999; Sassen, 1996). In other words, the set of technological changes, transformations that have taken place in finance and international integration of the markets attack the very foundations of the state model of concentration of power, rapidly eroding all the functions exercised by the old modern state and, to an even greater extent, those carried out by the twentieth-century welfare state, such as control of currency, intervention in the economy, the adoption of anti-cyclical policies and the introduction of social safety nets (Kapstein, 1994; Rosecrance, 1999).

On each of the fronts of discussion, however, convincing responses emerged, which did not, however, limit themselves to recognising how, all things considered, states in recent years have not disappeared at all and have, on the contrary, remained the main subjects of domestic and international politics. From the point of view of international

politics, it could be observed that, despite the apparent ‘emptying’ of the political and military powers of states, the number of state units has not decreased at all in the last twenty years (Krasner, 2001). On the contrary, the end of the Cold War—which also seemed to initiate a process of more intense globalisation—has rather contributed to a considerable increase in the number of states, and even in requests to become independent states made by regions or territories both in Europe and the rest of the world (Bellocchio, 2006). In this sense, the process that characterises the period after 1989 seems rather configurable as a dynamic of the ‘fragmentation’ of the international system not at all in contradiction with the logic of ‘globalisation’ (Clark, 1997). As far as the actual power of the state to govern social processes, to ‘contain’ and regulate economic dynamics or the communication flows themselves, every independence claim tends to lead to the formation of a new state and, therefore, to the recognition of the existence of a new state unity by the international community. As Carl Schmitt observed at the end of the 1970s, commenting on the words of Santiago Carrillo, every twentieth-century revolution paradoxically aimed at adopting a ‘legal’ form offered precisely by the form of state organisation. Precisely for this reason, although the *jus publicum Europaeum* is now in decline, ‘the State is by no means dead, on the contrary, it is more necessary and alive than ever’ (Schmitt, 1978).

Of course, the politically relevant players at the global level—i.e., the subjects who manage to influence the choices of national governments—are probably more numerous than in the past and involve economic players, transnational organisations and the set of realities included in the so-called ‘global civil society’. However, international politics has continued to be, in the first place, the scene in which states move—states obviously more or less endowed with economic, technological and military resources but all ‘sovereign’ by the very fact of being defined as such by the international community and moving as *magni homines* in the theatre of world politics.

Even the thesis of the victory of the global market over the state has found a series of rather fierce opponents who have questioned its most basic assumptions and who, above all, have called into question the actual causal order that binds ‘globalisation’ to ‘end of the state’ (and makes the second descend from the first) (Barrow, 2005; 2016; Bonefeld & Psychopedis, 2000; Bonefeld & Holloway, 1996; Bonefeld, 2014; Clarke, 1991; Mann, 1997; Panitch, 1996; Streeck, 2014). In some studies, Linda Weiss has, for example, strongly opposed the idea that the growing openness to the international market necessarily determines a decrease in the power of states; many indicators—relating to social spending, the tax burden and commercial and industrial strategies—do not

seem to confirm, at least in general terms, the thesis of the weakening of the state vis-à-vis the market, while some responses to the social and economic effects of globalisation even involve an expansion in the role of public institutions (Weiss, 1998; 2003). More generally, it has been underlined that, as the sizes of states are indispensable for globalisation and for the construction of a world market, even their functions and operating methods change over time.

In the 30 years that have passed since the end of the Cold War, however, the trajectories of the discussion on the fate of the state have significantly changed. Above all, the last decade has been marked by a progressive 'return' on the scene of the state itself, that subject that, in the eyes of many, had appeared in 'crisis', in 'decline' or even destined for inevitable obsolescence. Already in the aftermath of September 11, 2001, John A. Hall predicted that that event would trigger a significant strengthening in state power, not only in the United States but in all countries involved in the fight against terrorism (Hall, 2001). Indeed, on that occasion, attacks planned and carried out by non-state organisations had the effect of leading the state to be 'rediscovered' —especially the importance of solid state structures capable of maintaining public order— also by those liberal authors who, like Francis Fukuyama, had long underestimated its role (Fukuyama, 2004). However, it was the long sequence of events inaugurated by the global financial crisis that brought the state back to the centre of the discussion. In January 2010, the *Economist* announced, for example, the return of the old Leviathan, that Big government that during the 1980s and 1990s seemed to have been definitively defeated. Several analysts began to point out how, in the 21st century, a substantial share of large companies are actually represented by companies directly or indirectly owned by sovereign states—in particular, but not only, in the energy sector (Bremmer, 2012)— so that the idea of a 'state capitalism' is in vogue (Economist, 2012; Alami & Dixon, 2021; Alami, 2021).

The decade that began with the economic crisis, continued with the explosion of 'populist' protest and culminated with the pandemic emergency then confirmed rather unequivocally that the state was not dead and that, in many ways, it was instead becoming more important than never. The response to the Covid-19 pandemic has, in fact, seen an astonishing expansion in the role of the state, both in terms of related health policies and measures to contain infections and in terms of support for economic activities. Rather quickly, the neo-neoliberal agenda that had guided global elites for three decades was shelved, as national governments and supranational bodies began to recognise the need to 'take back control' of global economic flows, 'shorten' the value chain, 'rethink' globalisation and once again assign the state a pivotal role in economic

policy. *Foreign Policy* wrote that, after the long neoliberal season, we had all become 'statist' (Crabtree et al., 2020), and in general, 'many analysts and pundits around the world have been predicting the "return of the state" after what is generally seen as many years of neoliberal retreat' (van Apeldoorn & de Graaf, 2022, p. 306).

In his recent book, Paolo Gerbaudo argued that we are entering a new ideological season: a 'neo-statist' era in which the entire political debate will revolve around the tasks of the state and its ability to 'regain control' of global flows. In other words, if in the neo-liberal era the state was characterised in decidedly negative terms, such as 'parasitic', 'unproductive', 'expensive' and 'corrupt', most political forces must now return to a much more positive state because it is necessary to respond to the feelings of insecurity, anxieties and fears of citizens. In this way, we then return, at least on an ideological level, to the image of an innovator and investor, protector and planner — that is, a state capable of responding to the uncertainty and fears of the 21st century (Gerbaudo, 2021; 2022).

It is probably too early to establish whether the neo-statist ideology really corresponds to a 'return of the state', but it is easy to predict that the discussion on the 'return' of the state will continue for a long time. It is, however, certain that to understand the logic of this (presumed or real) 'return of the state', it is essential for us to equip ourselves with a new theory of the state capable of addressing many unresolved issues and avoiding the risk of recovering old theoretical models, which could reproduce fatal optical distortions. A rather striking example is offered, for example, by the singular revival of traditional geopolitics, of which neo-Marxist authors have also been supporters in recent years. Indeed, one of the clearest limitations of the Marxist theory of the state in the 1970s had been the underestimation of the international dimension: many of the schemes constructed at the time, incorporating a stylised image of the political system, in fact ended up forgetting that states acted within an international system and economy. In the last thirty years, these schemes have become obsolete for this, too. However, to the need to account for the international dimension, even neo-Marxist scholars in the broadest sense have responded by recovering the simplified schemes of the 'old' geopolitics, which represents the states (often depicted as monolithic entities) looking for dominion over space to pursue the goal of power (Davenport, 2011). In this way, the inevitable consequence is in fact that social conflicts are forgotten (or neglected), while the transformation of the state is interpreted as a simple adaptation aimed at interstate competition and the achievement of constant objectives.

With this issue of *Soft Power*, we want to contribute to the debate on a 'renewed' theory of the state capable of interpreting the contemporary 'return of the state' and its

relationship with the previous neo-liberal phase. One of our purposes is, first, to rearticulate the idea according to which there is a constant (albeit problematic and tendentially conflictual) relationship between the state and the market, and therefore between the state and globalisation. This does not only mean that the state is necessary for the existence of a global market but also that, in its various historical phases, the role of the state changes, and that the functions it is called upon to perform also change, due to international competition and internal political and social conflicts. Moreover, this also entails the need to consider the state as a 'machine in its complexity, i.e., as an apparatus in which knowledge, tools and conflicts are concentrated, and which therefore, as such, can respond in very different ways to solicitations and interstate competition.

By intertwining different levels of discourse and methods, this issue therefore represents, to some extent, the first chapter of the work that awaits us in the coming years. And even if we cannot be sure of the direction that the 'return of the state' will take, it is certain that, to truly understand its logic, we will need new theoretical tools or perhaps another 'state of mind' that allows us to use the old tools in a perspective equal to the change we are experiencing.

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# **SOBRE EL ESTADO COMO FORMA POLÍTICA DE LA SOCIEDAD<sup>1</sup>**

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## **ON THE STATE AS A POLITICAL FORM OF SOCIETY**

### **Resumen**

Este artículo expone el enfoque de forma política desarrollado en el contexto de la Nueva Izquierda de 1968, particularmente durante la década de 1970 en la antigua Alemania Occidental y el Reino Unido. Se desarrolló como una crítica del fetichismo estatal tanto de la socialdemocracia como del leninismo. El enfoque de la forma concibe el estado capitalista como la forma política de relaciones sociales definidas. Trata la separación de economía y estado como esferas distintas, como socialmente constituidas. Como expresión colectiva de la sociedad burguesa, el Estado no es propiedad de una clase ni un poder neutral o independiente. Más bien, como la forma de mercancía, es una forma de relaciones sociales históricamente definidas. Mientras que la forma de mercancía es la forma económica de la sociedad capitalista, el estado es su forma política. El Estado es un campo de lucha y reforma social, y cuanto más esta lucha civilice la conducta del gobierno y logre beneficios para los productores desposeídos de plusvalía,

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1. Fecha de recepción: 10 de febrero 2022; fecha de aceptación: 30 de marzo 2022. Este trabajo es fruto de un proyecto de investigación desarrollado en el Department of Politics of the University of York.

mejor. Sin embargo, el estado no es una instancia fuera del capital, porque la conceptualización tanto del estado como del capital se basa en la existencia de una clase de productores de plusvalía desposeídos, que es la única condición previa para la existencia de la relación social capitalista.

### **Palabras clave**

Estado; estado capitalista; Teoría del Estado; Sociedad; marxismo

### **Abstract**

This article exposes the political form approach developed in the context of the New Left of 1968, particularly during the 1970s in the former West Germany and the UK. It developed as a critique of the state fetishism of both social democracy and Leninism. The form approach conceives of the capitalist state as the political form of definite social relations. It treats the separation of economy and state as distinct spheres, as socially constituted. As the collective expression of bourgeois society, the state is neither a property of a class nor a neutral or independent power. Rather, like the commodity form, it is a form of historically definite social relations. While the commodity form is the economic form of capitalist society, the state is its political form. The state is a field for social struggle and reform, and the more this struggle civilizes the conduct of government and achieves benefits for the dispossessed producers of surplus value the better. However, the state is not an instance outside capital, because the conceptuality of both state and capital is founded on the existence of a class of dispossessed surplus value producers, which is the one precondition for the existence of the capitalist social relation.

### **Keywords**

State; Capitalist state; Theory of the State; Society; Marxism

## Enfoques marxistas del Estado

A pesar de las numerosas variaciones de la teoría marxista del Estado, éstas giran en torno a tres enfoques distintos y contradictorios: El leninismo, la socialdemocracia y el análisis de la forma política. El leninismo considera al Estado como un instrumento de opresión de clase. Expone un punto hecho por Marx y Engels (1996, 35) en el *Manifiesto Comunista*, según el cual el estado es “simplemente el poder organizado de una clase para oprimir a otra”. El leninismo considera al Estado como el comité ejecutivo de la clase dominante y sostiene que la conducta del gobierno refleja los intereses de la facción capitalista dominante. En su aparición, la teoría leninista del Estado fue combatida por la socialdemocracia. La socialdemocracia concibe el Estado como un ámbito fundamentalmente independiente y neutral para la lucha por la aplicación de reformas sociales transformadoras. La eterna pregunta sobre la concepción socialdemócrata es si la economía tiene autonomía *frente* al Estado nacional o, a la inversa, si el Estado nacional tiene autonomía *frente a* la economía, caracterizando su retroceso o su resurgimiento como poder *frente a* la economía. Dicho claramente, en el argumento socialista democrático “el poder del dinero y del capital se retira cuando el Estado avanza” (Haug, 2005, 102), lo que crea la condición para que el gobierno actúe en interés de los trabajadores, o en la moderna enunciación llana del término de Hardt y Negri “la multitud”, en interés de los muchos. En esta perspectiva, la conducta del gobierno y la dinámica de la economía expresan el equilibrio en el poder de las fuerzas sociales que actúan a través del Estado nacional.

El enfoque de la forma política se desarrolló en el contexto de la Nueva Izquierda de 1968, especialmente durante la década de 1970 en la antigua Alemania Occidental y el Reino Unido. Se desarrolló como una crítica al fetichismo del Estado tanto de la socialdemocracia como del leninismo.<sup>1</sup> Como explica Simon Clarke (1991, 4), “el crecimiento del Estado del bienestar... socavó la cruda identificación del Estado con los intereses del capitalismo monopolista”. Al mismo tiempo, “el impacto limitado del estado de bienestar en los problemas de la pobreza . . . socavó la visión optimista socialdemócrata del estado”. El enfoque de la forma rechazaba la tesis del capitalismo monopolista de Estado por subestimar la independencia del Estado y rechazaba la teoría estatal de la socialdemocracia por subestimar los límites de esa independencia. Argumentaba que el Estado no es un instrumento de dominio de clase y argumentaba además que el Estado no “posee”, como ya había argumentado Marx (1970, 28) en su *Crítica del Programa de Gotha*, “sus bases propias y libertarias”. El enfoque de la forma concibe el Estado capi-

talista como la forma política de unas relaciones sociales definidas. Esta concepción también podría recurrir a Marx. Por ejemplo, en la *Ideología Alemana*, Marx concibe el Estado como la “forma en la que, los individuos de los que se compone la sociedad se han dado posteriormente una expresión colectiva” (Marx y Engels, 1975, 80). La crítica de Marx a la economía política lo argumenta de una manera similar. Escribe en *El Capital* que el Estado es la “fuerza concentrada y organizada de la sociedad” (Marx, 1990, 995). En *los Grundrisse* se refiere al mismo como la forma política de la sociedad “vista en relación a sí misma” (Marx, 1973, 108). La lógica de su argumento es que la sociedad se desdobra en sociedad y Estado; es decir, ve al Estado como “el poder [independiente] de la sociedad” (Marx, 1987, 439)<sup>2</sup>.

Por lo tanto, lo que aparece en la distinción entre Estado y economía es en realidad una falsa separación. El enfoque de la forma trata la separación de la economía y el Estado como esferas distintas, tal y como fueron socialmente constituidas. Pertenece a la conceptualización de las relaciones sociales capitalistas. Su enfoque en las relaciones sociales capitalistas como fundamento constitutivo de las formas sociales se apoya en el argumento de Marx de que el materialismo histórico consiste en “desarrollar a partir de las relaciones de vida reales y concretas las formas en las que estas se han apoteósico” (1990, 494). Al igual que la forma mercantil de la riqueza capitalista es una forma de relaciones sociales definidas, “las formas del derecho, la política, el Estado y la nación son también formas de estas mismas relaciones” (Neupert-Doppler, 2018, 817). El análisis de la forma política, por tanto, no traza el “curso de la historia” para determinar la genealogía de los elementos del Estado moderno y del sistema estatal moderno desde la antigüedad.

Este enfoque contextualiza las formas sociales contemporáneas y concibe de ellos afines al “materialismo abstracto de la ciencia natural” (Marx, 1990, 494, 4n). El enfoque de la forma no contextualiza el estado como un esencia que se manifiesta en diferentes modos de producción como un estado en, digamos, el feudalismo, el capitalismo y el socialismo. Más bien, su objetivo es “presentar las formas [de las relaciones sociales capitalistas] en el contexto en el que se encuentran “lógicamente... en condiciones de una forma particular históricamente concreta de sociedad” (Blanke, Jürgens y Kastendiek, 1978, 118-119).

El análisis de la forma política expone la conceptualización del Estado como el poder concentrado de la sociedad capitalista. Su conceptualización está constituida social-

2. Las principales contribuciones al debate de Alemania Occidental aparecieron en Holloway y Picciotto (1978). Para el debate en el Reino Unido, véanse las contribuciones reunidas en Clarke, 1991.

mente. El análisis de la forma política se pregunta por la lógica social que impera en las relaciones sociales capitalistas y que se manifiesta en la separación de la economía y el Estado como esferas distintas.

## Estado y sociedad

Como expresión colectiva de la sociedad burguesa, el Estado no es la propiedad de una clase ni un poder neutral o independiente. Más bien, al igual que la forma mercancía, es una forma de relaciones sociales históricamente definidas. Mientras que la forma mercancía es la forma económica de la sociedad capitalista, el Estado es su forma política. En su forma económica, la sociedad capitalista se manifiesta como una sociedad de intercambio despolitizada en la que los sujetos formalmente iguales ante la ley y el orden son libres de perseguir sus intereses racionales realizando contratos entre ellos como propietarios, ya sea como dueños de la fuerza de trabajo o como propietarios de los medios de producción. En su forma política, la sociedad capitalista se manifiesta como un poder concentrado del orden social y del estado de derecho, del orden y de la ley. El estado concentra lo político como su medio y al hacerlo con éxito el estado despolitiza las relaciones sociales, garantizando la libertad de intercambio en forma de una libertad de contrato entre iguales ante la ley. Independientemente de su desigualdad en la propiedad, los que comercializan la fuerza de trabajo, aparecen como sujetos jurídicos igualitarios de contrato. Son libres de disponer de su propiedad privada respetando el estado de derecho y de acuerdo con las reglas del juego del mercado. El Estado de Derecho prohíbe por igual a los vendedores desposeídos de la fuerza de trabajo y a los propietarios de los medios de producción de robar el pan<sup>3</sup>.

El carácter de clase del Estado capitalista está implícito en su forma de poder independiente del orden y la ley en la sociedad capitalista. Establece y hace cumplir las reglas del juego y, al tratar a los individuos sociales como ciudadanos abstractos dotados de los mismos derechos, reproduce la desigualdad en la propiedad entre los “sacos de dinero” (Marx) y el trabajador doblemente libre. La explotación asume la forma de una igualdad jurídica formal. Para Marx, la igualdad jurídica tiene un carácter fundamentalmente burgués. En su contenido, el derecho de igualdad es un derecho de desigualdad. Como señaló en relación con la igualdad de los individuos ante el dinero, “el poder que cada

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3. Sobre el trabajo desposeído como premisa de las relaciones sociales capitalistas, véase Bonefeld, 2011.

individuo ejerce sobre la actividad de los demás o sobre la riqueza social existe en él como propietario del valor de cambio, del dinero. El individuo lleva su poder social, así como su vínculo con la sociedad, en su bolsillo” (Marx, 1973, 157). Además, como para el vendedor de la fuerza de trabajo el acceso a los medios de subsistencia está supeditado a su capacidad para lograr un contrato de trabajo, ella pertenece al capitalista antes de que intercambie su fuerza de trabajo por un salario, y antes de que el capitalista consuma su fuerza de trabajo para obtener ganancias durante las horas laborales contratadas, que es su derecho adquirido.

Sin embargo, aunque la trabajadora se vea obligada a intercambiar su fuerza de trabajo para evitar la libertad de morir de hambre, no deja de ser un sujeto libre, responsable sólo de sí misma. Si las condiciones son tales que su trabajo no es necesario, no sólo se convierte en redundante. También es libre de soportar la carga de llegar a fin de mes con sus propios recursos. ¿Cuál es el precio de un riñón? Hay un destino mucho peor que ser un trabajador explotado, y es ser un trabajador no explotable. La vida de la clase obrera pende del éxito de convertir su trabajo en beneficio. La apropiación lucrativa de ayer del trabajo de otra persona compra hoy a otro hombre: el comprador para obtener un beneficio, el vendedor para vivir. Los productores de plusvalía, vendedores desposeídos de la fuerza de trabajo, son libres de luchar para llegar a fin de mes, que es de hecho en lo que consiste la lucha de clases. La lucha para llegar a fin de mes y el trabajo para obtener beneficios son inherentes al concepto del trabajador. Su lucha pertenece a la conceptualización de la riqueza capitalista, es decir, del dinero que produce más dinero a través de la valorización del trabajo vivo. En esta conceptualización, la satisfacción de las necesidades es un mero espectáculo. Lo que cuenta es la extracción de plusvalía para valorizar el valor, para hacer dinero del dinero ( $M \dots P \dots M'$ ). Existe la compra de la fuerza de trabajo y luego su consumo que produce un valor total superior al valor de la fuerza de trabajo. Por un lado, la relación social entre el capital y el trabajo se desvanece en su aspecto económico como intercambio de una cantidad de dinero por otra. Esta relación de intercambio aparece en su forma política como una relación de contrato entre sujetos jurídicos igualitarios que son libres de perseguir sus propios intereses de manera ordenada por medio de un intercambio equivalente, en el que “cada uno se atiende solamente a sí mismo, y nadie se preocupa del resto” (Marx, 1990, 280). Las relaciones de intercambio equivalente entre los propietarios de mercancías, incluidos los propietarios de la fuerza de trabajo, implican al Estado como poder independiente de los derechos de propiedad, la seguridad del orden social, el imperio de la ley, la inviolabilidad del dinero como patrón de cambio y la moralidad de la iniciativa empresarial autogestionado.



Para el trabajador, esto último implica el reconocimiento del desempleo como una oportunidad de empleo.

Por otra parte, las relaciones sociales entre el capital y el trabajo se desarrollan en forma de una lucha constante por el salario, para lograr un acceso sostenido a los medios de subsistencia y por las condiciones de trabajo, insistiendo el capitalista en su derecho adquirido a consumir la fuerza de trabajo de su vendedor por un beneficio, y la trabajadora insistiendo en el simple hecho de que no se vendió a sí misma sino sólo su fuerza de trabajo con el propósito expreso de ganarse la vida. Entre la igualdad de derechos, como sostiene Marx en *El Capital* al analizar la lucha por la duración de la jornada laboral, la fuerza decide, y es la fuerza del Estado la que decide no sólo las reglas del juego entre las partes contratantes, sino también las condiciones de trabajo al prohibir, por ejemplo, el trabajo infantil, al legislar sobre la duración de la jornada laboral, o al establecer por ley los niveles mínimos de los salarios. La lucha de clases es una lucha por el acceso a los medios de subsistencia, por la mejora de las condiciones de comercio de la fuerza de trabajo y por la protección contra el hambre de lobo del capital por la plusvalía. La lucha de clases es el medio para civilizar el trato de la sociedad a sus trabajadores. Esta lucha adopta invariablemente una forma política porque es el Estado el que establece las reglas del juego y lo hace como medio organizado de orden y ley, adjudicación y reforma, legislación y aplicación de las reglas decididas.

Históricamente, la socialdemocracia representa el compromiso de lograr la mejora de las condiciones laborales. Para el enfoque de la forma política su compromiso presenta una ilusión objetiva. La ilusión dice que la acumulación rentable de dinero que produce más dinero no cuenta realmente; lo que cuenta es la erradicación de la pobreza. Sugiere que la vida de la clase ligada al trabajo no pende del éxito de convertir el trabajo del obrero en beneficio, como condición fundamental para lograr el acceso asalariado a los medios de vida; lo que cuenta es la redistribución de la renta al trabajo. Rechaza como absurdo que se quemen las cosas útiles que no pueden convertirse en beneficios; lo que cuenta es la producción de valor de uso. Se opone al capital como producción de dinero,  $M \dots M'$ . En cambio, considera el dinero como un medio de compra de mercancías ( $C \dots M \dots C$ ) y exige que el dinero se ponga en los bolsillos de los trabajadores para fortalecer su poder adquisitivo, conectándolos más firmemente a los medios de subsistencia. El intercambio de fuerza de trabajo (C) por dinero (M) que luego se intercambia por medios de subsistencia (C), es, sin embargo, una función de  $M \dots P \dots M'$ , es decir, de la extracción de beneficios del trabajo vivo. La “ilusión del estado de bienestar” (Müller y Neusüß, 1971) plantea lo que realmente importa. ¡Nadie debe

pasar hambre nunca más! Sin embargo, la pobreza no es una coincidencia de la riqueza capitalista. Es más bien la premisa de su concepto (Bonfeld, 2014).

A diferencia de la socialdemocracia, el Estado nacional “no puede estar por encima del capital, ya que el capital es de carácter mundial” (Clarke, 1991, 54). Las relaciones sociales capitalistas son relaciones de mercado mundial (Bonfeld, 2000) y la conceptualización del estado nacional es, por tanto, una conceptualización de mercado mundial. Concebido de esta manera, la concepción de Marx del Estado como la “fuerza concentrada de la sociedad burguesa” (Marx, 1973, 108) contiene más de lo que parece a primera vista. En cada jurisdicción nacional, el empleo y el bienestar de la fuerza de trabajo dependen de la rentabilidad de cada fuerza de trabajo en competencia con todas las demás fuerzas de trabajo a escala del mercado mundial. Los requisitos de competitividad, rentabilidad, dinero sólido, aumento de la productividad del trabajo, etc., pertenecen a un sistema de riqueza que sostiene el empleo y el bienestar de los trabajadores a condición de que su trabajo produzca un beneficio, que es la condición para lograr una medida de integración social. Los empresarios rentables compran fuerza de trabajo.

Los empresarios no rentables no lo hacen. La extracción rentable de la plusvalía es la condición del empleo sostenido y, con ello, del acceso salarial sostenido a los medios de vida. El destino de toda una clase de productores de plusvalía depende de la rentabilidad de su trabajo a nivel del mercado mundial. En resumen, el Estado político es invariablemente un “planificador” de la competitividad mundial de “su” fuerza de trabajo nacional.

## Conclusión

No cabe duda de que el Estado es un campo para la lucha social y la reforma, y cuanto más civilice esta lucha la conducta del gobierno y logre beneficios para los productores de plusvalía desposeídos, mejor. Sin embargo, el Estado no es una instancia ajena al capital, que Marx (1990, cap. 4) concibe como un proceso de valor como más valor, de dinero que produce descendientes vivos en una escala creciente. Más bien, la conceptualización tanto del Estado como del capital se fundamenta en la existencia de una clase de productores de plusvalía desposeídos, que es la única precondition para la existencia de la relación social capitalista (Marx, 1990, cap. 23). La exigencia socialdemócrata de la erradicación de la pobreza es por tanto ilusoria, por mucho que su esfuerzo pueda civilizar el trato de la sociedad a sus trabajadores. Invariablemente, para

que una política para muchos tenga éxito, de una manera u otra tendrá que facilitar la rentabilidad de su fuerza de trabajo nacional en competencia con todas las demás fuerzas de trabajo nacionales. De este modo, una política socialista en interés del trabajo “se convierte en una continuación y confirmación de la economía, y el Estado se convierte en una forma concentrada de compulsión económica. . . . En lugar de ser un medio potencial de emancipación de esta compulsión, la conceptualización del sistema político lleva a la clase [ligada al trabajo] . . . a identificarse con los representantes de la dominación” (Agnoli, 2004, 124). He argumentado que la forma mercantil de la riqueza conlleva la necesidad del Estado como forma jurídica de la violencia, del orden y de la ley, del derecho y de la rectitud, de la moral y de la rentabilidad. Si las cosas se precipitan, como ocurre invariablemente en una sociedad antagónica, se necesita un poder que contenga la agitación, frene las pasiones del malestar, despolitice las relaciones sociales si es necesario mediante el uso de la fuerza, y preserve el Estado de Derecho suspendiéndolo para hacer lo necesario para superar el desorden y restablecer para el Estado de Derecho el orden social en el que se basa (Bonefeld, 2006).

El enfoque analítico de la forma es una crítica del Estado. En palabras de Holloway (2002, 92), “criticar el Estado significa en primer lugar atacar la aparente autonomía del Estado, entender el Estado no como una cosa en sí misma, sino como una forma social, una forma de relaciones sociales”. Su perspectiva política se orienta hacia ese tipo de cambio radical, cuyo paso lamentó Max Horkheimer (1985, 99) en 1942 y cuya actualidad intentó recuperar Oskar Negt (1976, 462) en los años setenta: “Si hubo algo en el siglo XX parecido a una utopía concreta, eso fue la utopía de los consejos”. He argumentado que el estado político es un estado de clase sin ser el instrumento directo de una clase. No es un poder neutral. Es la forma política de unas relaciones sociales definidas y la conceptualización de estas relaciones se impone en la conceptualización del Estado. Mientras tanto, la ilusión estatal de la socialdemocracia, desde Sanders pasando por Warren hasta Melenchon, persiste como la aparentemente única alternativa viable a la miseria de nuestro tiempo, y con razón.

## Agradecimientos

Una versión anterior de este texto se publicó en inglés con el título ‘On the State as Political Form of Society’ en *Science & Society*, vol. 85, núm. 2 (abril de 2021): 177-84. Reimpreso con permiso de Guilford Press.

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# THE DARK SIDE OF SOVEREIGNTY THE QUESTION OF GOVERNMENT IN A HISTORICAL- EPISTEMOLOGICAL PERSPECTIVE<sup>1</sup>

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## Abstract

This paper aims to question the concept of government in a historical-epistemological perspective. In the first part, I will outline the features and stakes of such questioning, starting with a discussion of conceptual history and the history of governmentality (and their limitations). In the second part, I will seek to sketch out the possible trajectory of such ‘epistemological history’ of the concept of government, showing how – and in what way – it is intertwined with that pivoted on the concepts of sovereignty and representation. To do so, I will focus on two episodes in particular: physiocracy and neoliberalism.

## Keywords

Epistemological history of political concepts, conceptual history, history of governmentality, government, physiocracy, neoliberalism, modern science, cybernetics.

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1. Reception date: 24th March 2022; acceptance date: 27th March 2022. The essay is the issue of a research project carried out within the Dipartimento di Filosofia, Sociologia, Pedagogia Psicologia Applicata (FISPPA) of the Università degli Studi di Padova.

## **Resumen**

Este artículo pretende cuestionar el concepto de gobierno en una perspectiva histórico-epistemológica. En la primera parte, esbozaré las características y los retos de dicho cuestionamiento, comenzando con una discusión de la historia conceptual y la historia de la gubernamentalidad (y sus limitaciones). En la segunda, trataré de esbozar la posible trayectoria de esa 'historia epistemológica' del concepto de gobierno, mostrando cómo – y de qué manera – se entrelaza con la que pivota sobre los conceptos de soberanía y representación. Para ello, me centraré en dos episodios en particular: la fisiocracia y el neoliberalismo.

## **Palabras clave**

Historia epistemológica de los conceptos políticos, historia conceptual, historia de la gubernamentalidad, gobierno, fisiocracia, neoliberalismo, ciencia moderna, cibernética.



In general, a game-playing machine may be used to secure the automatic performance of any function *if the performance of this function is subject to a clear-cut, objective criterion of merit*. In checkers and chess, this merit consists of the winning of the game according to the accepted rules of permissible play. These rules, which are totally different from the accepted maxims of good play, are simple and inexorable. Not even an intelligent child can be in doubt concerning them for longer than it takes to read them while facing a board. There may be great doubt as to how to win a game, but no doubt whatever as to whether it has been won or lost.

Norbert Wiener, *God & Golem, Inc.*

## Prelude

In a press conference he gave in Rome on October 19<sup>th</sup>, 1974, the French psychoanalyst Jacques Lacan spoke about what Sigmund Freud called an “‘impossible’ profession” (Freud, 1964, p. 248), namely that of governing, saying that the “people who govern [...] haven’t, in the final analysis, the foggiest idea what they are doing. Which does not stop them from doing it, and even from doing a halfway decent job. Governors are needed, after all, and governors govern – that’s a *matter of fact*. Not only do they govern, but everyone is glad they do so” (Lacan, 2013, pp. 57-58, translation modified, emphasis mine).

Unlike psychoanalytic practice, which is more concerned with the untenability of its own position, dealing “especially with what doesn’t work” (Lacan, 2013, p. 61), we cannot say the same about governing.

Although the French psychoanalyst’s assertion may be correct to reduce the whole question to a *matter of fact* would be a mistake. On the contrary, one of the aims of this paper and, more broadly, of the line of research I aim to pursue with this paper is to consider this matter of fact as *problematic* and in question.

## ***Government: a matter of fact or a problem? Between conceptual history and the history of governmentality***

Suppose to takes even a cursory look at the history of the concept of sovereignty. In that case, it is almost impossible not to stumble upon what I believe constitutes its ‘dark side,’ namely, what concerns the field – both semantic and conceptual – of government.

I believe that, within the boundary drawn by such a question, we encounter this field in the first place as a *matter of fact* – “governors are needed, after all, and governors govern.” Under this outer cover, if we want to stay faithful to the philoso-phical injunction to “think the thinkability of politics again” (Galli, 2007, p. 9), we must recognize the insistence of a *problem*.

I suggest we can identify two facets of government as a matter of fact. One of them is epistemologically false, and we must refute it by proving its groundlessness. The other one is epistemologically fruitful; indeed, it allows the (in)visibly opaque insistence of the problem to shine through beneath the glassy transparency of the matter of fact.

We can see the first facet in the widespread attitude of regarding government as an invariant in a supposed history of political thought, generally outlined in continuistic terms. This attitude does not deny that ‘government’ (both as a term and as a concept) has denoted things that are highly different throughout history. Instead, the point is to reflect on these differences and to articulate them – often, and not coincidentally with great difficulty – within a single linear progression in which we can discover (but above all to seek out) continuities and consonances, anticipations and precursors.

To problematize this orientation and radically prove its groundlessness is an excellent achievement of conceptual history.<sup>2</sup> In line with its methodological assumptions, it proposed not to consider government as an invariant but to frame the question by identifying a historical threshold marking the transition from an ancient way of thinking about politics, essentially based on a further development of Aristotelian ethics, to the so-called modern political science.

This new political science finds its cornerstones in the modern concepts of sovereignty and representation, its theoretical genesis in the thought of Thomas Hobbes, and its constitutional expression through the “forced revision of Hobbesian doctrine” (Biral, 1998<sup>2</sup>, p. 85, n. 72), represented by the French Revolution. Crucially, this science gained

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2. The reference here is mainly to the variant that the conceptual history has adopted – in continuity but simultaneously breaking with the German *Begriffsgeschichte* – within the research group on political concepts in Padua (Chignola & Duso, 2008).

its current relevance in modern Western democracies, where we tend to consider these concepts (and the constellation of concepts derived from them: liberty, rights, people...) as matters of fact.

The formal rationality of the Hobbesian political science introduces an entirely new way of structuring political discourse, which I cannot possibly reproduce in its whole complexity within this context. I will, therefore, only summarize it in a few lines.<sup>3</sup> Besides pointing out the need – to which I will return – to think about civil science with the same precision with which natural science has allowed us to think about nature, Hobbes endows it with a peculiar anthropology based on the concepts of individual liberty and equality.

On the one hand, due to the possibility of hurting each other, the conceptual couple of liberty and equality makes the permanent state of war inevitable, a state of war that, according to Hobbes, characterizes the state of nature and makes the transition from it to the institution of the commonwealth necessary. On the other hand, they render what has long been considered “not only among necessities but also among advantages,” namely, the fact that “from birth, some are destined to be governed and others to govern” (Aristotle, 1995, p. 6, translation modified), as intolerable, as it is unreasonable. This change of perspective entailed the transformation of the relations of command and obedience into another form (of legitimacy).

Within an ellipse whose focal points are occupied by the concepts of authorization and representation, Hobbes lays the ground for the only tolerable form of obedience that we can logically admit, that of the entire body politic upon itself through the figure of its *representative*. As Hobbes clearly states in the 16<sup>th</sup> chapter of his *Leviathan*, the representative is *legitimized to act* – an action to which each of the individuals composing the body politic must render strict obedience – insofar as they are *authorized to express* the will of the body politic.

Such a perspective marks what Giuseppe Duso, following Max Weber, has aptly called the ‘birth of power,’ which would bring about the ‘end of government.’ This happened first at the level of the logical apparatus and then gradually through a reorganization of the structure of knowledge and its doctrine (Scattola, 1994; 2003), which accompanied the triggering of a series of constitutional processes that found their (slow) outcomes in the birth of the modern state.<sup>4</sup>

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3. For a comprehensive overview, see Biral, 19982; Piccinini, 1999.

4. By the term ‘modern state,’ I refer here specifically to the result of the “profound structural change” that took place around “the middle of the 18th century” (Brunner, 1968b, p. 117) and culminated in the reorganization of institutional and constitutional structures after the end of the *Ancien Régime*. The modern state – understood as a “historically conditioned

We must see in the ‘end of government’ the demise of an “ancient principle” (Duso, 2007, p. 84), complex and irreducible to the existence of a command-obedience relationship without legitimacy (a reduction made by Hobbes), around which, albeit in very different ways, it had thought politics until then. This is a principle we can start sketching out if we consider the “difference characterizing parts of society and the rationality of the fact that in society there is a relation for which some govern, and others are governed.” Moreover, it is, above all, a principle whereby “good government and its ability to relate to the idea of justice is judged from time to time at the level of concrete action and not a formal model” (Duso, 2008a, pp. 186 and 189).

Nevertheless, Duso himself points out the persistence of a “reality implied by the notion of government” besides the ‘end of government,’ (Duso, 2006, p. 382) which proves that things are more complex than one might imagine. Indeed, “the framework constituted by the binomial of liberty and power tends to negate the necessity of a relationship of government amongst people”. Nevertheless, “in reality, such a relationship is maintained *despite* the formal rationality that characterize power” (Duso 2008b, p. 307, emphasis mine).

And how so? In the form of a “permanent, institutionalized command-obedience relationship” (Brunner, 1968a, p. 66). Following Weber (2019) and Otto Brunner (1968a), we can call it ‘domination,’ in the light of what has been said so far about the nature of the formal legitimation mechanisms that make its acceptance possible.<sup>5</sup> Through them, on the one hand, the “heteronomy of the command and the personal difference between who commands and who obeys” is preserved. On the other hand, the legitimation strategy based on the authorization-representation pair conceals “the fully accountable political dimension of both those who command and those who obey” (Duso, 2008b, pp. 307-308).

This relationship is maintained in a series of declensions. They belong to a history more or less intertwined with that which has pivoted on the concepts of sovereignty and representation and has found its most recent expression in modern Western democracies, where the government essentially coincides with the activities of the executive.

However, precisely on this point the statements of conceptual history regarding the issue of government reach a theoretical limit and therefore require some adjustments.

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form of power organization” – in the broader sense, on the other hand, is referred to by Rotelli & Schiera, 1971-1973 and Schiera, 2004, which attest its emergence in the 13<sup>th</sup> century.

5. On this topic, see Duso, 2008a, and in light of the dialogue with this paper, Duso, 2013.

Indeed, while it has played a crucial role in undermining an earlier facet of government as a matter of fact, asserting the insistence of a ‘reality indicated by the notion of government,’ still, without rigorously questioning how this insistence ‘insists,’ it runs the risk of creating a second-order generality.

In asserting the reality of such an insistence, it implicitly shows how – in *lacanese* – the foreclosure of the *Real* of government from the *Symbolic* of political science implies a return of the latter in the ‘disruptive’ form of domination. Moreover, one could derive from this observation the conviction that political science must address the question of government. Without doing that, the latter remains in a permanent crisis, of which the history of democracy would be the most glaring symptom, with its periodic calls to ‘contest its boundaries’ (Benhabib, 1996).<sup>6</sup>

However, conceptual history fails to investigate how politics symbolized the Real of government in the course of modernity outside – or, in a position of extimity to – the Symbolic of modern political science. That is why it is unable to produce what I call a *clinic* of government as a matter of fact from which we would have to *critically* extract the opaque and ‘unthought’ dimension of the problem.

In this regard, more is needed to identify domination as the form by which the governing relationship is maintained despite the formal rationality that characterizes power. As Brunner notes, “in the present, domination [...] exists widely. The bureaucratic apparatuses of entities such as the state, municipalities, associations, and economic enterprises would be a case in point. Nevertheless, noting the “relevance of the factor ‘domination’ says nothing about the tasks of the entity in question” (Brunner, 1968, p. 105). More radically, I believe that it tells us nothing – or at least very little – about how the question of government has been taken up by political thought *since* the crisis of ancient political *epistēmē* and *through* the gradual spread of modern political thought. To do this, we would have to interrogate the whole series of histories interwoven with the history pivoted on the concepts of sovereignty and representation to which I referred earlier.

As is well known, Michel Foucault primarily raised the problem of framing these histories in general terms within the confines of the “history of governmentality,” that he declared his intention to undertake in the February 1<sup>st</sup>, 1978 lecture on *Security, Territory, Population* (Foucault, 2009, p. 108). Such a history is intertwined with the broader ‘history of government’ to which he alludes in the same course and with the broader

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6. The two questions at stake are formulated particularly clearly in Duso, 2006.

study of the ancient and late ancient world around the ethical problem of self-government that he will undertake in the upcoming courses of the 1980s.

The scope of the semantic and conceptual spectrum the word ‘governmentality’ circumscribes in Foucault’s reflection is broad. However, I believe that, at a minimal level, it starts from the word ‘to govern’ acquiring a “specifically political meaning” (Foucault, 2009, p. 122) in the 16<sup>th</sup> century. Consequently, I think it is entirely legitimate to understand the history of governmentality as the history of what the French philosopher calls “the government in its political form” (Foucault, 2009, p. 89, translation modified).

As Foucault describes it in the 1977-1978 lectures, it begins with the web of ‘reason of state-police science-cameralism-mercantilism’ that, in some ways, defines the threshold of modernity. Then, it continues with the “modern governmental reason” (Foucault, 2008, p. 10), which begins with the physiocracy and runs through the winding history of liberalism, ending up with the more contemporary neoliberal governmentality. This is a vibrant story focused not only on the state but rather on the state *and* its “necessary correlate,” the “vis-à-vis” (Foucault, 2009, pp. 350, 349) of the state, namely, society.<sup>7</sup>

In recent decades, either in the wake of the Foucauldian legacy or independently of it, several critical studies have dealt with one or more stages of this history of ‘government in its political form.’ Sometimes they emphasize how closely it is interwoven not only with the history of the modern state but also with the history of the logical apparatus and the conceptual constellation in which it finds its rational foundations and epistemic assumptions (Marcenò, 2011) before the latter even came into being. Sometimes, however, they show how it allowed a series of lines of escape to become visible, “resistance and preservation [...], overcoming and subversion” (Rotelli & Schiera, 1973, p. 7), vis-à-vis the centrality of the modern state and its logic (Dardot & Laval, 2014). They show, in addition, how running precisely along these lines of escape, the increasingly radical transformations to which the latter has been subjected in more recent times came about (Giannone, 2010; 2019; Ouellet, 2016, pp. 191-236; Palumbo & Bellamy, 2010; Rosenau & Czempiel, 1993).

Such histories of governmentality had the merit of shedding light on many archives and contexts that – for structural reasons – had not directly attracted the attention of conceptual history. However, they have proven themselves equally incapable of carrying out a clinic of government as a matter of fact, being limited to what I would rather call a

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7. On this subject, see Chignola, 2004; 2011; Schiera, 1987; Ricciardi, 2010.

*phenomenology* of government and its configurations. This phenomenology has yielded considerable insight into the structures of the various governmental rationalities. However, it has not been capable of deconstructing them in a way that extracts from these rationalities the problematic core – the unthought – that they could not (and cannot) think of for structural reasons.

Differently from conceptual history, which has reconstructed the emergence of modern political concepts to deconstruct them without accepting these concepts as matters of fact, the history of governmentality has reconstructed the emergence of the concept of government but in the end – at least, this is my impression – accepted it as a matter of fact as well.

Indeed, it did so in a way that is not that of naïve common-sense empiricism – ‘governors are needed, after all, and governors govern.’ It is not even that of the genealogical-theological matrix (Karsenti, 2009) of those who, as Giorgio Agamben (2011), “[t]hrough the Church Fathers and Rousseau [...] essentially recognizes no discontinuity, since it is always the identical theological matrix of Christian *oikonomia*” (Sebastianelli, 2017, p. 20). On the contrary, adhering to a “historical ontology” (Foucault, 1984, p. 45) helped to write a history of differences, changes of course, and discontinuities. Merandially, it could be argued that precisely based on an “ontology of the present” (Foucault, 2010, p. 21) we can draw a line of continuity between the history of governmentality and conceptual history. The latter is also from the very first moment, “oriented to the present [*gegenwartsbezogen*]” (Koselleck, 1972, p. xiv). In uncovering “a series of complex, difficult and never-functionalized relationships, a series of relationships which in a certain sense never functions at all” (Foucault, 1996, p. 39), what else could indeed we discern if not a critical questioning of concepts to allow their unthoughts to become visible?

However, it is something else. The investigation carried out by Foucault and subsequently by much of the work inspired by his history of governmentality does not aim to identify, under these modes of non-functioning, an unthought in the terms I have described it so far – the problematic kernel obscured by the matter of fact. Instead, by putting pressure on these modes of non-functioning, it circumscribes and creates the space of a political action that can escape the grasp of the structures through which this or that governmental rationality maintains its existence (Cesaroni, 2020, pp. 193-202; Ferrari, 2021). In doing so, however, one more or less consciously assumes that the question of government is wholly exhausted in the forms of modern and contemporary governmental rationalities. An assumption in which the unthought is likely to remain

unthought and the matter of fact the statement of a matter of fact, albeit critically reformulated.

On the one hand, the conceptual-historical study of government as a matter of fact thus identifies the unthought of modern political science precisely in the question of government. On the other hand, the history of governmentality shows how the question of government does not cease to be ‘thought and rethought’ in the course of modernity. It allows specific modes of non-functioning for each of these attempts to become perspicuous, but it cannot extract what is unspoken and unthought.

We thus stumble upon an apparent contradiction that we can only resolve by complicating the perspective of both conceptual history and the history of governmentality.

## For an epistemological history of political concepts

We have already seen how conceptual history approaches the question of government by identifying a historical threshold. However, it is worth recalling that this historical threshold constitutes an *epistemological notion* –<sup>8</sup> a crucial node that distinguishes it from the Koselleckian variant (Koselleck, 2004; 2018) of German *Begriffsgeschichte* (Chignola, 2008; 2016).

This means that behind the Hobbesian will to think of politics as a theory characterized by formal rigor along the lines of natural sciences, we can see the workings of “a new concept of science and a consequent shift in the sciences concerning man” (Biral, 1999, p. 256). According to Hobbes (1983, pp. 23-38; 1928, pp. xvii-xviii),<sup>9</sup> only by thinking civil science with the same precision featured by Galilean physics it is possible to escape the risk of contingency and a politics based on a precarious conception of justice. A very material example of this risk is the civil wars of religion which troubled France and England while he was writing his books.

From a historical-conceptual point of view, the question of government becomes the unthinkable and the unthought that disturbs the seemingly flawless coherence of modern political science *primarily* and *essentially* through the imposition of such a rationality.

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8. The reference here is to Koselleck, 1996 (p. 69, emphasis mine): “The *Sattelzeit* is neither an *ontological notion* nor is it tied to a single national language.”

9. See Skinner, 2002; Galli, 2011.



However, the same rationality, I argue, has driven and still drives modern and contemporary governmental attempts to cope with the same question. It follows that what this kind of rationality forbids us to think is *something* that brings into play the concept of government and that cannot be *entirely* foreclosed by modern political science nor domesticated by modern and contemporary governmental rationalities.

Obliquely to the government as a matter of fact, I propose to name this ‘something’ government as a *problem*. To give it consistency – as expected – it will not just take the standpoint of either conceptual history or the history of governmentality. Rather, I will outline a history of the ways in which a particular kind of rationality – whose features conceptual history has helped to identify, if only to some extent – has conditioned, among other things, attempts to think scientifically about politics: of the consequences of that conditioning and its unthoughts.

I propose to call this inquiry the Epistemological History of Political Concepts [EHPC]. It, indeed, undertakes to examine a political concept from its epistemological premises, in the belief that we have to identify this level as the genetic site of production of the unthoughts of modern political concepts. At the same time, it is only by adopting new and different premises **that it** becomes possible to think of them differently – or, more simply, actually to think of them.

There are better places to reconstruct all the theoretical bases of this type of investigation, which, in any case, far from being a methodological cookbook, can only find *in* its exercise the conditions *for* its exercise. A strong thesis about the nature of the kind of rationality that have conditioned, among other things, the attempts to think scientifically about politics since modernity constitutes one of its fundamental postulates.

We have already seen the features of formal rationality on which Hobbes bases his apparatus. We find them as such in constructing any modern political concept, in which the criteria of operativity, abstraction, and purity vis-à-vis experience are supposed to be active (Duso, 2003). More generally, we find them in every “theoretical performance whose claim to scientificity is identified with the definition of axioms, with the apodictic character of deductions and with the construction of a political model that is universally valuable” (Cesaroni, 2017, p. 521).

On this point, EHPC’s thesis is both more clearly stated and more universal. Namely, such rationality is the result of advocating an *epistemological posture* whose genesis is at the height of the so-called modern scientific revolution and assumes a twofold reduction. The first is an ontological reduction of reality to (id)entities. These entities are fully formed and given, stable and calculable, i.e., structures whose behavior and evolution

are known and predictable in advance, at least at a potential level, because they can be described in terms of deterministic causal relations. The second is an epistemological reduction of science to axiomatic-deductive systems, where ideas are arranged within a theory and concepts express their membership to the general laws of that theory.

This epistemological posture is an *ideological posture*. In this context, I can only formulate it as an axiom, but its apodicticity becomes concrete when applied to the history of sciences. It works as an obstacle to the actual praxis of science, whose essence is normative and irreducible to an ideal syntax. It equally works as an obstacle to the scientific understanding of a complex reality involved in continuous processes of individuation and, therefore, resistant to any reduction to equally ideal structures and entities.<sup>10</sup>

From these backgrounds, to write an Epistemological History of the Concept of Government [EHCG] we have firstly to examine the features that this epistemological posture has assumed from time to time and through which it has conditioned the configuration of governmental rationalities and their knowledge (ideologically saturating the range of thinkability of politics). Only then we can try to extract their unthoughts from intertwining the points of non-holding between the two layers, taking the risk of rewriting other epistemological premises that can create the conditions for their rethinking.

## **Toward an epistemological history of the concept of government. Hypotheses for a trajectory**

If we apply this framework to the study of the concepts of modern political science as identified and reconstructed by conceptual history, something significant for our study already emerges.

In this respect, the figure of Hobbes also provides a particularly useful prism for our inquiry for reasons that are in part different from those stated in works of conceptual history. Apart from some anachronisms that do not affect the coherence of the analysis, it is possible to recognize in him a synthesis of science and politics in light of the influence exerted by the mentioned epistemological posture.

Indeed, in the wake of Descartes, this posture influences Hobbes's natural philosophy. This is evident in all his attempts to philosophically neutralize the possible pro-

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10. I use the adjective 'ideological' and the noun 'obstacle' following Canguilhem, 1988 and Bachelard, 2002, pp. 24-32 freely.

blems arising from the (Galilean) discovery of matter in motion, which had definitively undermined the image of the ‘closed’ and hierarchically ordered Aristotelian-Ptolemaic ‘world’, by the coherence of a stable and universal geometrical-mechanical construction. On the other hand – setting aside Descartes and his provisional morality – his civil science is also largely influenced by the same posture, as we have already pointed out. A monstrous geometric-mechanical construction – the *Leviathan* – is called to neutralize the potential dangers of another monster. This other monster is what we might call *social matter* in motion, spectrally identified with the deliberately ambiguous concept of the *multitude* but more concretely attributable to the projection of a society of orders – the premodern ‘*societas civilis sive status*’ divided into estates (Brunner, 1968c) – in perpetual crisis. It was so because it was deprived of the harmony that guaranteed for it the “theological-cosmological continuum *in the name of which* the sovereign is *authorized* to govern and which provides models by which he must govern” (Foucault, 2009, p. 234, emphasis mine). Indeed, it began to wane a little over a century later, giving way to a society of free and equal, natural *and* social individuals.<sup>11</sup>

It seems that even this brief epistemological digression within Hobbesian reflection says something about the consistency of the ‘something’ I have named ‘the government as a problem’: primarily about the unthoughts of modern political science, but also about the kind of rationality that underlies it.

With a *boutade*, we might say that what such an epistemological posture neutralizes and renders unthinkable is precisely the “mysteries of matter and motion” [*materiae motusque arcana*] that Hobbes himself had ambitiously declared he wanted to “discover” (Hobbes, 1839, p. lxxxix). In contrast, the critical analysis of such neutralization allows us to identify as unthought, both at the epistemological and the epistemic levels of politics, a whole series of issues related to the conceptual framework of materiality and motility.

Let us try to point them out: the question of undecidability and its relation to the decision, the inevitable presence of elements of unpredictability and contingency, the irreducibility of any material difference to an ideal representation, the problem of evolution, growth, and change, the problem of disorder and instability (and their specifically political equivalent: conflict), etc.

I believe that it is precisely this kind of issue that governmental rationalities have sought to ‘think and rethink’ throughout their history, as they share the same episte-

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11. For all these issues, see Bardin 2016; 2019. On the concept of ‘motion’ in Hobbesian reflection, see also the classic Spragens, 1973.

mological posture with political science. All of this has contributed in various ways to their further (and more actual) neutralization.

On this basis, I propose to call such rationality the *science of government*. This term is can both to at the same time distinguishes it from the ancient art of government and to makes both its relation and its difference to modern political science and its disciplines (the sciences of the State, see Schiera, 1968) perspicuous.

If modern political science practices a foreclosure of such issues, the science of government aims at their domestication through its disciplines (humanities and social sciences).<sup>12</sup> This means that paradoxical as it may seem, within these sciences, the very elements that political science sought to repress to allow a reduction of social reality to the kind of structures I have just described play a crucial role in implementing the same reduction process. Suppose political science *has banished* every potentially risky element *from* the space of political action. In that case, the science of government is concerned with where these elements *reappear within* the latter, not to generate some legitimacy but to perform another form of neutralization on them.<sup>13</sup>

Now, to write the EHCG is to write the history of this science.

First, one must try to identify the historical threshold at which the question of government was articulated – at least at the theoretical level – *in terms of science*. For the sake of clarity, I specify I use ‘science’ in the precise (I emphasize: ideological) meaning that I have attributed to this term up to this moment, i.e., as a consequence of the orientation towards the reductions resulting from a particular epistemological posture.

To (begin to) do this, let us take a final digression into Foucault’s history of governmentality.

As has been argued at length, in *Security, Territory, Population*, Foucault articulates the relationship between the notion of (i) ‘government’ understood as the general idea that one man can lead another, and (ii) ‘governmentality,’ understood as the application of this idea to the political realm. This articulation leads to several points of strain within the French philosopher’s reconstruction (Cesaroni, 2010, pp. 177-191). This is all the more true if we considers that, at least initially, the notion of government seems to overlap in every way with that of ‘pastoral power.’ In Foucault’s opinion, the latter is the

12. I use the term ‘domestication’ because of its (o)economic semantic sediments.

13. It will have to be said, then, that the way modern and contemporary governmental rationality has ‘thought and rethought’ the question of government has made it impossible *actually* to think it. In this sense, the question of government represents not only the unthought of modern political science but, more broadly, the one of what I call the *epistemic apparatus of modern politics* (political science and science of government). On this topic, see especially Chignola, 2004; Ricciardi, 2010.

birthplace of the “idea that one could govern men, or that one did govern men” (Foucault, 2009, p. 123) in the East, but especially among the Jewish people and the Christian Church.

The most striking point, as far as our analysis is concerned, concerns the impossibility of finding any reflection on the political government before the 16<sup>th</sup> century. Foucault, gradually becoming aware of these inconsistencies, corrects course in a later phase of his reflections (Foucault, 1981) by deleting the overlapping relationship between government and pastoral power, thus identifying elements of government outside the Judeo-Christian tradition as well.

All this allows him to readily admit the existence of a political declension of government long before the emergence of the reason of state. However, we must reconsider the novelty that accompanies the emergence of the reason of state too. We are no longer confronted for the first time with applying the general idea of government to the political realm but rather with the emergence of a specific governmental reason.

What does the emergence of this “new rationality” (Foucault, 2009, p. 348) mark the end of? If we follow Foucault, it seems to be entirely legitimate to say that it breaks with the “simultaneously Christian and judiciary tradition, a tradition which claimed that government was essentially just” and should adhere to that ‘theological-cosmological continuum’ to which we referred earlier (Foucault, 1981, p. 243).<sup>14</sup>

Despite the subtlety – and in many respects, the correctness<sup>15</sup> – of this Foucauldian inquiry, I think it is necessary to correct it on two points.

First, it is appropriate to insist that this shift be embedded in a broader epistemic caesura. In these centuries, the question of government is beginning to be thought through the filters of the epistemological posture of modern science. This is not the first application of a general idea of government to the realm of politics. It is instead the exhaustion of a specific epistemological posture – the one associated with a closed and hierarchically ordered world – and a particular way of thinking about the political government that I would describe as Aristotelian-prudential rather than Christian-judiciary. They clear the way to a new epistemological posture, whose features we have already discussed, and a new way of thinking about government.

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14. See also Foucault, 2014, pp. 1-19.

15. A closer look at this claim would require a more comprehensive comparison between my theory of epistemological posture and Foucault’s reflections on the notion of ‘power-knowledge’ and its subsequent reformulation in terms of the notion of ‘regime of truth’ (Foucault, 2010). I defer such a comparison to a forthcoming paper and limit myself to some more pointed remarks in light of the general thrust of this paper.

Which one is it? Let me explain by formulating the second objection I want to raise against the Foucauldian genealogical reconstruction. As adequately documented, the reason of state was an admission of the crisis of the Aristotelian-prudential matrix and an attempt to respond to it. The elaboration of that response remains mainly within the frame of reference of that matrix, even as it helps to recode it radically.<sup>16</sup>

From the 16<sup>th</sup> century onward, the idea that maintaining the social *ordo* is “part of the general divine order of the world” (Biral, 1999, p. 22) is increasingly diminished. In a sense, it was an old idea. However, it had acquired a new particular declension in the Middle Ages due to a renewed interest in Aristotle and the unifying role exercised by the Church and, by extension, a specific religious culture (Hintze, 1970; Grossi, 1995). According to this idea, “[t]he powers stand within a sacred, inviolable order, and by remaining within this order, they testify their justice” (Biral, 1999, p. 22).

At the level of the EHCG, the reason of state stands as the recognition, source, and consequence of such exhaustion. Nevertheless, only very slowly and gradually does it abandon much of the conceptual reserve of the governmental reason against which it makes a break. On the one hand, therefore, it is the expression of an epistemological posture that precedes the one introduced by modern science. On the other hand, only much later, in the hive of disciplines that Foucault places alongside the reason of state (police science, cameralism, and statistics), an apparent discontinuity with the latter begins to appear. However, it does so from a position of complete subordination to natural law and modern political science (Scattola, 2003, pp. 493-521).<sup>17</sup>

So where should we place the historical threshold where “the art of governing gave way to a science of government” (Sebastianelli, 2017, p. 385)?

I propose to place this threshold at the height of the emergence of physiocracy.<sup>18</sup> However, I must immediately clarify that physiocracy *as a science of government* marks

16. Particularly significant in this regard are the transformations to which the concept of prudence has been subjected on the threshold of modernity. From being a virtue aimed at “the goodness of the action itself, which found the ground for its justice in an objective universe,” it is transformed “into a practical activity, based on empirical knowledge and skills” (Marcenò, 2011, p. 93). For a detailed analysis of these vicissitudes, see Scattola, 2003, pp. 109-521.

17. For a critique of Foucault’s reconstruction – which does not invalidate its “general conception and core intention” – within this perspective, see Scattola 2006.

18. Schiera, 1977 (in Schiera, 2011) already recognized “in the enlightened codifications of the late eighteenth century and *the early economic frameworks of the physiocrats* [...] the material evidence of the non-violent modes of transition from the ancient regime to the new post-revolutionary historical phase” (p. 119, emphasis mine). Similarly, Ricciardi, 2010, attributes to the “doctrines of the physiocrats” a “transitional semantics” for the “discovery” of society and the political role adopted by the emerging social sciences (p. 35). In a more radical gesture, similar to the one with which Reinhart Koselleck, 1988 claimed that Hobbesian theory “already contains the nucleus of the bourgeois notion of the rule of law [*Rechtstaatsgedanken*]” (p. 22, translation modified), I propose to see in the physiocrats’ reflections the nucleus of the constitutional praxis through which the action of the state (both in its ‘liberal’ and in its ‘social’ form) towards society was shaped from the first half of the 19th century onwards.

the colonization of the question of government by the epistemological posture of modern science. I leave in the background the question concerning whether it can be regarded as a prehistory of economic science or as its integral part.<sup>19</sup>

Instead, I want to emphasize that in the reflection of the physiocrats, we can see the stigmata of reductions which, as we have seen, characterize the epistemological posture of modern science.

When we deal with this, we can recognize the same need we have seen at work in Hobbesian reasoning. All of this is in a symptomatic attempt to contend with the latter for supremacy as the science of society. It is the abolition of all forms through which the government of society had hitherto been conceived, considered confusing and harmful, and a source of error.

Guillaume-François Le Trosne, for example, calls for subjecting “all received opinions [...] to scrutiny, so as not to admit anything whose evidence has not been verified, and to apply Descartes’ universal doubt to all points of economic science” (Le Trosne, 2013, p. 42). The “conflict between opinions [*contrariété des sentiments*]” had to be replaced by an “exact and proven science” of the principles of the natural order, convinced that economic science was nothing but “the application of the natural order to the government of societies, [...] as constant in its principles and as provable as the natural sciences” (Le Trosne, 2013, pp. 42, 27 and 25).

Furthermore, for those who are willing to acknowledge the advances of the exact sciences in a variety of fields but equally unwilling to accept the possibility of an exact science of government of society since “it depends on an incredible number of variable circumstances that are difficult to disentangle and evaluate,” one would have to reply with the presentation of a simple (matter of) fact. “There is [...] *a natural*, essential and

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19. For a reasoned reconstruction of this debate, see Labriola, 2004, pp. 31-82; Sebastianelli, 2019, pp. 184-215. On this topic, I merely point out – following observation by Brunner (1968b, pp. 101 and 126-127) – that physiocracy, when viewed from the standpoint of economic history as an “autonomous scientific discipline,” exhibits “meta-economic” features that reflect a broader inclination of economics to be a “universal science of man and society.” Unlike Brunner, however, I believe that in these characters, it is not enough to register the symptom of the persistence of “the ancient idea of the cosmos” and the “biblical-Christian conception of history” in which *ancient* European oeconomy (Ökonomik) “had its home.” This is once again the broader idea of the divine government of the world (*oikonomia*). As we have seen, it served as the premise and conformity model of the art of political government. Instead, these characters are where the essence of the *new* science of government and the new rationality that guides it becomes visible. This is true both for the works of physiocrats and some modern and contemporary economists whose membership in the history of economic science has never been questioned. As Foucault (2009, p. 104) has aptly noted, two interrelated processes are involved. On the one hand, “there is a quite subtle process [...] in which we can see how the science of government, the re-focusing of the economy on something other than the family, and the problem of population are all interconnected”. On the other hand, “we could also say that it is thanks to the perception of the specific problems of the population, and thanks to the isolation of the level of reality that we call the economy, that it was possible to think, reflect, and calculate the problem of government outside the juridical framework of sovereignty.” On economics as logic of government, see Bazzicalupo, 2016.



general *order* that embodies the constitutive and fundamental laws of all societies; *an order* from which societies cannot deviate without becoming fewer societies, without the political state losing consistency, without its members being more or less divided and in a state of violence; *an order* that cannot be completely abandoned without bringing about the dissolution of society and soon the absolute destruction of the human species.” (Dupont, 1910, p. 8)

Together with a specific anthropological account, the concept of *ordre naturel* “understood as the totality of human behaviors that provide the greatest possible advantage in terms of satisfaction of needs and *jouissance*” forms “the epistemological premise and the social condition of possibility for a science of economics” (Sebastianelli, 2019, p. 171). The main idea is that an interest-driven calculus determines human behavior and that, for this reason, it constitutes an invariant that can be the subject of a science of government that claims to be accurate and rigorous, such as the political economy.

Consequently, the latter will represent, on the one hand, the dictionary by which we can translate the immutable laws of the natural order into knowledge with “systematic and arithmetical rigor” (Quesnay, 2005, p. 743). Moreover, on the other hand, the gauge – which in François Quesnay’s case takes the form of his famous *Tableau économique* – will guide government action (Quesnay, 2010, p. 297) in its work of “explanation [*declaration*],” “handling [*manutention*],” and ‘containment and redress’ (Quesnay, 1888, pp. 376, 375 and 377) of the natural order: the maintenance, production, and reproduction of its optimal arrangements and the correction of its possible malfunctions, beginning with an overall process of ‘(re)orientation’ of individual behaviors.<sup>20</sup> To govern in this context means to act in such a way as to maintain the regularity of this (new) kind of order.

With the emergence of physiocracy, a declension of the science of government and social order is defined. Within this latter, the epistemological posture of modern science finds its full expression, and which – in its various transformation, of which I cannot, of course, give a complete account in this context – will orient the history of the concept of government for a long time to come.

In a sense, until the first half of the 20<sup>th</sup> century.

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20. We can explain the pronounced interest of physiocrats in public opinion and education in this sense. See Le Trosne, 1977, p. 295: “It is above all public opinion that one must try to guide: it is it that generally governs men more than reason;” Quesnay, 1888, p. 375: “But the first positive law, the primary law among all other positive laws, is *the institution of public and private instruction in the laws of the natural order* [...]”



## The question of government. Contemporary trajectories

To question the first half of the 20<sup>th</sup> century is to approach the present. To do so in terms of an EHCG is to make a considerable temporal leap from the historical threshold we have identified and demarcated. Consequently, it is to leave behind everything in between, which is, therefore, entirely left to be submitted to clinical and critical scrutiny.

I am aware of this. Nevertheless, in this context, I intended to write something other than an EHCG that is fully aware of the complexity of the entire time spectrum in which it developed. Besides, I take the liberty of doing so for two reasons.

First, this means diagnosing the governmental rationality in which we still live and think, and second, I think that this governmental rationality – let us call it: neoliberal – is the product of the most radical remake of the epistemological posture initiated at the beginning of the modern scientific revolution. Consequently, only by re-examining this posture is it possible to lay the foundation for a concept of government that is genuinely different from the modern and contemporary one.

I will proceed schematically.<sup>21</sup> To question neoliberal governmentality from its epistemological premises means examining the connection between neoliberalism's break and the break that the emergence of cybernetics has produced within the epistemological posture of modern science.

Because it is aware of the crisis of modern scientific conceptuality, cybernetics argues for rethinking the categories it underpins, especially the category of finalism. The latter, radically excluded from the specifically modern formulation of posture to which we have referred so far, has, on the contrary, formed the basis of cybernetic reflection since its beginnings.

Revised in light of the concept of negative feedback, it allows us to envision the behavior – of a machine, a living organism, a society – as the totality of all “purposeful reactions which are controlled by the error of the reaction – i.e., by the difference between the state of the behaving object at any time and the final state interpreted as the purpose” (Rosenblueth, Wiener & Bigelow, pp. 23-24).

Such a rethinking entails a new understanding of order and its organization, which is not strictly mechanical but characterized by an operational stability and ever dynamic equilibrium. It will be at the heart of an evolution in which the dynamic element plays an increasingly central role. Therefore, the idea that the state of organization of a system

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21. For a more detailed account of the concept of neoliberal government (and its unthoughts) that is consistent with the methodological assumptions developed in this paper, see Bardin & Ferrari 2022.

depends solely on its ability to function by blocking out disorder, accidents, chaos, etc. (in technical language: noise) to maintain unchanged structures responsible for conserving internal order will gradually be lost. All of this will eventually lead to a model of self-organization ‘from noise,’ in which disorder is the very source of the creation (and constant re-creation) of an increasingly complex, comprehensive, and proper order (Asby, 1962; Atlan, 2011; Von Foerster, 1960).

This model of (self-)organization has quickly gained currency in the humanities and social sciences as well (Mirowski, 2002; Mirowski & Nik-Khan, 2017) and at the broader level of what I have called the science of government. Within this latter, it has brought about the final transition from “theological power” to what Jean Baudrillard (2007, p. 46) has called “teleonomic power,” with an apparent reference to the terminology used by molecular biology largely nurtured by cybernetic conceptuality.<sup>22</sup>

It is precisely on this side that the study of the epistemological posture of cybernetics provides us with valuable tools to understand in which elements lie the real break generated by neoliberal governmental rationality and the “epistemic revolution” (Ouellet, 2016) that went with it.

The point of government in a neoliberal perspective is neither to limit the freedom of initiative nor to assume that social stability depends on an invisible hand but rather to carry on a detailed regulation of liberties for the sake of the ‘spontaneous’ equilibrium of the markets. Never-ending data mining by increasingly conscientious and individualizing algorithms (Berns & Rouvroy, 2013; Stiegler, 2017) allows each subject’s behavior to be directed in a *particular* way toward maintaining the *overall* order and stability of the system. This order and this stability, in turn, will always vary, oriented by each subject’s behavior, provided it stays (and *simultaneously* in order to stay) in the few parameters necessary for its maintenance.

All the ‘irrational’ noise that is not immediately reducible to order and stability thus conceived is either silenced or – once neutralized – included in the pattern as a risky and unforeseen opportunity to perfect the system’s survival (Castel, 1991; Dean, 1998; Ewald, 1991; Lemke, 2008; Marzocca, 2008). More radically, these elements are normatively integrated into the system’s core dynamics in the form of an ethics of flexibility (Fach, 2000; Fraser, 2003), establishing the ‘good’ functioning of governmentality.

The government is thus resolved in the ongoing operation of protection, management, and promotion of homeostatic mechanisms deemed capable of self-regulation,

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22. On both these levels, Friedrich von Hayek played a key juncture role. For an early account, see Oliva, 2016.

but in fact, selected and – if necessary – substituted with others, offering a more inclusive and complex capacity of adaptation to the macro-mechanism of the market (Bruno, 2009). This macro-mechanism is the undisputed horizon that imposes on political power the task of providing a homeostatic equilibrium functional to its progressive implementation (Supiot, 2015). With its ‘soft’ determinism and immanent teleology, the market thus appears to be a hypermodern version of the clockwork universe theorized in early-modern mechanical science and the vector of a similar – although different – reduction of social reality to a mathematical form.

I am tempted to say that government in its (neo)liberal variant is a well-guarded game, with control mechanisms, that becomes more pervasive the greater the freedom produced and put to use. It is indeed no coincidence that modeling techniques from game theory and operations research have played, and continue to play, a leading role in contemporary government practices.

While discussing precisely the value, productivity, and limits of game theory, Norbert Wiener, the father of cybernetics, writes:

The chief criterion as to whether a line of human effort can be embodied in a game is whether there is some objectively recognizable criterion of the merit of the performance of this effort. Otherwise the game assumes the formlessness of the croquet game in *Alice in Wonderland*, where the balls were hedgehogs and kept unrolling themselves, the mallets were flamingoes, the arches cardboard soldiers who kept marching about the field, and the umpire the Queen of Hearts, who kept changing the rules and sending the players to the Headsman to be beheaded. (Wiener, 1964, pp. 25-26)

Despite Wiener’s hesitation, and apart from the metaphor, I have the impression that the composition of the social, inside and outside the tight meshes of the neoliberal imaginary and the homeostatic mythologems of stability and equilibrium, is much more like *Alice’s* world than any game that well-formed rules can represent and that provides for a universal and absolute model of organization, resistant to any change. It is a complex and unpredictable ‘entity.’ The principles of its organization cannot be established a priori and once and for all but must represent the result of the actual – that is, not only ‘communicative’ but inventive – the interaction of the various levels of complexity that compose it (individuals, groups, institutions, etc.).

Here reappears the consistency of the ‘something’ that the epistemic apparatus ‘political science-science of government’ has increasingly sought to neutralize.

It is these unthoughts that an EHCP brings to light, and about which I believe a political science *à venir* should finally begin to reflect, through a new *concept* of government that does not reduce the *question* of government to a matter of fact.

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# CONTRADICCIONES DEL ESTADO DE RESCATE<sup>1</sup>

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## CONTRADICTIONS OF THE BAILOUT STATE

### Resumen

La necesidad de rescates a menudo se describe como un síntoma de cuán incoherente es el neoliberalismo. Sin embargo, estas interpretaciones desdeñosas no reconocen cómo la confianza en la lógica del rescate ha permitido a los formuladores de políticas navegar por dilemas que antes parecían intratables, que es lo que impulsó la transformación de las políticas de rescate de espectaculares rescates públicos en la década de 1980 a goteo mucho más significativo desde el punto de vista sistémico. Alimentar la lógica de rescate de bajas tasas de interés y flexibilización cuantitativa en el presente. La crisis de COVID-19 ha dejado en claro cuán central se ha vuelto la lógica de los rescates para la forma en que funcionan las sociedades occidentales contemporáneas: se han convertido en la opción de referencia para lidiar con los efectos desestabilizadores de los grandes impactos, incluso cuando la fuente es externa a el sistema económico. Al mismo tiempo, estamos viendo las contradicciones de este modelo de gobernanza económica. Esas contradicciones aparecen como una intensificación de las tensiones que ya se habían hecho visibles desde la crisis financiera mundial, cuando las autoridades financieras

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1. Fecha de recepción: 11 de febrero 2022; fecha de aceptación: 31 de marzo 2022. Este trabajo es fruto de un proyecto de investigación desarrollado en la University of Sidney.

percibieron cada vez más las limitaciones de su conjunto de herramientas de política. Este capítulo mapea la trayectoria del surgimiento del estado de rescate y toma la medida de sus contradicciones actuales.

### **Palabras clave**

Neoliberalismo; Lógica de rescate; capitalismo democrático; Karl Polanyi; Estado de bienestar keynesiano.

### **Abstract**

The need for bailouts is often depicted as a symptom of how incoherent neoliberalism is. However, such dismissive interpretations fail to recognize how the reliance on bailout logics has allowed policymakers to navigate dilemmas that had previously seem intractable, which is what drove the transformation of bailout policies from spectacular public rescues in the 1980s to the far more systemically significant drip-feed bailout logic of low interest rates and quantitative easing in the present. The COVID-19 crisis has made clear just how central the logic of bailouts has become to the way contemporary Western societies work—they have become the go-to option for dealing with the destabilizing effects of major shocks, even when the source is external to the economic system. At the same time, we are seeing the contradictions of this model of economic governance. Those contradictions appear as an intensification of tensions that had already become visible since the Global Financial Crisis, when financial authorities increasingly perceived the limitations of their policy toolkit. This chapter maps the trajectory of the rise of the bailout state and takes the measure of its current contradictions

### **Keywords**

Neoliberalism; Bailout logic; Democratic capitalism; Karl Polanyi; Keynesian Welfare State.

## Introducción

Hace unos cuarenta años, Clause Offe (1984) diagnosticó las contradicciones del Estado del bienestar en términos de “las crisis de la gestión de crisis” (Offe 1984: 35). El keynesianismo de mediados de siglo había prometido la transformación de la gestión de la crisis en un asunto tecnocrático al servicio de la democracia, y durante varias décadas pareció ofrecer precisamente eso. Pero los años setenta pusieron de manifiesto las contradicciones de ese orden: el propio éxito del modelo de economía mixta había conducido a crecientes exigencias en la gestión política de la economía, y la presión resultante para ampliar las protecciones ofrecidas por el Estado de bienestar era cada vez más incompatible con el mantenimiento de robustas tasas de crecimiento económico. Esto fue lo que Habermas (1975) identificó como una “crisis de legitimación”.

Aunque este diagnóstico de la “teoría crítica de Frankfurt” ponía de manifiesto la reparación entre los imperativos de la acumulación y la legitimación, tenía sin embargo tintes más bien técnicos. Entendía el problema clave en términos de la interacción cambiante de los subsistemas de la sociedad, y consideraba que las contradicciones internas resultantes ponían en peligro la única forma de sociedad capitalista que había demostrado históricamente tener alguna viabilidad y legitimidad democrática. En consecuencia, su tratamiento de los posibles contendientes fue un tanto arrogante: las ideologías emergentes, como el neoliberalismo de libre mercado, se consideraban tan poco adaptadas a los requisitos institucionales de la estabilidad social y política que parecía ridículo imaginar que pudieran servir como paradigmas alternativos de gobernanza que dieran forma a trayectorias futuras coherentes.

Este diagnóstico arrojó una larga sombra sobre los intentos de llegar a un acuerdo con el neoliberalismo; no sería exagerado decir que la actual oleada de teorización explícita sobre el neoliberalismo como un proyecto político e ideológico coherente es una reacción tardía al mismo. Wolfgang Streeck (2014) ha sido una de las principales voces de este último giro, y su compromiso con el diagnóstico de la teoría crítica es útil para comprender mejor los parámetros conceptuales en juego. Revisando los debates de los años setenta y ochenta desde un punto de vista posterior a la CFG, el argumento de Streeck es que el modelo de la teoría crítica de Frankfurt sobreestimó el grado en que el capital se había integrado efectivamente en el orden keynesiano de posguerra y subestimó la capacidad y la voluntad del capital de organizarse y afirmarse como un actor político bien definido. Desde esta perspectiva, la mejor manera de ver el giro neoliberal no era como el declive de un orden general que abarcaba a toda la sociedad; sus

contradicciones no eran puramente “internas” y no se prestaban al análisis en los términos relativamente neutrales de la sobrecarga administrativa y las contradicciones de la gobernanza. Más bien, el neoliberalismo fue un ataque intencionado del capital a las instituciones de la socialdemocracia y el intento de construir otra cosa.

El argumento de Streeck no era exactamente nuevo: en décadas anteriores, los economistas políticos marxistas habían formulado argumentos similares (Panitch 1994, Gill 1995), que analizaban el modo en que las élites empresariales e ideológicas aplicaban estrategias estatales que rompían el orden keynesiano y lo sustituían por formas globalizadas de regulación marcadas por la austeridad fiscal y la represión salarial. Estas ideas, enmarcadas en términos del alcance y el impacto de la globalización, fueron atacadas duramente por comentaristas que hicieron hincapié en la rigidez y la dependencia de los acuerdos institucionales (Hirst y Thompson 1997, Pierson 1998), y negaron que se estuviera produciendo algo más que un ajuste pragmático. Pero esta variante del paradigma de los “problemas de gobernanza” era más optimista que la de Offe, ya que su intuición rectora era que el globalismo neoliberal sólo tenía una eficacia limitada y no podría deshacer las instituciones del Estado de bienestar keynesiano de forma sostenida. Una de las principales pruebas presentadas por los escépticos de la globalización era que, a pesar de las afirmaciones de Thatcher y Reagan sobre la necesidad de un gobierno más pequeño, las instituciones públicas no mostraban signos de reducción.

La intervención de Streeck ha encontrado tal tracción porque fue ofrecida por alguien con credenciales políticas y académicas convencionales que, sin embargo, estaba dispuesto a señalar que algo importante había sucedido de hecho, algo que no podía reducirse a la complejidad institucional y a la dependencia de la trayectoria y que desafiaba el lenguaje de las contradicciones de la gobernanza y los ajustes pragmáticos. La intervención de Streeck fue emblemática de una tendencia a tomar más en serio el neoliberalismo como una fuerza política específica que tenía orígenes intelectuales discretos y rastreables y atacaba a las instituciones socialdemócratas con un claro sentido de propósito y misión (Mirowski 2013, Slobodian 2018). Sin embargo, la estructura conceptual del debate sobre el neoliberalismo contemporáneo ha terminado siendo notablemente similar a la del anterior debate sobre la globalización. El creciente interés por el neoliberalismo como movimiento político e ideológico ha ido acompañado de un interés igualmente intenso por la idea (un tanto banal) de que las etiquetas son incapaces de captar la complejidad del mundo y de que la trayectoria del presente reciente puede describirse perfectamente como una serie de cambios y ajustes pragmáticos (Venugopal 2015, Watts 2021).



Los términos de este debate son extraños: giran en torno al grado en que el mundo realmente existente del neoliberalismo se asemeja a la teoría, como si el rasgo definitorio de una fuerza histórico-mundial fuera la capacidad de entenderse a sí misma conceptualmente y de producir una imagen precisa y una comprensión transparente de sí misma. Merece la pena dejar que estos términos del debate se desarrollen para comprender mejor lo que está en juego. Por un lado, la debilidad del argumento del escepticismo neoliberal es que su punto central ya fue anticipado por la propia literatura del neoliberalismo. Esta última es muy consciente de la incoherencia constitutiva del neoliberalismo, de las contradicciones que manifiesta cuando toca el suelo y que anulan cualquier posibilidad de producir un mundo parecido a las fantasías de Friedman y Hayek. De hecho, gran parte de la literatura ha llegado a seguir un modelo conceptual “polanyiano”, que sostiene que el neoliberalismo produce cambios que son demasiado reales desde el punto de vista material, pero que también son intrínsecamente insostenibles y, por tanto, desencadenan una serie de reacciones democráticas. La dificultad que ha encontrado este modelo básico es que las instituciones democráticas han sido incapaces de escenificar un movimiento contrario eficaz, y esto ha dado lugar a lo que podemos denominar un modelo “neo-polanyiano”, que hace hincapié en la capacidad de las élites corporativas y financieras para marginar a las instituciones, bloquear el movimiento en contra y mantener el neoliberalismo más allá de su fecha de caducidad (Crouch 2013).

La narrativa de Streeck sobre el neoliberalismo es emblemática en este sentido. En su descripción, la expansión financiera -la manifestación distintiva de la ruptura del capital con el pacto keynesiano- ha fracasado repetidamente a la hora de cumplir lo prometido, un fracaso que él considera que se explica en última instancia por el hecho de que la financialización no se basa en la producción de valor real. Esta inestabilidad provoca desorganización y descontento, pero el público democrático ha sido incapaz de lanzar el movimiento en contra que debería haber surgido según el modelo básico polanyiano. En consecuencia, subraya el papel central de las *propias* fuerzas neoliberales para responder a los repetidos fracasos de su *propio* proyecto, y engendrar una oleada tras otra de crecimiento financiero. Con cada ola, la discrepancia entre la lógica ficticia del capital financializado y el mundo del valor real y el crecimiento sostenible se hace más evidente.

Para los escépticos del neoliberalismo (que no creen realmente en las contradicciones profundamente arraigadas del modo de producción capitalista que pueden diferirse pero no superarse), este argumento parece un poco artificioso y formalista. Una forma menos indirecta de decir lo mismo sería que el cambio ha sido poco sistemático y ha

estado rodeado de todas las consecuencias imprevistas normales y los efectos de retroalimentación que siempre acompañan a los cambios políticos. En su lectura, un observador que se durmiera a principios de los años setenta y se despertara ahora encontraría perfectamente reconocible la amplia composición institucional de la economía política contemporánea: discerniría una economía mixta, gobernada por políticas y técnicas económicas ampliamente keynesianas y caracterizada por un estado de bienestar que puede estar constantemente bajo presión (como lo estuvo en su día) pero que, no obstante, permite a las sociedades occidentales ofrecer a sus poblaciones un grado de seguridad social sin precedentes.

Así que, si el escepticismo neoliberal puede estar apuntando a una propuesta tentativa hasta cierto punto, también deberíamos considerar que hay algo sobre la política del neoliberalismo que el esquema neo-polanyiano simplemente no logra captar. La cuestión central aquí es que salta demasiado rápido de una lectura demasiado técnica a una demasiado política, una tendencia que se ha hecho más evidente a medida que la literatura del neoliberalismo sustituía la historia intelectual por la economía política (Mirowski y Plehwe 2009). Si la problemática de las contradicciones institucionales ha sido monopolizada en gran medida por una literatura centrada en términos que plantean interrogantes como la dependencia de la trayectoria, necesitamos entender mejor las fuerzas políticas que animan esta rigidez institucional. Propongo que entendamos esta fuerza en términos de la resistencia de una política de clase media que se extiende entre la división keynesiana y la neoliberal.

Desde esta perspectiva, lo que resulta más sorprendente que las diferencias entre las perspectivas sobre el neoliberalismo discutidas (sus evaluaciones de su eficacia) es su conceptualización compartida de los términos del problema. Para ambos, el post-New Deal keynesiano representa el punto de orientación normativo; y ambos entienden el neoliberalismo como un intento de deshacer o revertir el matrimonio keynesiano del capital y la democracia. Esto, sin embargo, es ignorar las muy reales credenciales democráticas que el neoliberalismo ha comandado. El intento del neoliberalismo de revitalizar una política de clase media implicó una serie de cambios políticos que han tenido tremendas consecuencias. Ciertamente, muchas instituciones públicas de la era socialdemócrata siguen vigentes, pero si el neoliberalismo no ha supuesto nunca una destrucción del Estado del bienestar o una contracción del gasto público, sí que ha supuesto una reconversión total de las instituciones del Estado y de sus mecanismos de gasto. Esta transición de un “estado de bienestar” a un “estado de rescate” no está suficientemente reconocida por ninguna de las dos perspectivas.

Este documento presenta los siguientes argumentos. En primer lugar, ofreceré algunos argumentos destinados a atenuar el control intuitivo que el marco de “el capital contra la democracia” tiene en nuestras intuiciones. Lo que se pierde en este marco, sugiero, es un conjunto de relaciones históricas y conceptuales más complejas que pueden sacarse a la luz reexaminando las relaciones entre el capitalismo, el republicanismo y la democracia. En particular, examinaré cómo la comprensión distintiva de la neutralidad institucional que podemos rastrear hasta la Ilustración escocesa transformó los imaginarios republicanos y las aspiraciones democráticas hasta su núcleo. A continuación, reconsidero el momento keynesiano de mediados del siglo XX, argumentando que nunca fue un “equilibrio” entre el capital y la democracia concebidos como principios opuestos. Vuelvo a describir la era keynesiana como la que organizó una integración sin precedentes en la historia de grandes segmentos de un público democrático en la lógica orientada al futuro del capital. A continuación, vuelvo a examinar la interacción del capital y la democracia en la era neoliberal. El proyecto no aborda el neoliberalismo como una “inversión” del keynesianismo, sino como una intervención en la política de la clase media que éste estableció. El neoliberalismo encontró tracción popular al sostener la lógica especulativa de los valores de los activos como el camino real hacia un orden institucional neutral (universal y no excluyente). Este imaginario es uno de los principales soportes de la política de clase media distintiva del neoliberalismo, y su deconstrucción es una condición previa para acceder a una política democrática que no sea presa de la racionalidad del capital.

## **La democracia del capital**

El renacimiento contemporáneo del pensamiento republicano ha promovido típicamente este paradigma como una alternativa olvidada al capitalismo del *laissez-faire* (Sandel 1998). Es decir, ha ofrecido una versión altamente comunitaria del republicanismo que se alinea fácilmente con el marco del “capital contra la democracia”. Sin embargo, la eficacia con la que el neoliberalismo ha reclamado su propia tradición republicana significa que debemos reconsiderar esta relación: el capitalismo ha interactuado con el republicanismo no sólo externamente, sino que el primero ha remodelado el segundo desde dentro. Las repúblicas premodernas podían tener algunas características atractivas, pero se basaban explícitamente en los estrictos límites de la ciudadanía. Las credenciales universalistas del republicanismo sólo se activarían más tarde, durante lo

que podemos considerar como el momento smithiano (Wood 1991). En ese sentido, fue necesario el auge del capitalismo y la consiguiente racionalización del capital para activar las credenciales democráticas del republicanismo.

Hasta ese momento, las concepciones del capital estaban profundamente moldeadas por la condena eclesiástica de la fabricación de dinero como una actividad ilegítima, que reclamaba irracionalmente el tiempo de la vida que sólo Dios podía dar. En la reconceptualización smithiana del capital -no como una amenaza al orden divino sino como una fuente secular de orden- fue fundamental la afirmación de la neutralidad institucional del mercado. Esto implica un cambio muy significativo en nuestra relación con el capital, que aparece cada vez menos como un “infinito malvado” (Harvey 2018), y cada vez más como una universalidad benévola, una forma de organizar la sociedad que tiene una capacidad de inclusión infinita. Y este cambio de pensamiento sobre el capital fue clave para la reconfiguración del republicanismo, dándole su enfoque económico distintivamente moderno (MacGilvray 2011). El dinero deja de ser la expresión de un movimiento irracional y se convierte en una promesa democrática de la vida secular.

Lo que ocurre aquí -el “capital” apprehendido como “el mercado”- es lo que Lefort (1988) podría haber denominado un momento de oclusión fundacional, un punto ciego constitutivo que se produce cuando las legitimaciones trascendentes de la autoridad pierden su poder y la subjetividad secularizada se encarga de representarse y simbolizarse a sí misma. En sus orígenes smithianos, la brecha entre el “capital” y el “mercado” es casi imperceptible, una grieta en el espejo que sólo es visible cuando se observa desde ángulos muy específicos. Sin embargo, las consecuencias son profundas: a partir de ahora, los problemas del capital se conceptualizan cada vez más en términos de la corrupción de su verdadera forma de intercambio contractual impulsado por el consenso: la economía como institución plana y descentralizada que no privilegia a nadie en particular contrarresta las concentraciones de poder y recompensa el esfuerzo y el mérito de manera imparcial. Nadie que lea a Smith puede dejar de apreciar la verosimilitud de sus descripciones de los efectos sociales benévolos del comercio y el intercambio, y ese mismo elemento de verosimilitud nos lleva a buscar siempre formas de recuperar esa inocencia fundacional.

Los comentaristas progresistas tienden a criticar el axioma de la neutralidad como el principio más desfasado de la economía ortodoxa. Pero eso nos impide ver el imaginario más amplio que expresa y la forma en que modula el compromiso democrático. La imagen paradójica del mercado como regulador y a la vez neutral en sus efectos expresa una estructura “trascendental”, kantiana, de la experiencia que está conformada por la

tensión entre la necesidad agudamente sentida de la contingencia y la poderosa creencia de que podemos avanzar hacia el futuro de forma autotransparente y predecible (Konings 2018). Esta estructura de creencia cargada afectivamente -a la que Adorno se refirió como la “falacia de la subjetividad constitutiva” (Adorno 1973: xx)- es tenaz: cuando nuestra vida secular no logra la seguridad e inmunidad absolutas que imaginamos para ella, no reexaminamos ese imaginario, sino que culpamos a los demás de interferir en su funcionamiento. En esos momentos, nos preocupamos intensamente por diferenciar entre las formas legítimas e ilegítimas de avanzar hacia el futuro, entre la representación del valor real y las inversiones irracionalmente especulativas que carecen de fundamento y no respetan los límites objetivos (O’Malley 2012).

Esta capacidad de ir y venir entre el reconocimiento de nuestra condición especulativa, por un lado, y la preocupación por los fundamentos objetivos, por otro, constituye un mecanismo clave por el que los modernos reniegan de su propia participación en la opresión y la exclusión. Los sujetos de la razón capitalista dominan un extraño truco: conciliar su observación de la exclusión y la opresión con su creencia en el universalismo (Balibar 1989). En el contexto estadounidense, la futuridad encarnada por el dinero era fundamental para la independencia republicana y la autodeterminación democrática que podían imaginar los colonos blancos (Baker 2005). Cuando, como observadores actuales, echamos la vista atrás a la política del republicanismo jeffersoniano y jacksoniano, tendemos a ver una flagrante contradicción entre las pretensiones de igualdad e inclusión, por un lado, y la realidad de la opresión y la exclusión, por otro. Sin embargo, diagnosticar esto como hipocresía y estar excesivamente invertidos en nuestra propia indignación puede fácilmente distraer la atención del hecho de que esta cualidad paradójica de la esfera pública sigue viva y bien en el presente. De hecho, da forma profundamente a la política de la clase media del siglo XX (Dahl 2018, Beltrán 2020).

## **Reformular el estado de bienestar keynesiano**

La revolución keynesiana respondió a la creciente dificultad que el capitalismo de principios del siglo XX tenía para proporcionar independencia personal a una clase media blanca y a la forma en que esto socavaba sus promesas de progreso universal. Las interpretaciones existentes tienden a entender el keynesianismo según el esquema polanyiano de desempate/reempate, que tiende a reducir el keynesianismo a un movimiento mecánico en la lógica cíclica del capitalismo y tiende a subestimar la novedad

cualitativa y el impacto transformador de la revolución keynesiana. Dos puntos son críticos aquí. En primer lugar, el keynesianismo no “desmercantilizó» el trabajo. Más bien, por primera vez en la historia, organizó el orden social y político de forma integral en torno a la venta y reproducción rutinaria del trabajo asalariado. Hasta entonces, el trabajo asalariado había seguido siendo una condición de marginalidad social, carente de perspectivas de futuro. El keynesianismo creó ese futuro al abrir la clase media propietaria a los trabajadores. En segundo lugar, la revolución keynesiana no lo hizo suprimiendo el dinero, sino precisamente potenciando su futuro. Lo que habitualmente consideramos como una era de finanzas reprimidas fue, de hecho, una expansión muy significativa del crédito que desempeñó un papel clave en la transformación del trabajo asalariado, que pasó de ser una condición de marginalidad social a ser la base de la ciudadanía plena para la clase media blanca asalariada (Konings 2011). Se buscó el dinero como una fuente material de temporalidad, un dispositivo práctico para navegar por la condición inherente de la incertidumbre secular (Tellmann 2017).

El keynesianismo cargó aún más la estructura paradójica de la subjetividad capitalista. Por un lado, ofrecía una poderosa crítica al postulado de neutralidad y a la mentalidad racionalista que no podía entender el papel práctico de la incertidumbre. Por otro lado, al ofrecer un manual de política económica que permitiera a los tecnócratas ilustrados *hacer* funcionar la economía de forma neutral, adoptó precisamente esa mentalidad racionalista (Mann 2017). El keynesianismo de mediados del siglo XX solo se entiende superficialmente como un “equilibrio” de la política y la economía concebidas como principios opuestos; su logro clave fue precisamente la integración de la población en la lógica especulativa y orientada al futuro del capital.

En la medida en que el keynesianismo se preocupaba por la apertura y maleabilidad inherentes al futuro, también era profundamente productivista y se preocupaba intensamente por diferenciar las subjetividades dedicadas a la producción de valor real de las que no estaban dispuestas o eran incapaces de hacerlo. El hecho de que conozcamos ampliamente la afinidad del keynesianismo con todo tipo de exclusiones biopolíticas perniciosas y que, sin embargo, sigamos considerándolo como una época que establece un estándar normativo para la vida democrática, es un reflejo de nuestros perdurables puntos ciegos. El mito que rodea a la economía mixta keynesiana, paradójicamente, no sólo reproduce los puntos ciegos de aquella época, sino que también da credibilidad a la pretensión de universalidad del capital, que ha sido desplegada de forma mucho más eficaz por el pensamiento neoliberal. Para estar seguro, mi intención aquí no es reescribir la historia del keynesianismo, sino más bien llamar la atención sobre aquellos

aspectos que no encajan en la imagen estándar, y reconsiderar el cambio neoliberal a esta luz. “Invertir” el neoliberalismo puede haber sido el propósito declarado y la fantasía central de muchos pensadores neoliberales, pero tomar esto como nuestra guía para la política institucional supone el tipo de influencia que los intelectuales anhelan pero que rara vez disfrutan. La mejor manera de entender el neoliberalismo es como una intervención en esta política de la clase media en un momento en que el modo keynesiano de integración social estaba bajo presión; y las ideologías neoliberales se desplegaron en este contexto.

En un sentido importante, el orden del New Deal fue víctima de su propio éxito: el nivel de seguridad sin precedentes que había proporcionado a un segmento de la población asalariada generó un nivel de presión sobre el sistema que no estaba preparado para acomodar. Esto encontró su expresión más vívida en los niveles de inflación que prevalecieron durante la década de 1970, que fueron el resultado de la organización específica del sistema financiero que se había creado con el New Deal. Tras la Gran Depresión, la política fiscal y monetaria de Estados Unidos se estableció para bloquear el tipo de movimientos de desapalancamiento financiero que había llevado a Estados Unidos y al mundo a la Gran Depresión (Minsky 2008 [1986]). Esta “red de seguridad financiera” permitió que las finanzas funcionaran en interés de un segmento más amplio de la población y fue un componente clave del estado de bienestar del New Deal. El efecto inflacionario de este acuerdo institucional se hizo evidente a mediados de la década de 1960. Dejar que la dinámica de la deflación de la deuda se desarrollara por sí misma parecía ser la única manera de contener la inflación, y esto se consideraba invariablemente un precio inaceptablemente alto. En respuesta, los agentes del mercado empezaron a tener en cuenta en su cálculo del riesgo la voluntad de los responsables políticos de acomodar sus innovaciones financieras de expansión del crédito, lo que ahora llamaríamos el riesgo moral asociado a los rescates.

## **Del estado de bienestar al estado de rescate**

Desde el punto de vista crítico, la inflación no era una cuestión técnica que sólo preocupaba a las autoridades monetarias: era una cuestión social apremiante en el corazón de la política democrática y la movilización popular. Es cierto que los pensadores neoliberales y neoconservadores consiguieron provocar una histeria moral en torno a la inflación, pero sólo pudieron hacerlo porque, para empezar, tenía una gran relevancia

afectiva y vivencial. Las fuerzas populistas del Congreso ejercieron una gran presión sobre una Reserva Federal reticente a tomar medidas más decisivas sobre la inflación (Young 2000). En este contexto, la idea monetarista de que se podría imponer un simple límite global a la cantidad de dinero encontró tracción. Esta idea emblemática del libre mercado tiene un fuerte tinte keynesiano, basado en la idea de que se puede aplicar un dispositivo técnico institucional para neutralizar los problemas que surgen de forma endógena. Por supuesto, el monetarismo se inscribe intelectualmente en la tradición de pensamiento de la teoría cuantitativa, pero la idea de que “la oferta monetaria” era una cantidad discreta que podía ser fácilmente manipulada por las autoridades habría sido inconcebible antes del replanteamiento keynesiano de la macroeconomía y su gestión (Mitchell 2005).

La idea de los objetivos cuantitativos no era más capaz de trascender las contradicciones del estado de bienestar keynesiano que las políticas keynesianas. Volcker, nombrado presidente de la Reserva Federal por el presidente Carter cuando se acercaba el final de su mandato y estaba convencido de que era imperativo contener la inflación, no llegó con ningún instrumento político cualitativamente nuevo (Silber 2012). La aplicación del monetarismo se basó en las técnicas existentes de gestión monetaria, y la principal contribución de Volcker consistió en su voluntad de hacer lo que los presidentes anteriores se habían resistido a hacer: dejar de acomodar la dinámica de los mercados financieros. Las probables consecuencias debían ser obvias para él. Después de todo, en varias ocasiones durante la década y media anterior, la Reserva Federal había intentado limitar la capacidad de creación de crédito del sistema financiero, y siempre se había retirado del borde al darse cuenta de que seguir adelante provocaría fallos que tendrían un impacto significativo en sectores populares más amplios de la economía.

En un sentido objetivo, pues, el propósito del shock Volcker era poner fin de forma decisiva a la constante socialización del riesgo a través de la inflación generalizada. Por supuesto, esto nunca estuvo acompañado de una convicción positiva de que, en la práctica, sería posible dejar quebrar a las principales instituciones financieras. En ese sentido, el giro de Volcker representó un intento especulativo (y, podemos decir con el beneficio de la retrospectiva, exitoso) de forzar un cambio en el enfoque del Estado estadounidense sobre la gestión del riesgo. Este nuevo enfoque se convertiría en el régimen *too-big-to-fail* (demasiado grande para fallar), por el que el Estado estadounidense pone un piso bajo el mercado selecto, permitiendo que la inversión especulativa haga subir los precios de los activos, pero asegurando que en áreas selectas se bloquee la dinámica descendente. La diferencia crítica entre la prevención de la crisis financiera



mediante una política monetaria acomodaticia, por un lado, y el tratamiento de las consecuencias de la crisis financiera mediante rescates, por otro, consiste en que la segunda puede ser mucho más selectiva que la primera (Panitch y Gindin 2013). En el primer caso, el riesgo se socializa en un grado muy alto; en el segundo, los recursos se concentran en el mantenimiento de los núcleos sistemáticamente importantes del sistema, mientras que a muchas entidades financieras que no forman parte directamente de este núcleo se les permite quebrar o devaluarse. En consecuencia, este último caso es mucho menos inflacionista que el primero.

Por supuesto, el recurso a los rescates se suele describir como un síntoma de lo incoherente que se está volviendo el neoliberalismo. Pero tal desestimación no reconoce cómo la dependencia de la lógica de los rescates permitió a los responsables políticos sortear dilemas que antes parecían insolubles, que es lo que impulsó la transformación de las políticas de rescate desde los espectaculares rescates públicos en la década de 1980 hasta la lógica de rescate por goteo mucho más significativa desde el punto de vista sistémico de los bajos tipos de interés y la flexibilización cuantitativa en el presente (Konings 2011). Es cierto que el régimen de “demasiado grande para quebrar” fusiona el problema y la solución de forma paradójica, resolviendo constantemente los problemas al reforzar la dinámica subyacente que los genera. Pero no debemos evaluar el régimen de rescate en función de una imagen idealizada de las políticas públicas, sino estar atentos a la lógica interna que caracteriza a ese régimen (Vogl 2017).

El paso del Estado de bienestar al Estado de rescate dio a las credenciales universalistas del capital un nuevo e importante impulso. En un contexto en el que se había vuelto cada vez más difícil ampliar el acceso a los salarios de la blancura de manera literal (es decir, a través de los salarios), el neoliberalismo cambió de marcha para ofrecer tales beneficios a través del acceso a la participación en la lógica central del capital, es decir, la inversión especulativa (Adkins 2018, Feher 2018). Reutilizando la maquinaria keynesiana de la política fiscal y monetaria para redirigir las presiones inflacionistas de los salarios al capital, el neoliberalismo puso en marcha una política de aspiración de la clase media que puso un techo a las subidas salariales y un suelo a los precios de los activos (Adkins, Cooper y Konings 2020). La perspectiva que ofrecía no era simplemente la plena ciudadanía para el trabajo asalariado, sino la posibilidad de superar por completo la condición de trabajo asalariado: la inclusión sin necesidad de exclusión. De este modo, el neoliberalismo aprovechó plenamente la paradoja del dinero, imaginando la inversión especulativa como el camino real hacia un mercado neutral y republicano (Vogl 2014). Es fácil ridiculizar este imaginario como la creencia distorsionada de

economistas profesionales e ideólogos neoliberales, que ignoran deliberadamente las realidades prácticas sobre el terreno. Pero este estilo de crítica ha llegado a su límite: la idea de que podemos comprobar los hechos para salir del neoliberalismo es singularmente impotente frente a los poderosos impulsos afectivos que puede movilizar. Cada vez más, no hay alternativa para hacer el trabajo mucho más difícil de descifrar cómo la fantasía de la neutralidad institucional expresa una estructura cargada afectivamente de ciudadanía economizada que ha dado al neoliberalismo una gran tracción como filosofía de gobierno.

Sin duda, a medida que la normalización de los principios de “demasiado grande para quebrar” a través de las políticas de Quantitative Easing han recibido más atención, se ha reconocido que los rescates -no los “mercados libres” desregulados- han sido un factor clave que ha impulsado la creciente desigualdad (Pollin y Epstein 2021). Aunque esta conexión es incontrovertible, estas evaluaciones siguen estancadas en un modelo interpretativo que no reconoce la complejidad del problema. Al centrarse principalmente en el “1%”, asumen que los efectos distributivos de este tipo de política explican plenamente sus orígenes y su persistencia, y mantiene parte del sentido de que los rescates son de alguna manera “excepcionales”, una divergencia de una política más sostenible o racional. Lo que no suele reconocerse suficientemente es la política específica de la clase media que gira en torno a la promesa democrática de la revalorización de los activos. La nostalgia que evoca hoy en día la década de los noventa debería verse desde esta perspectiva: representó el punto álgido de esta política de la clase media centrada en los activos, cuando el aumento de los precios de la vivienda y de las acciones proporcionaba beneficios lo suficientemente amplios como para dar credibilidad a la promesa de una riqueza inclusiva, y los rendimientos significativos de la educación daban al sueño del capital humano la tracción suficiente para desviar la atención del estancamiento general de los salarios. Ese sueño ya no goza del mismo grado de verosimilitud, y en eso consisten las contradicciones del Estado de rescate: su incapacidad para facilitar el acceso a los beneficios de la inflación de los activos sobre una base lo suficientemente amplia como para fundamentar las expectativas de inclusión universal que tanto ha fomentado.

## Conclusión

En el plano de la técnica y el despliegue institucional, el Estado de rescate es plenamente keynesiano (Malysheva y Walter 2010). Este elemento de continuidad no significa

en absoluto que haya cambiado poco: la maquinaria institucional fiscal y monetaria se ha reorientado exhaustivamente en torno a la lógica de la propiedad de activos y la inflación. Esto es algo que el trabajo de Streeck pasa por alto: se limita a ver una serie de burbujas cada vez más insostenibles que *no* se sustentan en una amplia configuración compleja y profundamente arraigada de instituciones y políticas. En este capítulo he sugerido una forma diferente de ver estas tendencias. Mi enfoque también difiere de la argumentación realizada por una literatura afín: cercana al espíritu neo-polanyiano de la perspectiva de Streeck, hace hincapié en la interacción de “roll-back” y “roll-out” (Peck y Tickell 2002). Según esta interpretación, el neoliberalismo ha tenido una gran repercusión en el retroceso del estado de bienestar, pero también ha desplegado otros nuevos, cada vez más coercitivos y represivos, sustituyendo con el tiempo las viviendas públicas por prisiones y la asistencia social por el trabajo. Sin embargo, esta tendencia a considerar el neoliberalismo como esencialmente autoritario pasa por alto los aspectos más técnicos de la gobernanza económica y el modo en que una política de clase media ha evolucionado en ese espacio institucional. El argumento que he tratado de exponer en este documento se refiere al neoliberalismo en ese nivel: no ha asumido la capacidad del neoliberalismo para dejar de lado o paralizar las instituciones públicas democráticas, sino que ha examinado cómo las ha transformado desde dentro.

Los rescates en respuesta a la crisis de 2007-08 fueron ampliamente aclamados como el fin del neoliberalismo, y los comentaristas tardaron algunos años en aceptar el hecho de que no eran nada de eso. Las medidas de política económica adoptadas en respuesta a la crisis de Covid han suscitado declaraciones similares, aunque más cautelosas (Polychroniou 2021). Sin embargo, desde la perspectiva que aquí se presenta, los rescates y los pagos de Covid apenas aparecen como una ruptura con el pasado reciente. La crisis de Covid-19 ha puesto de manifiesto hasta qué punto la lógica de los rescates se ha convertido en la forma de trabajar de las sociedades occidentales contemporáneas: se han convertido en la opción a la que se recurre para hacer frente a los efectos desestabilizadores de las grandes crisis, incluso cuando el origen es externo al sistema económico. Ver en esto un retorno a la política del Estado de bienestar es pasar por alto el hecho de que los rescates de Covid fueron impulsados en gran medida por la necesidad de mantener a flote los valores de los activos. No estaban destinados a impulsar la demanda y estimular el crecimiento económico; de hecho, los cierres significaban explícitamente frenar el crecimiento económico. En cambio, sirvieron para mantener a raya la posibilidad de que la interrupción de los flujos de ingresos desencadenara una deflación de la deuda de la magnitud de la crisis de 2007-08 o algo peor (Adkins y Konings 2021).

El hecho de que cantidades significativas de dinero terminaran fuera de la circunscripción obvia de “demasiado grande para quebrar” se explica en gran medida por la tremenda incertidumbre del momento y la dificultad de determinar, in medias res, qué riesgo importaba al sistema en su conjunto y de trazar límites claros en torno a las circunscripciones pertinentes. Por ejemplo, un cese generalizado del pago de los alquileres en un contexto en el que es imposible desalojar a los inquilinos podría haber supuesto una grave amenaza para los precios de la vivienda (Konings et al 2021).

Mi objetivo aquí no es sugerir que el estado de rescate esté libre de contradicciones. Se trata precisamente de sugerir la utilidad de considerarlas como contradicciones *internas* a una formación social específica que la era neoliberal ha construido, en lugar de hacerlo con la vara de medir inevitablemente moralista que proporciona la imagen del Estado de bienestar keynesiano. El reto central al que se enfrenta el Estado de rescate es que actualmente no ofrece ninguna clase de activos que esté abierta a una amplia participación. La vivienda desempeñó este papel popular durante mucho tiempo, pero el aumento de los precios de la vivienda hace cada vez más difícil que los nuevos participantes se aseguren la participación. Cada ronda de flexibilización cuantitativa agrava este problema: la inflación de los activos funciona para concentrar la riqueza, beneficiando a los propietarios de activos existentes a expensas de los aspirantes. Este problema no se les escapa a los responsables políticos. Los bancos centrales, en particular, perciben cada vez más las limitaciones de su caja de herramientas políticas a la hora de abordar las condiciones más amplias de viabilidad de una economía política impulsada por los activos, y están cada vez más preocupados por la dinámica económica que parecen no tener más remedio que seguir alimentando.

Algo de esto ya era visible en la sensación generalizada de que, tras la crisis de 2007-08, las economías occidentales habían aterrizado en una recesión interminable. Pero imaginar que una vuelta al keynesianismo del Estado del bienestar es la única alternativa a seguir por el camino actual sería ignorar cómo el capitalismo impulsado por los activos ha transformado estructuralmente las reglas de juego socioeconómicas y descartar la posibilidad de que estas transformaciones hayan abierto trayectorias y opciones que aún no hemos discernido. Por ejemplo, es notable la tracción que ha conservado la noción de capital humano incluso después de que la promesa de una revalorización rápida y sin esfuerzo ya no tenga la misma vigencia. La idea de la inversión y la valoración de la marca personal sigue estructurando incluso espacios que habrían parecido candidatos poco probables para ello (ya sea porque se trata de un trabajo no cualificado y precario o precisamente porque exige un pensamiento crítico, como las universidades). De

importancia central aquí es el hecho de que, en un mundo de valores fluctuantes de los activos, los actores económicos no se limitan a especular; más bien, deben asegurarse de que son vistos como dignos de ser especulados por otros (Feher 2009), una dinámica en la que incluso los marginados deben participar activamente, aunque solo sea para evitar una mayor depreciación (Elliott 2018). El capital neoliberal es una máquina de provocación, que engendra nuevas y más volátiles modalidades de subjetivación con las que todavía tenemos que lidiar. Enmarcar esto en términos de la ideología que mantiene las cosas unidas mientras el mecanismo económico básico ha dejado de funcionar, sería pasar por alto precisamente cómo el neoliberalismo ha fusionado irreversiblemente las lógicas políticas, ideológicas y económicas (Vogl 2017).

Lo que ahora aparece cada vez más como la persistente incapacidad de la vida democrática para oponerse al capital ha dado lugar a un pesimismo cultural que se centra en la idea del robo del futuro por parte del capital, como si fuera el Grinch (Fisher 2016). Pero la postura depresiva del realismo capitalista es más interesante como fenómeno cultural que como contribución a la crítica del capital. El capital nunca ha abandonado su estructura promisoría, y exige constantemente una renovación de nuestra orientación hacia el futuro al obligarnos a dar respuestas constructivas a situaciones que no son de nuestra propia cosecha. Es nuestra receptividad subjetiva a estas provocaciones lo que la concepción polanyiana del capital como desencarnado nos permite desautorizar al figurar como una fuerza externa. Los críticos contemporáneos tienen una persistente dificultad para aceptar el aspecto democrático del capital y la lógica de la implicación que engendra. Por lo tanto, la principal conclusión que hay que extraer de la actual politización del capital es negativa: que las formas de ver existentes y los puntos ciegos constitutivos sobre los que trabajan no nos permiten formular una crítica eficaz del capital. Desenganchar la “fuerza del sujeto” de la “falacia de la subjetividad constitutiva” (Adorno 1973: xx) requiere que nos alejemos de donde nos inclinamos intuitivamente a situar la contienda política y encontremos formas de volver a abordar las dificultades en las que prospera el capital.

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# LA GLOBALIZACIÓN Y EL SURGIMIENTO DEL ESTADO FORTALEZA<sup>1</sup>

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## THE GLOBALISATION AND THE RISE OF THE FORTRESS STATE

### Resumen

A partir de la década de 1990, la teoría de la globalización ha descartado rutinariamente el Estado-nación como irrelevante para comprender el desarrollo político y económico contemporáneo. Así, una serie de libros y artículos han defendido la crisis del Estado-nación, la retirada del Estado e incluso el fin del Estado-nación. En cambio, este artículo considera la relación entre la teoría de la globalización y la teoría del Estado para argumentar que los Estados-nación son los principales agentes de la globalización, así como los garantes de las condiciones políticas y materiales necesarias para la acumulación de capital global. Este texto argumenta que la teoría de la globalización ha construido una antinomia distorsionada, que ignora desarrollos significativos en la teoría estatal neomarxista. Para comprender el proceso de globalización, es importante reconocer que el Estado está siempre presente dentro de las relaciones sociales de producción. De esta manera, es posible entender que el nuevo sistema globalizado de

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1. Fecha de recepción: 13 de febrero 2022; fecha de aceptación: 2 de abril 2022. Este trabajo es fruto de un proyecto de investigación desarrollado en la University of Texas Rio Grande Valley.

acumulación de capital ha resultado en una asimetría cada vez mayor entre la respuesta del Estado a las demandas de políticas que faciliten la acumulación de capital frente a las políticas que sustentan su legitimidad democrática. Esta asimetría está generando cada vez más formas de Estados nacionales que son “Estados fortaleza” propensos a utilizar medidas represivas para proteger la acumulación de capital contra las demandas populares democráticas de regulaciones protectoras y de provisión de bienestar social.

### **Palabras clave**

Estado; Estado capitalista; neoliberalismo; globalización, teorías del Estado.

### **Abstract**

Since the 1990s, globalization theory has routinely dismissed the nation-state as irrelevant to understanding contemporary political and economic development. A series of books and articles have thus argued for the crisis of the nation-state, the withdrawal of the state and even the end of the nation-state. This article instead considers the relationship between the theory of globalization and the theory of the state to argue that nation-states are the main agents of globalization, as well as the guarantors of the political and material conditions necessary for the accumulation of global capital. This text argues that globalization theory has constructed a distorted antinomy, which ignores significant developments in neo-Marxist state theory. To understand the process of globalization, it is important to recognize that the state is always present within the social relations of production. In this way, it is possible to understand that the new globalized system of capital accumulation has resulted in an a widening asymmetry between the state's responsiveness to demands for policies that facilitate capital accumulation as opposed to policies that sustain its democratic legitimacy. This asymmetry is increasingly generating national state forms that are “fortress states” prone to using repressive measures to protect capital accumulation against democratic popular demands for protective regulations and social welfare provision.

### **Keywords**

State; Capitalist State; Neoliberalism; Globalization, Theories of the State.

A partir de la década de 1990, la “globalización” se convirtió en una palabra de moda entre periodistas, políticos y académicos de muchas disciplinas académicas (Steger y Wahlrab, 2017). Este interés por lo que en realidad era la reproducción ampliada del capitalismo neoliberal —el llamado Consenso de Washington a escala mundial— desencadenó una renovación de la economía política, pero en sus etapas iniciales la teoría de la globalización desplazó a la teoría del Estado del escenario intelectual. Durante la década de 1990, hubo una aparición incesante de libros y artículos sobre la crisis del Estado-nación (Poggi, 1990), el eclipse del Estado (Evans, 1997), el retroceso del Estado (Strange, 1996), e incluso el fin del Estado-nación (Ohmae, 1990). El tema central de estos discursos era que los Estados-nación habían perdido el control de sus economías nacionales, sus monedas, sus fronteras territoriales e incluso sus culturas y lenguas, ya que las formas macroscópicas de poder se desplazaron del Estado-nación al mercado global, las empresas transnacionales y los medios y redes de comunicación globales (Castells, 1997).

El nuevo clima intelectual generado por la teoría de la globalización planteó la cuestión de por qué alguien iba a seguir estudiando una institución que no solo estaba en retirada, sino que quizás estaba en el ocaso de su soberanía (Wriston, 1992). De hecho, con la globalización del neoliberalismo anunciada como “el fin de la historia”, el propio marxismo fue declarado de nuevo, como muchas veces antes, obsoleto como crítica del capitalismo y su política (Fukayama, 1992). Así, a principios de la década de 1990, la teoría de la globalización se yuxtaponía a la teoría del Estado, con esta última supuestamente en rápido retroceso (Barrow y Keck, 2017). Sin embargo, irónicamente, fue la globalización la que generó un nuevo cambio paradigmático en la teoría del Estado, ya que la crisis financiera mundial y la Gran Recesión (2008-2010) proporcionaron el impulso material para un renovado interés en la teoría del Estado.

El supuesto declive del Estado, y el consiguiente retroceso de la teoría del Estado, se invirtió bruscamente con el colapso de las principales instituciones financieras de Estados Unidos en 2008, seguido por el colapso de las principales empresas industriales en 2009. A pesar de los vacuos tópicos de los economistas y politólogos de la corriente dominante, que siguen promoviendo una ideología neoliberal antiestatal y de libre mercado, fueron los Estados-nación y las decisiones de las élites estatales los que resultaron fundamentales para estabilizar la crisis financiera, y fue la financiación estatal del déficit la que rescató a los bancos y a las empresas industriales. Sin embargo, al actuar para estabilizar la crisis financiera e industrial mundial, el trato preferente del Estado a los capitalistas financieros, junto con su total desprecio por la difícil situación de los ciuda-

danos de a pie afectados por esa crisis, quedó a la vista de todos, independientemente del partido político que estuviera en el poder en ese momento. De repente, no era sólo el Estado, sino la teoría marxista del Estado la que estaba de vuelta, y esto parece exigir una nueva teorización sobre el Estado capitalista (Konings, 2010).

## Globalización y teoría del Estado

Leo Panitch postuló en una ocasión que una teoría del Estado plenamente desarrollada en la sociedad capitalista debe cumplir tres requisitos básicos:

Debe delimitar claramente el complejo de instituciones que conforman el Estado. Debe demostrar concretamente, en lugar de limitarse a definir de forma abstracta, los vínculos entre el Estado y el sistema de desigualdades de clase en la sociedad, en particular sus vínculos con la clase social dominante. Y debe especificar, en la medida de lo posible, las funciones del Estado bajo el modo de producción capitalista. (1977, p. 5)

Estos tres requisitos deben combinarse en varias configuraciones y se les debe dar un peso explicativo diferencial en circunstancias geográficas e históricas particulares para explicar las políticas y el desarrollo institucional de cualquier Estado realmente existente en la sociedad capitalista. No existe una teoría general del Estado (Barrow, 2016, cap. 5), pero esto no impide que se realicen análisis teóricos de los Estados en las sociedades capitalistas (y en otras). Sin embargo, me gustaría argumentar que un cuarto requisito básico de la teoría del Estado es que debe situar a los Estados aliados existentes dentro de los procesos de acumulación global de capital y la reproducción ampliada del capitalismo a escala global. En 2005, desafié por primera vez la teoría ortodoxa de la globalización proponiendo un retorno al Estado. Mi análisis del retorno al Estado estuvo muy influenciado por la obra de Michel Aglietta *A Theory of Capitalist Regulation* (2000) y por tres ensayos anteriores publicados por Leo Panitch (1994, 1996, 2000). En *A Theory of Capitalist Regulation*, Michel Aglietta identifica la “relación salarial” como la piedra angular del modo de producción capitalista, ya que es la base de la explotación y, por tanto, de la acumulación de capital. Aglietta anticipó la globalización como una expansión territorial de la relación salarial, pero al ampliar el alcance territorial de la relación salarial capitalista observó que las empresas capitalistas entran en conflicto con

las obligaciones recíprocas de las sociedades tradicionales. Así, al sustituir la relación salarial capitalista por las relaciones de la sociedad tradicional, la introducción de las relaciones sociales capitalistas rompe la ética social y otras formas de regulación social que constituyen la antigua sociedad civil. El resultado es que el Estado debe instituir nuevas normas sociales y este proceso requiere que el Estado intervenga en la sociedad civil y la reestructure para que sea compatible con la relación salarial emergente. Aglietta (2000) sugiere que las investigaciones históricas y empíricas de este proceso demostrarían que “el Estado forma parte de la existencia misma de la *relación salarial*”<sup>2</sup> (p. 32).

En otras palabras, es importante reconocer que el Estado siempre está presente dentro de las relaciones sociales de producción. El Estado constituye, mantiene y reproduce activamente las relaciones sociales de producción a través de políticas y acuerdos institucionales, lo que significa que el Estado no es externo a “lo económico”, sino que siempre está presente dentro del nivel económico de un modo de producción. La teoría marxista del Estado es una crítica de la economía política y no un análisis de las “intervenciones” periódicas del Estado en la economía.

En consecuencia, la reproducción ampliada del capitalismo a escala mundial (o a cualquier otra escala) es teóricamente inconcebible sin el Estado, que debe penetrar en la sociedad civil y reestructurar sus normas e instituciones mediante leyes, coerción e incentivos que proporcionen las condiciones políticas y materiales generales para la acumulación de capital en determinadas formaciones sociales (Altvater, 1973a, 1973b). Además, a diferencia de quienes sugieren que la globalización ha supuesto un retroceso del Estado, yo sostengo que el proceso de globalización ha requerido Estados comparativamente fuertes. Como observa Aglietta: “Las políticas, las mentalidades y las instituciones que interfieren en los factores determinantes de la acumulación de capital no se desarrollan al mismo ritmo que las técnicas, los métodos de trabajo y los mercados” (2000, p. 414). En consecuencia, los Estados-nación han tenido que gestionar una gran cantidad de conflictos de clase dentro y entre los límites territoriales de las formaciones sociales capitalistas. La globalización no fue un proceso inexorable y sin líderes. Fue un proceso iniciado, dirigido y ejecutado por los Estados-nación. A pesar de estas ideas tan tentadoras, Aglietta (2000) señala que su propio análisis del Estado era incompleto<sup>3</sup>.

2. Asimismo, Gill y Law (1988, 84) afirman que “los Estados son esenciales para las economías, ya que proporcionan las condiciones legales para el establecimiento y mantenimiento de los derechos de propiedad, que se definen en términos privados dentro del capitalismo.... En el mundo moderno, estos sistemas de derechos de propiedad se definen además en el contexto de la aceptación generalizada de la soberanía nacional y la jurisdicción territorial”. Por ejemplo, Marx (1977, cap. 10), sobre “La jornada de trabajo, que gira en torno a la regulación estatal de la relación salarial a través de las leyes del Parlamento”. Del mismo modo, véase Cleaver, 1979.

3. Véase también De Bernis (1990, 36), quien advierte que «nuestro enfoque no es un sistema teórico completo... somos

Del mismo modo, incluso cuando el concepto de imperialismo estaba siendo desechado por los teóricos de la globalización, Aglietta seguía refiriéndose al imperialismo como “una terrible realidad” de la economía global emergente, pero era una noción ambigua que no se desarrollaba en su obra, precisamente porque rechaza la idea de que se pueda construir una teoría del imperialismo basándose únicamente en conceptos económicos. Aglietta (2000) define el imperialismo como un sistema de hegemonía a través del cual “un Estado influye en otros Estados para que adopten un conjunto de reglas que favorezcan la estabilidad de un vasto espacio de relaciones mercantiles multilaterales que garanticen la circulación del capital”<sup>4</sup> (p. 32). Por consiguiente, no son las empresas multinacionales o transnacionales las que organizan las relaciones económicas y políticas imperiales, sino que la existencia de las empresas transnacionales no sería posible sin un sistema de Estados que mantuvieran relaciones estables de influencia desigual en todo el planeta. Así, Aglietta (2000) sostiene que, en la medida en que el imperialismo es un elemento constitutivo de la forma actual de globalización, “sólo se puede comprender sobre la base de una teoría del Estado plenamente desarrollada, capaz de estudiar la importancia de las relaciones interestatales” (pp. 29-30) en el proceso de globalización.

En un ensayo de 2005, me basé en estas ideas para analizar los orígenes y el impacto del Tratado de Libre Comercio de América del Norte y argumentar que los desarrollos que se habían conceptualizado como una retirada del Estado eran en realidad una transformación de la forma estatal. Argumenté que los Estados no estaban indefensamente subordinados a los misteriosos e inexorables “procesos de globalización”, sino que los Estados-nación eran los principales agentes de la globalización, así como los garantes de las condiciones políticas y materiales necesarias para la acumulación global de capital. De hecho, no ha habido un final de los Estados-nación, ya que estos han proliferado a raíz de la descolonización, la caída de la Unión Soviética y otros movimientos secesionistas nacionales, con un aumento de los miembros de las Naciones Unidas, que ha pasado de 51 miembros originales en 1945 a 193 miembros en 2020. A diferencia de quienes, desde la izquierda, veían una nebulosa lógica de imperio (Hardt y Negri, 2000), un estado en red (Castells, 2004), o incluso un estado global o transnacional (Shaw, 2000; Robinson y Harris, 2000) como depositarios de una nueva soberanía supranacional, yo sostengo que la globalización, en su forma actual, es en realidad la nueva forma de hegemonía e imperio global estadounidense.

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muy conscientes de que una serie de cuestiones muy importantes relativas a la teoría de la regulación no han sido aún suficientemente analizadas y estudiadas. Entre estas cuestiones se encuentra la construcción de una teoría de varias etapas del papel del Estado».

4. Para los antecedentes, véase Brewer, 1990.



Aproximadamente a partir de 1975, los Estados de las sociedades capitalistas han pasado del Estado de bienestar keynesiano a una nueva forma de Estado neoliberal estructurada por la internacionalización, la desnacionalización y la desestatización de la política estatal<sup>5</sup>. También sugiero que esta transición requirió un refuerzo de los aparatos represivos y de vigilancia del Estado (nacionales e internacionales), mientras que los aparatos económicos del Estado, en expansión, se desplazaron cada vez más hacia instituciones que están aisladas de los canales institucionalizados de presión democrática (por ejemplo, el cambio de la política fiscal a la monetaria, la constitucionalización de los acuerdos comerciales y la eliminación de las barreras no arancelarias). Al mismo tiempo, las políticas de bienestar social no se redujeron simplemente o se convirtieron en programas de trabajo, sino que se reestructuraron en subordinación a una lógica de inversión social y formación de capital humano que apoya aún más la acumulación de capital con poca consideración del bienestar social (O'Connor, 1973).

En consecuencia, el nuevo sistema globalizado de acumulación de capital ha dado lugar a una asimetría cada vez mayor entre la respuesta del Estado a las demandas de políticas que facilitan la acumulación de capital y las políticas que sostienen su legitimidad democrática. Esta asimetría está generando cada vez más formas de Estado nacional que son “Estados fortaleza” propensos a utilizar medidas represivas para proteger la acumulación de capital contra las demandas populares democráticas de regulaciones protectoras y de provisión de bienestar social. Esto significa que, en ausencia de un fuerte movimiento socialista y de la penetración de los Estados por parte de los partidos de la clase obrera, el fascismo y la dictadura son ahora tendencias omnipresentes del Estado capitalista, y no circunstancias excepcionales, como se pensaba antes (Poulantzas, 1974, 1976).

En sus últimas notas sobre el Estado capitalista, Poulantzas (2008, 405) concluye acertadamente que, a medida que los Estados capitalistas se vuelven más autoritarios, los teóricos del Estado y otros necesitan identificar nuevos lugares y nuevas formas de lucha de clases, ya que las viejas formas de democracia representativa están retrocediendo tras el estatismo autoritario. A medida que el Estado se convierte en una “fortaleza aislada”, los esfuerzos populares para ganar “representación” a través de las elecciones y las libertades civiles jurídicas tendrán que dar paso a nuevas reivindicaciones de autogestión o democracia directa (Poulantzas, 2008, 411), y estas demandas deben promulgarse fuera del Estado y contra el Estado (Barrow, 2019).

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5. Este análisis se reproduce en Barrow, 2016, cap. 6.

Otro interrogante importante para la teoría contemporánea del Estado es si el sistema globalizado de acumulación de capital puede sostenerse incluso en la marcha del neoliberalismo autoritario o si generará su propia crisis del capitalismo. De hecho, allí donde los populistas de derechas se han hecho con el poder del Estado, han sido capaces de desorganizar las redes de la élite mundial que sostienen el capitalismo global mucho más rápido y en un grado mucho mayor de lo que la mayoría de los analistas políticos creían posible. Si, como sugiere Poulantzas, una de las principales funciones del Estado es organizar a la clase capitalista, entonces Estados Unidos, al actuar como superintendente del capitalismo global, está dejando de cumplir la función básica de mantenimiento de un Estado capitalista (al menos a escala global). Estados Unidos es ahora un Estado que no está dispuesto a actuar en interés del capital como un todo (global), porque como dice Trump, Estados Unidos ha sido supuestamente víctima de “malos tratos” con sus aliados de la OTAN, sus socios del TLCAN y la OMC (Farber, 2018). Como han observado recientemente Panitch y Gindin (2018, p. 15): “Trump no solo ha liderado el ataque al libre comercio, sino que al mismo tiempo ha supervisado la erosión de las capacidades institucionales esenciales para gestionar la economía capitalista global”.

El crecimiento del autoritarismo ha sido un peligro claro y presente desde la aparición del neoliberalismo en la década de 1980. Sin embargo, en el largo pasado histórico, tales amenazas fueron rechazadas en gran medida por el poder del Estado estadounidense. Estados Unidos intervino contra las potencias absolutistas en la Primera Guerra Mundial. Bloqueó el ascenso del nazismo y el fascismo en la Segunda Guerra Mundial, y desafió al totalitarismo comunista con la Guerra Fría (1945-1993). Mientras Estados Unidos recibía el apoyo de sus aliados occidentales democráticos y liberales, el Estado estadounidense sufragaba en gran medida los costos de sostener y reproducir el capitalismo y, en ocasiones, la democracia liberal, a una escala mundial cada vez mayor. ¿Qué ocurre si los Estados Unidos se convierten en una amenaza para el orden mundial que crearon a su imagen y semejanza, y si la red de alianzas globales y las instituciones internacionales construidas para sostener ese orden mundial siguen deshaciéndose y desintegrándose? Es posible imaginar formas de capitalismo no globales y no liberales —el bonapartismo, si se quiere— como solución preferente a las crisis económicas y políticas nacionales generadas desde el proceso de globalización.

## Agradecimientos

Una versión anterior de este texto se publicó en inglés con el título ‘Globalization and the Emergence of the Fortress State’ en *Science & Society*, vol. 85, núm. 2 (abril de 2021): 170-77. Reimpreso con permiso de Guilford Press.

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# STILL THE RETURN OF THE STATE? CRITICAL ISSUES AND POSSIBLE NEW RESEARCH AVENUES<sup>1</sup>

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## **Abstract**

In recent years, precisely between the global financial crisis and the Covid-19 pandemic, the theme of the “return of the State” has resurfaced often and in different forms. Some authors, for instance, speak of the return of “neo-statism” on the ruins of neo-liberal ideology (Gerbaudo, 2022), some others of “post-neoliberalism” (Cooper, 2021; Davies and Gane, 2021), while international institutions such as the International Monetary Fund have recently recommended (i.e. in the pandemic period) a large-scale intervention of national authorities to deal with the effects of the pandemic. In this essay we critically discuss the issue of the return of the State by assessing the strengths and weaknesses of this literature. In particular, we focus on the need to – first – theoretically frame the State, and in particular the neoliberal State, and – second – foster an alternative view of policy-making that takes into account the relative autonomy of State powers in managing the social conflict while advancing class-based interests. In the

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1. Reception date: 18<sup>th</sup> March 2022; acceptance date: 21<sup>st</sup> April 2022. The essay is the issue of a research project carried out within the Dipartimento di Scienze Politiche of Università della Campania “Luigi Vanvitelli”. This research was carried out with co-funding from the European Union ESF-REACT-EU, PON Research and Innovation 2014-2020 DM1062/2021.

conclusions, while reasserting the centrality of State analysis, we discuss some possible lines of research capable to grasp continuities and changes at State level.

### **Keywords**

Return of the State; Neoliberalism; Post-neoliberalism; Critical policy analysis.

### **Resumen**

En los últimos años, precisamente entre la crisis financiera mundial y la pandemia de Covid-19, el tema del “retorno del Estado” ha resurgido con frecuencia y bajo diferentes formas. Algunos autores, por ejemplo, hablan del regreso del “neoestatismo” sobre las ruinas de la ideología neoliberal (Gerbaudo, 2022), otros del “posneoliberalismo” (Cooper, 2021; Davies y Gane, 2021), mientras que instituciones internacionales como el Fondo Monetario Internacional han recomendado recientemente (es decir, en el periodo de la pandemia) una intervención a gran escala de las autoridades nacionales para hacer frente a los efectos de la pandemia. En este ensayo discutimos críticamente la cuestión del retorno del Estado evaluando los puntos fuertes y débiles de esta literatura. En particular, nos centramos en la necesidad de —en primer lugar— enmarcar teóricamente el Estado, y en particular el Estado neoliberal, y —en segundo lugar— fomentar una visión alternativa de la elaboración de políticas que tenga en cuenta la relativa autonomía de los poderes del Estado en la gestión del conflicto social al tiempo que se promueven los intereses de clase. En las conclusiones, al tiempo que se reafirma la centralidad del análisis del Estado, se discuten algunas posibles líneas de investigación capaces de captar las continuidades y los cambios a nivel estatal.

### **Palabras clave**

Retorno del Estado; Neoliberalismo; Post-neoliberalismo; Análisis político crítico.



*“We have come to take the state for granted  
as an object of political practice and political analysis  
while remaining quite spectacularly unclear  
as to what the state is”  
(Philippe Abrams, 1977)*

## 1. Introduction

At least since the 1970s the return of the state has been announced regularly, actually being a theme that returns at every critical juncture<sup>2</sup>. This, for instance, happened in the aftermath of the global financial crisis of 2008, when – in the context of the hegemonic crisis of neoliberalism – it was pointed out that a strong change in the State, and collateral forms of State intervention, was now imminent. The ideological and policy paradigm shift was due to the weight of growing inequalities (Milanovic, 2016; Alvaredo et al., 2017), the broken promises of neoliberalism (Ferrarese, 2017; Parsi, 2021), the growing mass of the “losers of globalisation”. Specifically, the dominant conception of, and consensus around, the idea of a “minimal State” — whose economic intervention was limited to a function of mere market surveillance — was now increasingly considered outdated. The State, it was argued in the press and in some of the literature, would become (post)Keynesian again, and the obsession with permanent austerity would have been finally surpassed. Thus, a new era of budgetary countercyclical expansion and novel forms of State interventions and market-regulation was heralded (Altvater, 2009). And yet, expectations and beliefs about an imminent change were disproved after only a few months. Besides not recording — in general — *permanent* changes whatsoever in State intervention and policy direction, especially in Europe we have witnessed a significant resurgence of austerity policies, often embedded in an institutional framework that has left very little room for possible alternatives. While this has actually provoked political upheavals in the form of the strengthening of populist, right-wing and eurosceptic parties in the long 2010s to the present (Bruno, 2018), and reduced the consensus towards mainstream political forces on both the left and right, on the other hand state policy direction continued to follow the pathway established in the 1980s and 1990s, with few real exceptions.

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2. For an overview of the “State debate” since World War II to present see Cozzolino (2021, chapter 2).

The critical juncture of the COVID-19 pandemic, in which the state played a more direct role in citizens' everyday lives, not only in terms of economic and health protection but also in the restriction of some fundamental freedoms, led to the resurgence of the thesis of the return of the State (Amato, 2022; Gerbaudo, 2022; Garrard, 2022). After decades in which wealth and power shifted from States to markets, it seems that we are now witnessing a reverse process (Garrard, 2022) and a possible paradigm shift: from neoliberalism to neostatism (Gerbaudo, 2022). As it was with the 2008 crisis, rather than sticking to the thesis of the "return" as such, it is important to analyse the different dimension of change in depth, so as to distinguish between contingent responses to the crisis and those that may lead to the identification of permanent features of change that herald a possible paradigm shift.

The objective of this paper is therefore to articulate an alternative reading of the processes underway, focusing attention on certain dimensions of analysis that are, in our opinion, capable of complexifying the interpretation of these phenomena, thus at least partially calling into question the thesis of the return of the state. The paper is above all conceptual, that is to say, it aspires to deal conceptually with the question of the "return of the State" pointing to potential new research avenues capable to grasp continuities and changes at State level.

The paper is structured as follows. In the following section we advance some critical remarks to the idea of the "return" of the State. In the central section we discuss the most recent version of this idea, which in a way is also the most interesting one: the hypothesis of neostatism, especially in a recent formulation of Paolo Gerbaudo (2021, 2022). Then we lay out possible alternative frameworks to situate policy and policy-making within State theory: a fundamental step to look at policy within the broader framework of State power. The paper closes with some concluding remarks on potential research avenues.

## **2. Problematizing the return of the State and its neoliberalisation**

Despite being full of insights (especially in terms of analysis of ideological changes), the literature on the "eternal return" of the State suffers from several limitations, which prevent a more nuanced and complex analysis of State transformations. In fact, while they are certainly useful in signalling certain discontinuities with the past, those studies contain important theoretical and methodological shortcomings that risk overshadowing

all those elements of continuity that concern State policy and politics. Briefly, those weaknesses can be traced back to: 1) an overly simplistic conception of the State, often described as an autonomous and unitary entity; 2) an overly dichotomous State-market view, which does not help to understand the multiple interpenetrations between the two and often leads to the former being portrayed as eminently positive and the latter as per se negative; and 3) a reductionist and overly economicist conception of neoliberalism seen as simply the triumph of market forces, and of neoliberalization as the dismantling and downsizing of the State.

These critical issues cut across the three political *dimensions* of the State — the State as polity, the politics of the State and the policies of the State — and concern both theoretical and empirical aspects. For illustration purposes only, with reference to the polity dimension, the literature on the return of the State often presents an unproblematic conceptualisation of the State itself, sometimes seen as a static and too autonomous polity. This leads to a misinterpretation of the changes, which are either poorly contextualised historically or described as the result of abstract State action as completely detached from society. As to the politics dimension, the risk is an underestimation of political agency, resulting in, for example, a misleading interpretation of the transformation of the State, which results in a mechanic process totally disconnected from the power relations expressed by politics and society. Lastly, concerning the policy dimension, it often emerges, also as a consequence of the aforementioned issues, a conceptualisation of policy making (and, broadly, State intervention) that is understood in isolation from the broader analysis of the State. In relation to this last point, for instance, the expansion of State budget (that is a change in a *specific* policy domain) is interpreted as a full-blown return to the Keynesian Welfare State. Yet, in relation to the crisis of 2008 and the following sovereign debt crisis, this kind of policy proved to be a temporal arrangement to mitigate the effects of the crisis and avoid a major political crisis of the State — only to return shortly afterwards to the previous situation with even harsher austerity and neoliberal policies.

In the following part, we focus on some issues related to the dimensions of polity and politics. By highlighting empirical and theoretical shortcomings, we aim at emphasising the elements of continuity in the political dimensions of the State, in order to stress the importance of identifying, and distinguishing between different layers of analysis of State transformations. This would put the analysis of neoliberal State in its proper place, leading us to the thesis of a post-neoliberal. paradigm shift (see section no. 3), and also suggest some possible avenues for further research (see section no. 4).

In a nutshell, our thesis is that for a paradigm shift to take place, and that therefore we can speak of a “return of the (Keynesian) State”, it would be necessary to register permanent changes on all three dimensions (polity, politics and policies) and levels of analysis (theoretical and empirical) of State transformations. As far as the latter is concerned, a common shortcoming in State theory is the absence of conceptualisation of the different layers encompassed by the concept of “State”. This often leads to regard the State as a thing or person, internally homogenous and mostly separated from society. This unified vision of the state has the effect of underestimating the internal changes within the state itself, which can go in the opposite direction to that imagined by the ‘returners’. Thus, for example, the return of the state is supported, but the centralisation of powers in the executive, the technocratisation, the imbalance of powers between State institutions or the depowering of parliament are not fully problematized.

By contrast, to understand what kind of State is back, it is important — first of all — to “open” the State box and conceive it as a field of political struggle between different power networks and apparatuses. This means, on an empirical level, looking at the specific transformations *within* the State as occurred over the last decades and focusing on the specific and interrelated dimension of state politics and the question of power distribution *within* the State, and how they impacted (*i*) on the State as a polity, (*ii*) on State policies, and (*iii*) the forms and processes of (the crisis of) representative democracy (De Tullio, 2020). While reasons of space prevent us from closer theoretical and empirical investigations, suffice it to say here that — speaking about transformations — one fundamental piece of the neoliberal state puzzle are the processes of strengthening of executive apparatuses and other technocratic institutions (think, for example, about independent authorities), both at national and European level. This process runs in parallel with other fundamental dynamics such as the crisis of political parties (Palano, 2019, 2020) and the marginalisation of representative institutions — actually, a process also defined as *de*-democratization. Accordingly, a change in the politics dimension would manifest itself through a reverse process of democratization and rebalancing of power between executive and legislative, that does not seem to us to be taking place at present.

Furthermore, this argument leads us to further reconsideration of the essence of the neoliberal State. Rather than the “shrinking” State (Strange, 1996) or the minimal state — as alleged by many supporters of the thesis of the return of the state —, several strands of political science, sociology and political economy literatures have demonstrated that the reality of this form of State is part of processes of *selective empowerment* of the aforementioned executive and technocratic apparatuses. Important studies have

made it clear that the *strong* — rather than minimum — State is the real counterpart of free market economy (Gamble, 1994; Bonefeld, 2012, 2017) and of “economic liberty”. A strong State is one that provides for a strong (and stable) legal and institutional framework, possibly as much separated as possible from social-democratic politics and thus possible political economy alternatives. Other strands of study have further effectively highlighted that “although the shorthand phrase ‘strong state and free market’ has its usefulness in explaining neoliberalism, how one defines strength is not self-evident. [...] It makes little sense to think of the state in quantitative rather than qualitative terms; the question of ‘how much’ state should be replaced by ‘what kind’ of state” (Slobodian, 2018, p. 7). In this same direction go the studies that have been pointing out since the beginning of the millennium that the neoliberal project should be conceived of as “a simultaneous roll-back *and* roll-out of state functions” (Peck, 2001, p. 447, italics in the original). Hence, “if we place too much emphasis on the category of market fundamentalism, we will fail to notice that the real focus of neoliberal proposals is not on the market per se but on redesigning states, laws, and other institutions to protect the market” (Slobodian, 2018, p. 6).

This vision of the State is indeed present in the documents of some international institutions. For instance, previous research showed that already by the early 1990s the IMF and the World Bank, the main promoters of neoliberalism in the world since the 1980s (Peet, 2003), under the label of “good governance”, tried to steer the transformations of the State towards a strengthening of the apparatus of government while reconfiguring its direct role in the economy (Amoretti, Cozzolino, Giannone, 2021). As we read in a report of the World Bank dedicated to former socialist economies of Eu-rope transiting to capitalism, “institutional reforms — establishing clear property rights, sound legal and financial infrastructure, and effective government — will be needed to make markets work efficiently” (1996, 22). In the report, significantly entitled *From Plan to Market*, we also read: “the transition from plan to market calls for a wholesale reinvention of the government. The state has to move from doing many things badly to doing its fewer core tasks well” (1996, p. 110; see also World Bank, 1997). At stake is an idea of State which is, at same time, strong in terms of legal and institutional apparatuses, and limited in terms of redistributive and productive role: a State devoted to free market economy.

This legal and institutional strengthening is also visible in the policy dimension, as shown for instance by monetary policy. The establishment of the “ordoliberal” European Central Bank meets the requirement of separating monetary policy from democratic

politics and therefore exerting strong “disciplinary effects” on the working populations of Europe (Saad-Filho, 2010; Sandbeck and Schneider, 2014). In this framework, the global financial crisis seems to have triggered a further escalation of the processes described above — in the background of the crisis of consensus towards market economy and of growing inequalities. Some have thus spoken of “authoritarian neoliberalism” (Bruff, 2014; Tansel, 2017; Storey, 2019; Wigger, 2020). While “authoritarianism can [...] be observed in the reconfiguring of state and institutional power in an attempt to insulate certain policies and institutional practices from social and political dissent”, neoliberalism becomes increasingly authoritarian

especially in our current time of crisis [when] the conditions [are set] for the emergence of more coercive neoliberalization processes. Put more simply, in the absence of a hegemonic aura, neoliberal practices are less able to garner the consent or even the reluctant acquiescence necessary for more “normal” modes of governance. Of particular importance for this article is the increasing frequency with which constitutional and legal changes, in the name of economic “necessity,” are seeking to reshape the purpose of the state and associated institutions (Bruff, 2012, p. 115).

Before entering in a detailed analysis of the policy dimension (see section n. 4), in the next section we discuss the most recent version of the idea of the return of the State, which in a way is also the most interesting one: the hypothesis of neostatism, especially in a recent formulation of Paolo Gerbaudo (2021, 2022). The neostatism thesis (correctly) sees in several novel forms of State intervention — such as: planning, industrial policy, budget expansion — as many signs of a renewed State intervention and even a “paradigm change” (Gerbaudo, 2022). However insightful and certainly agreeable, the question is *to what extent* this represents a wholesale rupture with the neoliberal *direction* of policy (a paradigm change), or just a temporary adjustment to avoid that a severe socio-economic crisis develops into a full-blown political crisis of the State.

### 3. From neoliberalism to neostatism?

The crisis of Covid-19 came after a decade or more that neo-liberalism was considered to be in irreversible crisis and somehow already outdated. For instance, the

concept of “post-neoliberalism” begun to be used in different context and in light of different political and politico-economic processes. First born in Latin America to mark the rupture with neoliberal adjustment policies enacted since the 1980s (under the influence of international organizations as the International Monetary Fund and the World Bank), the concept has been used in the capitalist Western core to denote especially the new forms of hegemony by the alt-right (Cooper, 2021), which some-how mark a departure from liberal-market enthusiasm. And, if before the onset of Covid-19 the crisis of neo-liberalism was already under way, the coronavirus emergency has significantly accelerated the phenomenon. We have witnessed significant expansionary measures of States’ budgets to sustain working population and business, while strengthening, where possible, health system and produce vaccines. This, it is worth noting, in a context where national and international institutions have suggested national States to resort on bolder fiscal policy measures to help the economy recover (Amoretti, Cozzolino, Giannone, 2021). It is no surprise, then, that in such a context several authors foresaw a possible (new) return of the State. One of the first attempts to develop a theoretical account of the “neostatism” thesis is that of Gerbaudo whose argument is that the crisis of neoliberalism is paving the way to neostatism, that is “a new ideological horizon based on a minimum consensus on the need for greater State intervention”<sup>3</sup> (2022, pp. 10-11). Importantly, this manifests in a set of policies such as: relaxation of fiscal and monetary policy; trade protectionism and industrial policy through subsidies, regulatory barriers, custom duties, protection of national property and strategic industries; taxation of multinational corporations and great wealth; new forms of planning, especially in the environment and energy. Thus, to Gerbaudo, only a few years ago this set of policy measures would have been rejected by neoliberal political elites on both the left and right. Now, they seem to constitute the core of a new interventionist spirit of State action.

Historically, neostatism — rather than being a coherent ideology — is emerging towards the end of the 2010s from a whole array of new social demands — protection, first of all — to which political classes are trying to answer. These answers are not only a way to remedy to market failures but a leap forward — Gerbaudo defines it as a “paradigm change” in political discourse and practice (2022, p. 13) — embodied by a more proactive role of public authorities. The “return of the State”, therefore, can be seen as an “early sign” of a possible future new paradigm. For now, it is a marker of a phase of

3. Authors’ translation. Original: “un nuovo orizzonte ideologico basato su un consenso minimo rispetto alla necessità di un maggiore intervento dello Stato”.

*interregnum* — the reference to Gramsci here is clear — between the irreversible crisis of neoliberalism and the neostatism to come (*ibid.*).

The cultural and ideological dimension deserves attention too, as different authors pointed to different ideological and hegemonic forms to address the crisis of neoliberalism and its historical overcoming (Lather, 2020; Davies and Gane, 2021; Slobodian, 2021). In Gerbaudo's line of reasoning (which takes inspiration from the Soviet economist Kondratiev), there are "ideological waves" that roughly last from 40 to 60 years. Examples of these in the past comprise classic liberalism, social-democracy and neoliberalism. Considering the latter's rise from the late 1970s and consolidation in the 1990s, it has arrived to its historical limit, and so as the policies it has inspired. Within the decline of neoliberal ideology — and the endemic crisis of globalization — a new one is rising, an ideological landscape whose core is the return of an active conception of the State. Within this "return", three are the key components of neostatism: sovereignty, protection and control. In relation to the first, the return of the concept of sovereignty — which belongs to the history of modern society — can be conceived as a reaction against the neoliberal distrust towards *popular* sovereignty, the state and democracy. It is, therefore, a means of claiming back decision-making power and reassigning centrality to the *demos* after that neoliberalism, with its strengthening of technocratic apparatuses, has shifted decision-making mechanisms elsewhere (see also the now-endemic crisis of representative democracy). The concept of protection follows a similar logic. Neoliberalism conceived of "protectionism" as going in parallel with pervasive State intervention. By contrast, the (popular) demand for protection has increased in the context of deregulated and transnational market economy. On the other hand, Covid-19 (with both economic and health crisis) and the environmental crisis seem to intensify the need for states and international institutions to intervene to protect populations from the negative effects of markets and changes in the productive sphere, while actively promoting forms of transition to more sustainable sectors and modes of production. The final concept that constitutes the core of neostatism is control. As Gerbaudo remarks, if "protection is the final goal, control is the means" (p. 189). Later on adding: "Control, therefore, designates the capacity of the state to intervene, to determine, to govern people and things, and the specific actions that result from that capacity. [Compared to the concept of sovereignty] this term takes on a more practical and action-oriented sense"<sup>4</sup> (*ibid.*). The need for greater control arises against the uncontrolled movements

4. Italian: "Controllo", dunque, designa la capacità dello Stato di intervenire, di determinare, di governare le persone e le cose, e le azioni specifiche che [Rispetto al concetto di sovranità] questo termine assume un senso più pratico e orientato all'azione".



of globalization: taking back control, for instance, implies a higher capacity of the State to acquire more autonomy on societal processes like taxation (especially of large multinational corporations) and democratic planning.

In conclusion, at stake seems to be an epistemic rupture with the neoliberal era. The State — the key political institution of our era — is the cornerstone of this rupture and one fundamental place of struggle for a new *post-neoliberal* order to arise. While this argument effectively captures some elements of a phase of deep changes, at the same time it is necessary to problematize further the analytical framework and try to offer a more nuanced picture of State transformations.

It seems in fact at least partial to speak of — yet another — “return” of the State. Also because the idea of a “return” to a more Keynesian-oriented State actually bears the risk of hiding the current problems of the crisis of democratic forms and processes. By contrast, a convenient research strategy would begin with a more nuanced view of the complex nature of the State — and of State-society complex — and try to detect on empirical grounds continuities *and* changes occurring at State and policy level.

#### **4. Critical State studies and Critical policy studies: possible research avenues**

In order to try to develop an answer, in this paragraph we discuss more specifically policy and policy-making. The aim is to consider the problem of policy within the broader State-society complex and its transformations. To this aim, we lay out a possible alternative framework to situate policy and policy-making within State theory. In particular, we draw on several strands of critical policy analysis such as Historical Materialist Policy Analysis (HMPA) (Brand et al., 2022; Caterina, 2019) and Cultural Political Economy (CPE) (Jessop and Sum 2010), which explicitly deals with this issue in the framework of critical theories of the State.

The critical analysis of policy differs from mainstream approaches under several respects. First of all, conventional approaches usually conceive policy as a result of a rational process based on given power resources and on a “problem-solving” framework. In other words, such view of policy analysis explicitly or implicitly asserts that “government decisions should be based on sound knowledge, and that such knowledge should rise above politics”, so that “in the modern world these ideas point instead to the conception of a governing elite of technical experts — or technocracy — working as a

neutral instrument on behalf of human progress” (Fisher et al., 2015, p. 1). Thus, at stake there is a positivist episteme and a linear view of the historical process in which policies are rationally enacted in the name of the general interest<sup>5</sup>. At the same time, the policy process usually is, albeit implicitly, *de facto* conceived as isolated from the more general discourse on the State and State-society complex. In contrast, policies should be seen as the result of the (conflictual) intersection of several power networks within and outside State structures, nationally and internationally. Also, this should be also understood within the broader framework of State-society complex. This implies that what happens “within” the State and its apparatuses cannot be abstracted from the specific condition and evolution of social relations of production.

Mainstream policy assumptions have been contested by a variety of approaches that, from different angles, have criticised the rationalist, neutral and interest-free view of policy-making (Fisher et al., 2015). In order to overcome a technocratic, a-historical and positivist view of policy analysis, we introduce a possible alternative framework to study policy and situate it within broader processes of State transformations.

A possible critical study of policy begins with recognising that the “policy process” always occurs within a society characterised by certain structural conditions and conflicts between material interests. In line with a (critical) political economy perspective, this approach recognises the centrality of social relations of production and reproduction engendered by (transnational) capitalism as the dominant mode of (re)production. The attention to “material structures” allows to understand policies and policy-making within their broader social context – thus favouring the possibility to understand in greater depths both the policy and the context. Thus avoiding examining policies in terms of abstract “rational” processes.

Within this theoretical framework, history occupies a prominent role in two main respects. First, the historical analysis helps tracing the emergence, consolidation and transformation of social relations of production and related conflicts. Second, history is not a linear process set on the path of progress (i.e., the technocratic view) but is conceived as the contingent result of the dialectical relation between structure(s) and socio-political agency through different spaces and places. Therefore, the complex and intertwined matrix of conflicts comprising material interest, ideas-ideologies and values — all shaping and being shaped by politics — has a prominent role both to

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5. Incidentally, let us note that especially when it comes to “technocrats” and technocratic forms of steering, this underlying rationalist core is even reinforced given their (apparently) non-partisan, problem-oriented and pragmatic *allure*, and of course the high-profile of their expertise.

understand and explain policy, and to give a specific conformation to a polity. Accordingly, this approach “understands policies against the background of manifold social relations of (re)production (including societal relations to nature) that are contradictory, dynamic, crisis-prone and lead to latent or manifest conflicts” (Brand et al., 2022, p. 282).

The other fundamental theoretical-analytical element for critical policy analysis is the State. In a theoretical perspective based on the intellectual legacy of authors as Gramsci and Poulantzas, the State is conceived neither as completely autonomous from society, nor as an instrument in the hands of ruling classes. While the State is always — in Gramsci’s terms — *integral*, namely it is a complex comprising State and society, at the same time State power is, following here Poulantzas, *relatively autonomous*. That is to say that ruling political forces (also: the policy-makers) enjoy a degree of “distance” from social forces (and production relations) that allows establishing compromises and concessions among competing and antagonistic material interests in order to extend indefinitely the dominant societal order. Also crucially, the State is not an internally homogenous entity but it is itself a *field of conflicts*. Following again Poulantzas (2000), the State is the “material condensation” of class relations.

The notion of material condensation means that social relations of forces have been historically inscribed into the material structure of the state (its institutional buildup, the law, the political orientation of state officials), i.e. its different branches and apparatuses (ministries, central bank etc.). This implies specific, asymmetric selectivities, i.e. filter mechanisms with regard to the strategies, interests, discourses and forms of action of different societal interests and political actors in their capacities to access the state and formulate policies (Brand et al., 2022, p. 284; Jessop, 2015).

The State as field of conflicts (among different power networks) is not a symmetric one. On the one hand, the institutional structure of the State constitutes a *strategic selectivity* (Jessop 1990) vis-à-vis the broader structure of societal power relations of classes and class fractions. In other words, how different branches of the State “filter” policy demands and implement policies depends on underlying power relations. On the other hand, State apparatuses and bureaucracies remain critical (and relatively autonomous) agencies in the formulation, definition and implementation of policy. From within State structures and apparatuses, ruling political elites and State bureaucracies formulate and

implement policy according to a certain variety of material and cognitive factors: (i) general balance of power among social forces and their transformations over time; (ii) ruling ideas and visions of the future; (iii) inner conflicts occurring among parties and politicians (also within the same governing coalition and in light of the respective electoral constituencies); (iv) contingent factors that may necessitate extraordinary interventions (a large economic or health crisis that requires additional fiscal stimulus); (v) concrete impact of policies in society at large and conflicts occurring at the level of civil society; (vi) overall need to preserve the dominant social order also through concession to what in Gramsci's terms we can call "subaltern groups".

One final word about the (fundamental) question of public finance and expansionary budget policy, which we already mentioned earlier in the essay. In the aftermath of the global financial crisis of 2008, many Western States intervened with relevant budget measures both to sustain the banking sector in crisis (avoid the so-called "credit crunch" and a proper recession) and to finance social safety nets for people who lost their jobs. On the one hand, this soon led to further increases in government debt, but on the other, already by 2010-11, the policy direction returned on a strict austerity policy and overall neoliberal direction (Tooze, 2018; Bellofiore, 2013), with serious consequences on the political landscape of many European countries in terms of growing polarization (Hutter and Kriesi, 2020). With the pandemic, we witnessed something similar. The State, under the strong advice from international institutions as the IMF and the World Bank, intervened with important budget measures to sustain businesses and families. This also in tandem with European institutions, which intervened with ambitious financial programmes as the Next Generation EU. These programmes seem to lean towards more incisive interventions by public authorities also in terms of accompanying the transition of production towards new sectors such as green energy and digital.

A paradigm change, then? And, are we really confronted with a "returned" and post-neoliberal State? Or are these measures just concessions to the subaltern classes to avoid a general political crisis? In our view, while it is still premature to speculate on a paradigm shift, it would perhaps be more appropriate to develop a more complex view of the State and its (contradictory) transformations in order to understand, also in relation to the state-democracy-capitalism triad, persistences and changes in this complex relationship, and with what social and political consequences.

## 5. Conclusions. Space for further theoretical and empirical pathways

In this essay, we examined the thesis of the return of the State, highlighting several theoretical and empirical issues. In particular, we focused on the three political dimensions of the State, emphasising that a paradigm shift in the conception of the State would require stable changes in each of those dimensions. We then discussed one of the most recent proposals on the return of the state, namely that of “neo-statism” put forward by Paolo Gerbaudo. Finally, by drawing on Historical Materialist Policy Analysis and Cultural Political Economy, we proposed that, for a more nuanced interpretation of current phenomena, it is necessary to “open” the State box and conceive it as a field of political struggles between different power networks and apparatuses. By analysing these political struggles, it is possible to highlight which changes and in which dimensions are occurring after the pandemic.

If we look back to the 20th century, there have been at least two paradigm shifts in the conception of the State: the one from the liberal State to the welfare State, which occurred after the Second World War, and the one from the welfare state to the neoliberal State, which has occurred since the 1970s. In both cases, there have been more or less stable changes in each of the political dimensions of the State.

For example, the affirmation of the neoliberal state was accompanied by a rebalancing of power between capital and labour in favour of the former; this rebalancing was then manifested at the political level with the arrival in government of leaders and parties that explicitly advocated new policies — such as privatization, liberalization, supply-side economics — and a new idea of the State, which in short has become “hegemonic as a mode of discourse, [and has had] pervasive effects on ways of thought to the point where it has become incorporated into the common-sense way many of us interpret, live in, and understand the world” (Harvey, 2007, p. 3). Within a few years there was a permanent change in the polity, policies and politics of the state.

Without excluding the possibility of a return of the State, we maintain that the analysis of the State after the pandemic must take into account economic and social variables, and look at the State in greater detail, by focusing on “what kind of” State rather than on “how much” State has returned. In this context, changes in the conception of the state, as well as in its politics and policies should be detected that are not simply linked to the contingency of the crisis. While this essay has simply highlighted some problematic

nodes, future research should investigate, for example, what conception of the state is held by the centre-right ruling classes in many European countries, how the notions of sovereignty, protection and control are interpreted, what policies can be reversed in comparison to past decades, what role the European Union will play.

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# EXPLICACIÓN DE LAS RESPUESTAS NACIONALES DIVERGENTES AL COVID-19: UN MARCO DE LA CAPACIDAD ESTATAL MEJORADA<sup>1</sup>

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## EXPLAINING DIVERGENT NATIONAL RESPONSES TO COVID-19: A FRAMEWORK FOR ENHANCED STATE CAPACITY

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1. Fecha de recepción: 16 de febrero 2022; fecha de aceptación: 4 de abril 2022. Este trabajo es fruto de un proyecto de investigación desarrollado en la University of Sydney y la School of Social Sciences, UNSW Sydney.

## Resumen

En este artículo desarrollamos un marco de capacidad estatal para dar cuenta de diferentes respuestas nacionales al Covid-19. Nuestro punto de partida es la idea influyente de que el neoliberalismo tiene un papel importante que desempeñar en el fracaso del Estado para controlar la pandemia. Al implementar reformas neoliberales, los estados aparentemente se han vuelto incapaces de prevenir o mitigar el brote viral. Un enfoque en la experiencia británica da peso a esta perspectiva. Pero cuando se ve en una luz comparativa, la imagen es menos sencilla. Al comparar los casos británico y australiano, vemos una aceptación similar de las reformas neoliberales en todo el gobierno, aunque con resultados sorprendentemente divergentes. ¿Cómo podemos explicar esta diferencia dramática? Para responder a esta pregunta, ofrecemos un marco de capacidad estatal mejorado para aclarar nuestra comprensión de las diversas respuestas nacionales al Covid-19. Nuestro objetivo más amplio es enriquecer la literatura sobre capacidad estatal existente de dos maneras. Primero, ampliamos el marco de capacidad estatal existente mediante la introducción de una nueva categoría, capacidad saludable, para encapsular la capacidad de un Estado para corregir y contrarrestar el curso de una emergencia sanitaria nacional. En segundo lugar, presentamos la idea de elección política para enfatizar la importancia de la agencia para compensar las debilidades institucionales asociadas con la reforma neoliberal.

## Palabras clave

Covid-19; Energía infraestructural; neoliberalismo; elección política; Capacidad estatal.

## Abstract

In this article, we develop a state capacity framework to account for different national responses to Covid-19. Our starting point is the influential idea that neoliberalism has a major role to play in state failure to control the pandemic. By implementing neoliberal reforms, states have ostensibly rendered themselves incapable of preventing or mitigating the viral outbreak. A focus on the British experience lends weight to this perspective. But when viewed in a comparative light, the picture is less straightforward. By comparing the British and Australian cases, we see a similar embrace of neoliberal reforms across the whole of government, yet with strikingly divergent outcomes. How can we account for this dramatic difference? To answer this question, we offer an enhanced state capacity framework to improve our understanding of diverse national responses

to Covid-19. Our larger objective is to enrich the existing state capacity literature in two ways. First, we extend the existing state capacity framework by introducing a new category – salutary capacity – to encapsulate a state’s ability to correct and counteract the course of a national health emergency. Second, we introduce the idea of political choice to emphasise the importance of agency in offsetting the institutional weaknesses associated with neoliberal reform.

### **Keywords**

Covid-19; Infrastructural power; Neoliberalism; Political Choice; State Capacity.

## Introducción<sup>2</sup>

Como muchos han observado, la pandemia del Covid-19 ha puesto de manifiesto las marcadas diferencias en las respuestas nacionales. Comparemos la gran eficacia de las primeras respuestas de Australia con las acciones más vacilantes del Reino Unido para frenar la propagación del virus. Sin embargo, sorprendentemente, hay pocos esfuerzos sistemáticos para dar sentido a las diferencias nacionales. Lo que sí tenemos son muchas observaciones a nivel de país que tratan de explicar los malos resultados destacando la ausencia de factores concretos, como la confianza (Fukuyama, 2020), el liderazgo eficaz (Tourish, 2020), la cohesión social (Lofredo, 2020) y la capacidad del sector público (Mazzucato y Kattel). Y en muchas historias nacionales de malos resultados, se cree que la transformación neoliberal del Estado desempeña el papel central. Como forma de describir las reformas normativas desde la década de 1980 (en particular, la privatización, la externalización y la desregulación), el neoliberalismo ha surgido como la forma preferida de explicar los errores de los gobiernos y su incapacidad para controlar la propagación del virus (Andrew *et al.*, 2020; Bartholomeusz, 2020; Denniss, 2020; Hil, 2020; Monbiot, 2020; Petersen, 2020; Rogers, 2020). A través de la lente de la transformación neoliberal del Estado (NST), los analistas han tratado de dar sentido a los esfuerzos desacertados del Reino Unido para contener el virus y su desastroso número de muertes (por ejemplo, McCormack y Jones, 2020; Jones y Hameiri, 2021).

Según la tesis de la NST, para explicar la deficiente respuesta británica a la pandemia, no hay que mirar más allá del régimen neoliberal de gobierno fragmentado que ha prevalecido desde principios de los años ochenta:

La pandemia de Covid-19 no es simplemente una crisis de salud pública... lo que es más importante, es una crisis de toda una forma de gobernar la sociedad. El cambio hacia la categoría de Estado reguladora y el gobierno transnacional ha socavado las capacidades prácticas necesarias para responder de forma significativa a las verdaderas amenazas del bienestar público. (McCormack y Jones 2020, párrafo 5)

A medida que el Estado británico se transformaba, “se suprimió la planificación, se disolvió la burocracia, se privatizaron las empresas estatales y se externalizó cada vez

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2. Este trabajo fue apoyado por la Academia de Estudios Coreanos [número de subvención AKS-2018-LAB-1250001].

más el suministro de bienes y servicios al mercado” (McCormack y Jones 2020, párrafo 2). En términos más generales, bajo el nuevo régimen vaciado, “el papel de los aparatos estatales centrales pasó de tomar decisiones autorizadas a limitarse a emitir reglamentos”, privándoles de los “sistemas jerárquicos de “mando y control” necesarios para gestionar una emergencia sanitaria” (McCormack y Jones 2020, párrafo 4). Además, el hecho de externalizar la toma de decisiones a científicos, que no tenían ni responsabilidad ni certeza científica, supuestamente produjo una respuesta caótica que abrió una ventana para que el virus volara libre. Así debilitado, el NHS se vio en peligro, ya que la creciente demanda de equipos de protección personal (EPP) superó el suministro, y el temor a la escasez de ventiladores se hizo sentir. Para agravar el problema, la base industrial agotada frustró los esfuerzos del gobierno por reponer el suministro nacional, como veremos más adelante en el análisis de la capacidad de transformación.

Como caso aislado, la experiencia británica parece apoyar, en parte, la tesis de la NST. Sin embargo, cuando se examina desde un punto de vista comparativo, como explicación convincente de la propagación de Covid-19, la tesis de la NST se queda corta. Para probar rigurosamente esta hipótesis, la elección de un caso de estudio comparativo es muy importante. Si X es el neoliberalismo, la ausencia o el carácter limitado de X en un caso no puede probar su papel causal en un caso con X. Metodológicamente, por tanto, no servirá comparar un Estado transformado neoliberalmente (por ejemplo, Gran Bretaña) con otro que solo ha coqueteado con las reformas reguladoras (por ejemplo, Corea del Sur, Taiwán, Japón), especialmente cuando haya razones de peso para esperar un rendimiento divergente (por ejemplo, la experiencia previa del SARS). Evidentemente, si los puntos de partida son muy diferentes, cabe esperar resultados distintos. Al comparar a Gran Bretaña con Corea del Sur, por ejemplo, solo se podría reforzar la explicación preferida en lugar de probarla. Para ilustrar este enfoque problemático, véase el reciente estudio de Jones y Hameiri (2021), que discutimos con más detalle a medida que avanza nuestro análisis. Estamos de acuerdo en que es importante explorar las formas en que las reformas neoliberales podrían influir en el rendimiento de la pandemia. Pero para hacerlo con cierto rigor sería necesario comparar dos regímenes neoliberales. Una prueba eficaz sería comparar Estados en los que un gobierno neoliberal está bien establecido, pero en los que los resultados difieren: por ejemplo, Gran Bretaña y Australia.

Esto nos lleva a la primera gran debilidad del relato de la NST sobre el Covid-19: *es incapaz de explicar las variaciones entre los regímenes neoliberales*. Consideremos que, al igual que muchos países de la OECD, tanto el Reino Unido como Australia han

adoptado sin reservas las reformas neoliberales. Sin embargo, Australia ha obtenido muy buenos resultados en la contención del virus en comparación con el Reino Unido y, de hecho, con la mayoría de los demás “Estados neoliberales”, sobre todo los Estados Unidos. Los recuentos de infecciones y muertes per cápita, al 12 de julio de 2021, reflejan la situación: mientras que en EE.UU. se registraron 104.305 infecciones y 1.870 muertes por millón de habitantes, y en el Reino Unido 75.035 y 1.882 respectivamente, la cifra australiana fue comparativamente modesta: 1.205 y 35 (Worldometer, 2021). Algunos atribuyen los mejores resultados de Australia a su condición de isla y a su territorio “poco poblado” (Jones y Hameiri, 2021). Sin embargo, como revela el caso británico, no todas las islas aprovechan su ventaja natural. Hay que tener en cuenta también que aproximadamente la mitad de los 26 millones de habitantes de Australia (más o menos lo mismo que Taiwán) se concentra en tres grandes ciudades, lo que ofrece amplias posibilidades de propagación viral. De hecho, históricamente, a Australia le ha ido bastante mal en el control de epidemias, contabilizando unas 15.000 muertes por la gripe española de 1918, que infectó al 40% de la población. En fechas más cercanas, un plan de preparación para la pandemia de 2014 preveía que, incluso con la planificación más eficaz, Australia podría esperar más de 500.000 infecciones y 6.500 muertes por un brote de gripe grave (es decir, del estilo de 1918) (DOH, 2014). En términos más generales, debemos ser cautelosos con las suposiciones que vinculan incuestionablemente la densidad de población y la geografía con el comportamiento de la pandemia (Hsu, 2020).

Esto nos lleva al segundo gran defecto del enfoque en cuestión. Al plantear un amplio vaciamiento y debilitamiento de las capacidades del Estado, el relato de la NST no puede entender los cambios en el rendimiento de un Estado a lo largo del tiempo<sup>3</sup>. Por ejemplo, la gran eficacia del despliegue de vacunas en Gran Bretaña frente al lamentable “paseo” de las vacunas en Australia. A 8 de julio de 2021, el porcentaje de la población británica totalmente vacunada era del 50,64, frente a un escaso 8,3 en Australia (Worldometer, 2021).

En tercer lugar, el relato de la NST ignora la importancia de la acción (en cuanto a la elección política), con lo que se pierde la oportunidad de comprender sus posibilidades de solución. Una expresión algo extrema de este desprecio es la implicación de que la

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3. Otro problema para la tesis de la NST es dar cuenta de la variación en el desempeño *dentro de los estados neoliberales* organizados a nivel federal. Consideremos el caso de Australia: en el ámbito de la salud, encontramos una actuación variada en las distintas jurisdicciones subnacionales (léase “gobierno estatal”). En materia de cuarentena, atención a la tercera edad y pruebas y rastreo, encontramos enfoques y resultados sorprendentemente diferentes a pesar de estar sujetos a la reforma normativa neoliberal. Se trata de una complicación importante para la tesis de la NST que debemos abordar en un estudio separado.



NST funciona como una “camisa de fuerza” para la toma de decisiones (Andrew *et al.*, 2020), lo que significa que “el sistema” da forma a las decisiones políticas y a los resultados, y que la acción tiene poca importancia. Las palabras de Jones y Hameiri (2021) ejemplifican esta posición:

El Estado británico fracasó estrepitosamente en 2020. Esto no fue... simplemente una consecuencia de la incompetencia ministerial o del primer ministro, ni tampoco una función del partido específico en el control en ese momento —los conservadores—... incluso si el Partido Laborista hubiera ganado las elecciones de 2019, habría heredado un aparato estatal regulador... (p. 14).

Nuestro análisis comparativo aporta un importante correctivo a esta visión. Si bien es relevante en tiempos normales, la elección política adquiere un significado especial en una emergencia nacional. Especialmente al comienzo de una pandemia, son las elecciones de los principales responsables las que determinan la trayectoria de una nación, independientemente del sistema en el que se produzca la crisis. Las decisiones fundamentales incluyen la determinación de cerrar las fronteras, instituir pruebas, rastrear contactos y establecer periodos de cuarentena.

Es difícil ignorar las diferentes decisiones políticas que contribuyeron a producir resultados marcadamente divergentes entre los regímenes neoliberales del Reino Unido, Estados Unidos, Australia y Nueva Zelanda. En lo que respecta al cierre temprano de las fronteras, por ejemplo, el Reino Unido fue un caso atípico, ya que se negó a restringir la entrada hasta bien entrada la pandemia (Clark *et al.*, 2020). De este modo, perdió la ventaja de ser una “isla” que los líderes australianos (y neozelandeses) aprovecharon. En EE.UU., el presidente Trump optó por cuestionar la propia existencia del virus, al tiempo que ridiculizaba y rechazaba el distanciamiento social mientras las tasas de infección y muerte se disparaban. Por el contrario, los líderes australianos y neozelandeses prestaron atención a la tragedia que se estaba desarrollando y actuaron rápidamente para intentar contener o (en el caso de Nueva Zelanda) eliminar el virus.

En resumen, la tesis de la NST tiene mérito en la medida en que pone de manifiesto las formas en que las reformas reguladoras pueden debilitar las capacidades del Estado y exponer a un país a la crisis. Pero su valor explicativo está muy limitado por su ceguera ante los diferentes resultados de los Estados transformados neoliberalmente, y sus respuestas cambiantes a lo largo del tiempo.

Aunque estamos de acuerdo en que los Estados pueden verse debilitados por las reformas neoliberales, y que la debilidad en la capacidad del Estado puede ser entonces parte de la historia, necesitamos un instrumento más preciso que la idea de la NST para

explicar la variación nacional en el rendimiento de la pandemia. Nuestro marco proporciona una mejor comprensión de la capacidad estatal. Especifica los diferentes aspectos de la capacidad que son importantes para el desempeño de la pandemia y explica cómo pueden reforzarse mutuamente. También aclara la contribución de la elección política que influye en el rendimiento y cómo se cruza con la capacidad estatal.

## Un marco de capacidad estatal ampliada

Para explicar las respuestas nacionales divergentes a la pandemia, es conveniente mirar más allá del tipo de régimen (neoliberal o no) y empezar con el poder infraestructural del Estado, es decir, la capacidad del Estado para movilizar recursos (ya sean humanos o materiales) sobre la base del consentimiento (Mann, 1984). Cuando una comunidad se enfrenta a situaciones de vida o muerte —ya sea la amenaza de una invasión extranjera o una pandemia—, el poder o la capacidad infraestructural del Estado es fundamental. Un Estado con poder infraestructural es capaz de movilizar a la población de su territorio para un proyecto común. Más que un ejercicio de arriba abajo, la capacidad del Estado siempre se pone en práctica a través, y no *sobre* la sociedad, mediante la negociación y el consentimiento. Existe independientemente del tipo de régimen y no puede darse por hecho, ni siquiera en las democracias avanzadas (Weiss y Thurbon, 2018).

En tiempos normales, la capacidad del Estado puede funcionar de forma bastante rutinaria a través de acuerdos institucionales que permiten, como mínimo, la extracción y redistribución de recursos. Pero en épocas extraordinarias, como una pandemia, la capacidad de responder a los desafíos imprevistos puede no estar disponible a falta de una acción orientada a objetivos. La acción orientada a objetivos abre una ventana a la importancia de la elección política y su interacción con la capacidad estatal.

Nuestro análisis enriquece de dos maneras el conjunto de trabajos existentes sobre la capacidad estatal. En primer lugar, ampliamos el marco estándar de la capacidad estatal con la introducción de una nueva categoría, la capacidad sanitaria, para encapsular la capacidad de un Estado de contrarrestar el curso de una emergencia sanitaria nacional. En segundo lugar, reafirmamos la importancia de la acción política en el análisis de la capacidad estatal, en la tradición del institucionalismo histórico centrado en el agente (véase, por ejemplo, Weiss y Thurbon, 2004; Bell, 2005, 2011; Bell y Feng, 2014; Weiss, 2014; Thurbon, 2016a). En tercer lugar, identificamos tres formas en las que la elección

política puede cruzarse con la capacidad estatal para reforzar las capacidades debilitadas en entornos transformados neoliberalmente.

## **Preparación para una pandemia: las tres caras de la capacidad estatal**

En general, todos los Estados *modernos* están dotados de un mínimo de poder infraestructural (Mann, 1984). Sin embargo, sus capacidades para actuar en diferentes escenarios políticos no son en absoluto similares. En las últimas décadas, por ejemplo, la destreza de Estados Unidos en materia de innovación radical para preservar la superioridad militar (Weiss, 2014) debe compararse con su pésimo historial en cuanto a la atención sanitaria de la nación (por ejemplo, Dickman *et al.*, 2017). En cambio, Australia se ha desempeñado bien en la prestación de servicios de salud (Our World in Data, n.d.), pero ha obtenido malos resultados en la promoción de la transformación tecno-industrial de la nación (Thurbon, 2016b).

Así pues, como era de prever, frente a la actual emergencia sanitaria, algunos países demostrarían ser mucho mejores que otros en la gestión de los tres retos relacionados con la pandemia: prevenir, suprimir o contener la propagación viral; proporcionar recursos económicos para apoyar los medios de subsistencia durante el confinamiento; y movilizar el suministro nacional de equipos médicos. La vacunación de la población es un capítulo crítico en esta historia, que reservamos para una discusión posterior. Mientras que algunos países parecen haber tenido buenos resultados en la resolución de uno o más de estos retos, especialmente Taiwán, Dinamarca, Alemania, Corea del Sur, Australia y Nueva Zelanda, otros han tenido dificultades en los tres frentes, especialmente Estados Unidos, Reino Unido, Italia y España (Thurbon y Weiss, 2020).

Para entender estos resultados tan diferentes, debemos empezar con dos fuentes bien establecidas de capacidad estatal: la *extractiva-distributiva* y la *transformadora*. La capacidad extractiva-distributiva implica la capacidad del Estado de movilizar recursos económicos para su redistribución. Si bien esta capacidad es importante en tiempos de relativa estabilidad económica, se vuelve crítica en tiempos de crisis, cuando la amenaza del desempleo y las quiebras hacen que los cierres sean menos viables socialmente. La capacidad de transformación se refiere a la capacidad de las autoridades gubernamentales de movilizar al sector empresarial para fomentar la industria y la innovación de manera que promueva el ascenso de un país en la escala industrial-tecnológica del

desarrollo. En una pandemia, la grave escasez de todo, desde mascarillas hasta ventiladores, en muchas jurisdicciones puede hacer que esta capacidad (transformadora) en el ámbito económico sea un asunto de vida o muerte.

Nuestra investigación anterior ha tenido mucho que decir sobre la capacidad transformadora y extractiva en diferentes entornos nacionales (Weiss y Hobson, 1995; Weiss, 1998; Weiss y Thurbon, 2018). Sin embargo, los desarrollos actuales en el campo de la salud nos invitan a inventar un nuevo término —*capacidad* sanitaria— para abarcar la gama de respuestas que actualmente observamos a nivel internacional. Consideremos que Taiwán, a pesar de vivir cerca a China continental, se ha preparado para la pandemia de tal manera que ha contenido eficazmente la propagación del virus (Yeh y Cheng, 2020). Por el contrario, y a pesar de su enorme riqueza y sofisticación técnica, los EE.UU. han luchado y fracasado al hacer frente a la amenaza pandémica, al menos hasta el despliegue de la vacuna.

Por capacidad sanitaria nos referimos a la habilidad del Estado para corregir y contrarrestar el curso de una emergencia sanitaria nacional. En lo que respecta a Covid-19, las medidas específicas de la capacidad sanitaria incluyen la posibilidad de controlar las fronteras nacionales, aplicar la cuarentena, comunicar una amenaza para la salud pública, ordenar medidas de salud pública, realizar pruebas metódicas, rastrear y aislar, movilizar la infraestructura sanitaria, el personal y el equipo médico y, en última instancia, vacunar a la población.

Hay que destacar que la capacidad sanitaria no es *sui generis*. En parte, depende de las capacidades extractivas-distributivas y transformadoras previas del Estado. Por ejemplo, la capacidad de movilizar y distribuir recursos ha demostrado ser esencial para permitir los bloqueos prolongados que son fundamentales para controlar la propagación del virus. Del mismo modo, la capacidad sanitaria depende en cierta medida del alcance y la sofisticación de la base tecno-industrial de la nación. Aunque no es evidente, la capacidad de movilizar a los agentes económicos —capacidad de transformación— tendrá una influencia significativa en el hecho de que el país se enfrente a una escasez desesperada o a una mayor autosuficiencia en materia de suministros médicos.

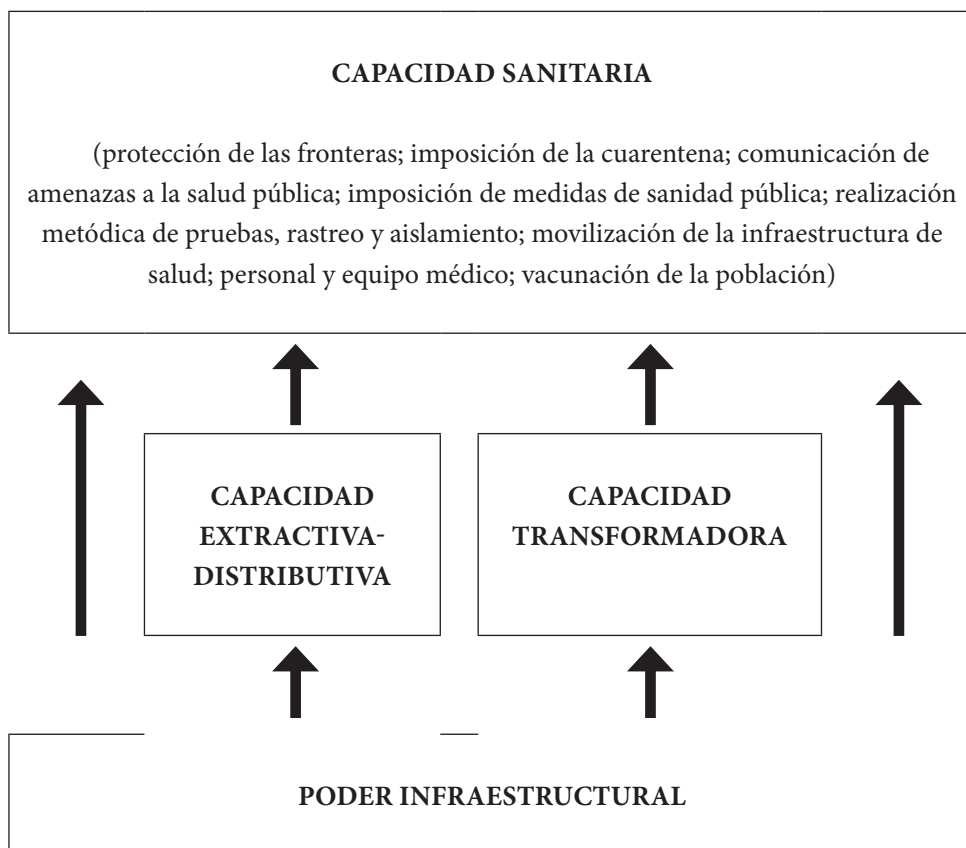
**Cuadro 1: Tres caras de la capacidad estatal  
para prepararse para una pandemia**

<b>Sanitaria</b>	<b>Extractiva- distributiva</b>	<b>Transformadora</b>
Prevenir, suprimir o contener el virus y su propagación (control de fronteras, cuarentena, comunicaciones, prueba y rastreo, bloqueos, tratamiento de los enfermos, vacunación).	Proporcionar recursos económicos y apoyar los medios de subsistencia durante bloqueo (pagos de licencia).	Producir una oferta interna de equipos médicos (EPP, ventiladores, vacunas).

Fuente: elaboración propia de los autores.

Sin embargo, la capacidad sanitaria no se reduce a las capacidades extractivas-distributivas y transformadoras de un Estado. Se refiere a un conjunto de capacidades que permiten a un país corregir y contrarrestar el curso de una emergencia sanitaria (véase el cuadro 1). Al igual que las capacidades transformadoras y extractivas-distributivas, la capacidad sanitaria es consecuencia del poder infraestructural de un Estado (Weiss 2006, pp. 168-169). Incluso los Estados con capacidades poco desarrolladas en las áreas de extracción y transformación pueden desarrollar eficazmente algunos elementos críticos de la capacidad sanitaria —como la protección de las fronteras y el establecimiento de regímenes de pruebas y rastreo— cuando se enfrentan a una emergencia sanitaria (pensemos en Vietnam, véase Willoughby, 2021) (Figura 1).

**Figura 1. La procedencia de la capacidad sanitaria**



Fuente: elaboración propia de los autores.

Llamamos la atención sobre estas tres facetas de la capacidad del Estado para entender las respuestas estatales divergentes que dan forma a diferentes resultados para las vidas y los medios de subsistencia durante una pandemia. Sin embargo, la capacidad estatal es una explicación necesaria pero no suficiente de por qué algunos países anglosajones han salido mejor librados que otros durante la pandemia. Sostenemos que la elección política es un elemento central de la historia de la capacidad de respuesta nacional. Usamos el término “elección política” como indicador de las decisiones de los agentes estatales, ya sean líderes elegidos, burócratas o asesores o líderes de programas designados políticamente. Mediante una comparación de los casos británico y australiano, mostramos la importancia de la elección política para la capacidad estatal.

En primer lugar, las decisiones de los agentes estatales pueden *hacer que las debilidades institucionales sean menos importantes de lo que podrían haber sido*. En segundo lugar, las decisiones políticas pueden ayudar a *compensar las debilidades* mediante la búsqueda de soluciones creativas a problemas acuciantes. En tercer lugar, las decisiones políticas pueden permitir que se activen las capacidades latentes. En cuarto y último lugar, las decisiones de los dirigentes políticos pueden socavar por completo una estrategia que, de otro modo, sería eficaz y podría provocar un cambio de rumbo.

## **Elección política y capacidad del Estado**

La elección política puede hacer que las debilidades institucionales sean más o menos importantes

Si hay un solo acto que puede detener o acelerar la propagación del Covid-19 es la decisión temprana de cerrar o dejar abiertas las fronteras nacionales. El cierre temprano de las fronteras es importante porque puede minimizar la propagación de la infección, limitar la necesidad de confinamientos y dar a los países un margen de maniobra para poner en marcha sus sistemas de rastreo de contactos y pruebas. El cierre de fronteras en Australia no evitó por completo los brotes ni la necesidad de un confinamiento. Su mayor beneficio fue contener suficientemente la propagación viral para que el rastreo y las pruebas fueran eficaces (Duckett y Stobart, 2020). La acción temprana en las fronteras también tuvo enormes consecuencias para la capacidad sanitaria, ya que ayudó a frenar la propagación del virus y evitó que el sistema hospitalario, de recursos limitados, se viera desbordado.

Tanto en Australia como en el Reino Unido, décadas de reformas neoliberales han debilitado significativamente sus sistemas de salud pública, exponiéndolos potencialmente a la prueba más severa de enfrentar a una pandemia viral. En el Reino Unido, esas debilidades se revelaron claramente cuando la demanda del Sistema Nacional de Salud (NHS) amenazó con sobrecargar la capacidad del personal sanitario para tratar adecuadamente a los infectados. Podría decirse que el sistema solo evitó verse desbordado porque los “pacientes ajenos al covid aplazaron la búsqueda de ayuda, en respuesta a las peticiones de “proteger al NHS”” (Scobie, 2021; véase también Wingfield y Taegtmeier, 2021). En Australia, las capacidades debilitadas del sistema hospitalario nunca fueron el centro de atención debido a las decisiones tomadas en la fase inicial del brote

mundial. De este modo, las debilidades institucionales de Australia en el sector sanitario resultaron menos importantes de lo que podrían haber sido.

Entonces, ¿cómo explicamos estas diferentes opciones? ¿Está involucrado el neoliberalismo, como afirma el relato de la NST?

El fracaso del Reino Unido para imponer restricciones fronterizas (y de cuarentena) en el momento oportuno se ha atribuido a un sistema neoliberal de gobierno en el que las decisiones críticas se “subcontratan” a asesores científicos “irresponsables” que seguían un plan de pandemia de inspiración neoliberal (McCormack y Jones, 2020; Jones y Hameiri, 2021, pp. 13-14). Según esta perspectiva, la Estrategia de Preparación para la Pandemia de Influenza del Reino Unido de 2011 se presenta como un ejemplo de gobierno regulador neoliberal que privilegia la economía sobre la vida. Se afirma que la estrategia evita el cierre de las fronteras y otras restricciones sociales durante una pandemia para dar prioridad a la continuidad de la actividad económica, sin tener en cuenta el costo humano. Además, al indicar que es “apropiado” que las autoridades se preparen logísticamente para un gran número de muertes y el racionamiento ético de los recursos médicos, supone que la estrategia refleja una ideología neoliberal que antepone la salud de la economía a la de las personas (véase Jones y Hameiri, 2021, pp. 13-14).

Una falla importante de este argumento es que se basa en la lógica deductiva y no en la teoría inductiva. Este defecto se manifiesta de dos maneras. En primer lugar, hay poca evidencia para apoyar una interpretación neoliberal del plan pandémico, mientras que hay amplia evidencia para justificar el argumento contrario elaborado aquí. Entonces, si miramos con dos ojos en lugar de uno, está claro que la estrategia británica contra la pandemia de influenza era menos un reflejo de la ideología neoliberal que la comprensión científica predominante sobre la eficacia del cierre de fronteras para las pandemias de influenza. El documento de la estrategia de 2011 se basa directamente en modelos internacionales de brotes de influenza anteriores (DOH, 2011). Los hallazgos, publicados en *Nature*, muestran que las grandes restricciones fronterizas (digamos, el 90%) a los viajes internacionales “probablemente no retrasan la propagación más de 2-3 semanas” (Ferguson *et al.*, p. 448).

Resulta revelador que incluso el crítico más acérrimo y antiguo asesor de Boris Johnson reconozca en su testimonio de 2021 ante la Cámara de los Comunes que, en la fase más crítica en la que se tomaron las primeras decisiones sobre las fronteras y que tendría enormes consecuencias (enero-marzo de 2020), las preocupaciones económicas no influyeron en la decisión de mantener las fronteras abiertas:



No sería justo culpar al Primer Ministro por lo que ocurrió antes de marzo [2020]... definitivamente no estaba priorizando el turismo... Le escuché cuando dijo específicamente a los asesores científicos y al Departamento de Salud: “Esperen ¿no va a pensar mucha gente que estamos locos por no cerrar las fronteras?” El Primer Ministro insistió en ello en enero/febrero, y sería erróneo e injusto decir que dio prioridad a la economía en ese momento (Cummings en la Cámara de los Comunes, 2021, Q1092).

En segundo lugar, no hay evidencia convincente de que, al estimar las probables muertes, el plan de la pandemia estuviera de alguna manera respaldando un alto número de muertes como un precio “aceptable” a pagar para mantener las fronteras (y la economía) abiertas. Como lo ha demostrado el registro histórico, las pandemias suelen provocar un gran número de muertes, por lo que planificar cómo gestionar un gran número de víctimas mortales y racionar éticamente los escasos recursos médicos es un aspecto de la planificación responsable de una pandemia a nivel nacional y aceptado mundialmente. Al igual que muchos otros, la Estrategia Nacional de Gran Bretaña trató de modelar los peores escenarios de mortalidad sobre la base de brotes de influenza anteriores, y analizó las consideraciones éticas del racionamiento de recursos, en línea con los protocolos internacionales<sup>4</sup>. En términos más generales, es importante señalar que antes de la década de 1980, las consideraciones éticas eran marginales en la literatura de salud pública, y el nuevo énfasis desde la década de 1980 se considera un desarrollo abrumadoramente positivo (en lugar de perverso) en esa disciplina (Kotalik, 2006; IOM, 2007).

En resumen, encontramos poca evidencia que respalde la afirmación de que el Plan de Preparación para la Pandemia de 2011 de Gran Bretaña “da prioridad a los negocios *económicos habituales*” (Jones y Hameiri, 2021, p. 14, *énfasis* añadido). De hecho, el Plan suele aplicar el término “negocios habituales” a una serie de actividades no económicas, y actúa como sustituto de “seguir con la vida cotidiana normal”. Así es precisamente como se emplea el término en el Plan en la página 57, (en lugar de la connotación exclusivamente *económica* atribuida incorrectamente por Jones y Hameiri).

Además, incluso si aceptáramos la afirmación de la NST de que los planes de pandemia modernos priorizan los medios de subsistencia sobre las vidas, no se deduce que los líderes de los regímenes neoliberales deban o vayan a seguirlos ciegamente. Esto nos

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4. Por ejemplo, una revisión reciente de los planes europeos para pandemias reveló que 19 de 29 naciones abordaron las cuestiones éticas asociadas al racionamiento de recursos (Droogers *et al.* 2019).

lleva al tercer y último problema de la tesis de la NST: su razonamiento determinista. Su hipótesis central es que, en un régimen neoliberal, ni la competencia de los dirigentes ni la naturaleza del partido en el poder importan para los resultados, porque las opciones fundamentales están efectivamente determinadas por el aparato estatal regulador, “el sistema” (Jones y Hameiri 2021, p. 14).

Es aquí donde un análisis comparativo aporta una perspectiva muy necesaria. En efecto, a diferencia de Gran Bretaña, los dirigentes australianos tomaron una decisión completamente “alejada de la sabiduría convencional” de que el cierre de las fronteras era inútil (B. Murphy citado en K. Murphy, 2020). En palabras del entonces director médico de Australia (CMO), Brendan Murphy:

El mantra de la salud pública, y la OMS siempre lo ha dicho... nunca se cierran las fronteras, eso no es algo útil en una pandemia. Cuando tomamos medidas en las fronteras, algunos de nuestros colegas de otros países cuestionaron el valor o el mérito de hacerlo. No se ajustaba a la sabiduría convencional... Simplemente decidimos que, cualquiera que fuera el mantra de salud pública, no íbamos a seguirlo (B. Murphy citado en K. Murphy, 2020).

¿Cómo podemos explicar esta decisión poco ortodoxa? A diferencia de sus homólogos británicos, a principios de enero de 2020, el perfil epidemiológico emergente del virus inquietó a los científicos australianos. La tasa de mortalidad del virus, su carácter infeccioso y su epicentro geográfico en Wuhan alimentaron las primeras especulaciones dentro de la comunidad científica de que Australia podría estar enfrentándose a las consecuencias de un accidente de laboratorio (Murphy, 2020). Estas preocupaciones ayudaron a determinar el curso de acción que tanto el CMO como el primer ministro (PM) acordaron. El cierre de las fronteras no tardó en producirse, primero con Wuhan el 21 de enero y luego con toda China el 1 de febrero.

Así que, para ser reiterativos, estas decisiones y acciones tempranas tomadas sobre el cierre de fronteras han tenido impactos grandes y significativos. Gran Bretaña pagó un alto precio por su retraso al permitir una propagación viral masiva que hizo imposible la realización de pruebas y el rastreo tempranos. Mientras que las tasas de infección y muerte en Gran Bretaña se dispararon, Australia logró contener la propagación del virus, lo que le dio un tiempo precioso para introducir un régimen eficaz de prueba y rastreo. Esto evitó el colapso del sistema y ocultó en gran medida las debilidades institucionales de su propio sector sanitario que habían sido causadas por décadas de reformas

neoliberales. En esencia, el sistema hospitalario australiano nunca fue puesto a prueba como el británico.

Por lo tanto, sostenemos que, al inicio de una pandemia, son las decisiones que toman los actores políticos —más que la capacidad estatal per se— las que más afectan la escala e intensidad de la crisis sanitaria. Consideremos lo siguiente: si Australia hubiera decidido seguir el consenso internacional (de la OMS) en ese momento, es muy probable que su sistema sanitario se hubiera visto completamente desbordado, y *dado el estado de recorte de gastos en ese sector*, es muy probable que el planteamiento de la NST resultara entonces más plausible.

En términos más generales, al atenuar la importancia de las debilidades institucionales, las decisiones políticas se convierten en una parte importante de la historia de los resultados de la pandemia. En los países industrializados, esas debilidades pueden surgir de décadas de reforma neoliberal. En los entornos menos desarrollados, la debilidad de las instituciones puede deberse a una prolongada falta de recursos. Sea cual sea el origen de la debilidad, si se interviene rápidamente para bloquear la propagación del virus, incluso los países con sistemas sanitarios carentes de recursos pueden obtener buenos resultados (por ejemplo, Vietnam; véase Willoughby, 2021).

Las decisiones políticas pueden ayudar a compensar las debilidades institucionales ideando respuestas creativas a problemas acuciantes

Tanto en Australia como en el Reino Unido, los gobiernos recurrieron a los “confinamientos” como parte de sus estrategias de gestión de la pandemia, aunque por razones diferentes. En Australia, a pesar del número relativamente reducido de casos, la decisión de cierre fue parte de una estrategia de contención temprana (al igual que en Nueva Zelanda y, más recientemente, en Taiwán [CDC, 2021]). En el Reino Unido, la decisión tardía fue la reacción a una infección descontrolada<sup>5</sup>. Ya sea para prevenir o remediar la propagación del virus, los cierres ponen a prueba la capacidad distributiva del Estado: es poco probable que la gente se “refugie en un lugar” sin alguna garantía de ingresos (como ha revelado el caso de la India).

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5. Aunque ambos países empezaron a introducir medidas de confinamiento más o menos al mismo tiempo (23 de marzo de 2020), el Reino Unido lo hizo en un punto mucho más tardío de su curva de infección creciente (es decir, con más de 6.600 casos en comparación con los aproximadamente 1.800 de Australia), de ahí que la respuesta fuera “tardía”. La decisión del Reino Unido de mantener las fronteras abiertas y evitar una cuarentena significativa también comprometió la eficacia de su cierre.

Ambos gobiernos trataron de movilizar y distribuir grandes sumas de dinero para respaldar su estrategia de confinamiento. Estos planes de apoyo económico se financiaron principalmente mediante la emisión de bonos del Estado, retrasando así el desafío *extractivo para* una fecha futura. En esta primera fase, el reto más acuciante era encontrar un mecanismo de *distribución*. Sin embargo, décadas de reformas neoliberales habían dejado el canal distributivo obvio, frente al sistema de seguridad social, inadecuado para su propósito. Así que, cuando llegó la crisis, los mecanismos de seguridad social de estos países, parcialmente privatizados, con fondos y personal insuficientes, no pudieron hacer frente a la abrumadora demanda.

Para evitar la caída libre de sus economías, se diseñó rápidamente un programa de subsidios salariales, inspirado en el ejemplo alemán. El exitoso programa alemán de *Kurzarbeit* (falta de trabajo), en vigor desde la década de 1920, subvenciona los salarios de los trabajadores despedidos por falta de trabajo en tiempos de crisis (von der Leyen, 2010). Sin embargo, el esquema alemán depende de un sólido sistema de seguridad social, algo de lo que carecen tanto el Reino Unido como Australia. Los actores estatales en cada caso dieron una respuesta creativa: trataron de eludir el debilitado aparato distributivo (es decir, el sistema de seguridad social) y entregar los pagos de la seguridad social a través de un aparato extractivo mucho más robusto (el sistema fiscal)<sup>6</sup>. En palabras del primer ministro australiano:

Privatizamos efectivamente el sistema de seguridad social en las nóminas de las empresas... Eso es exactamente lo que hicimos. Si no hubiéramos puesto en marcha [el plan de subvenciones salariales a través de la Oficina Tributaria], toda esa gente habría hecho cola en Centrelink [seguridad social] en un día y todo el sistema de seguridad social se habría colapsado debido a la presión. Era muy necesario (Morrison citado en Murphy, 2020, p. 92).

En resumen, los dirigentes nacionales de ambos países aprovecharon su infraestructura extractiva (el sistema fiscal) para eludir los posibles bloqueos distributivos asociados a un sistema distributivo desbordado<sup>7</sup>. Movilizando de forma creativa a la Oficina

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6. Aunque el objetivo principal del sistema fiscal es la extracción, hay casos en los que la Oficina de Impuestos también puede distribuir el pago (como las devoluciones de impuestos). Para más detalles sobre el régimen británico, véase el Tesoro de su Majestad (2020). Para el régimen australiano, véase el Tesoro del Gobierno Australiano (2021).

7. Además, los beneficiarios de la seguridad social que ya estaban en el sistema en ambos países recibieron un aumento temporal de sus beneficios.

Tributaria, las autoridades nacionales fueron capaces de aportar lo necesario para ejecutar un confinamiento.

Para que no haya confusión, no estamos insinuando que los sistemas extractivos de Australia y Gran Bretaña sean de algún modo excepcionales. La mayoría de los países desarrollados tienen sistemas fiscales sólidos. Más bien, nuestra afirmación es que, en esta época de crisis, los actores estatales de ambos países fueron capaces de compensar las debilidades de sus sistemas distributivos reutilizando de forma creativa sus instituciones “extractivas” más fuertes para fines “distributivos”. Nuestro punto de vista más amplio (expuesto anteriormente y reiterado aquí) es que los Estados no son, en su mayoría, unitarios, son débiles en algunas áreas y fuertes en otras.

Evidentemente, cuando se enfrentan a una crisis, los líderes políticos de Australia y el Reino Unido han demostrado que pueden superar grandes retos distributivos, si así lo deciden. Los líderes de ambos escenarios han estado dispuestos a abrir el grifo financiero y han contado con la capacidad institucional para ejecutar sus planes de gasto. Aunque la disposición del Estado a gastar puede parecer incoherente con el pensamiento neoliberal, se podría objetar que se trata de una medida temporal destinada a hacer frente a una situación de emergencia. Esta es precisamente la forma en que el gobierno australiano enmarcó sus planes de apoyo a los ingresos, insistiendo en que se “recuperaría” cuando la pandemia estuviera bajo control (véase Murphy, 2020). La cuestión no es si estos planes son o no efímeros. La prueba de la capacidad del Estado se ha cumplido y, al menos en el ámbito de la distribución, la idea de la NST de un Estado muy limitado por la revisión de la normativa es insuficiente.

La elección política puede permitir que se activen las capacidades latentes

El desempeño deficiente en el ámbito sanitario aumenta la carga sobre el sistema de salud y la demanda de equipos sanitarios. En la medida en que las cadenas de suministro mundiales fallen y el suministro local sea limitado o no esté disponible, la capacidad de transformación del Estado se pondrá a prueba. Esta fue la experiencia británica. La crisis de covid-19 creó una enorme demanda de suministros médicos, desde maquinaria sofisticada (respiradores invasivos) hasta mascarillas de protección. La tardanza del gobierno británico en cerrar las fronteras —lo que permitió que el virus se extendiera sin control— contribuyó a las limitaciones de suministro. Cuando la demanda de respiradores se disparó, Whitehall se dio cuenta de que tendría que satisfacer la demanda urgente mediante la producción nacional. Pero los años de desindustrialización y la

dependencia de las cadenas de suministro extranjeras hicieron que los productores nacionales de los equipos necesarios fueran prácticamente inexistentes.

Para algunos, este “vaciamiento” de la capacidad industrial es otro indicador de la transformación neoliberal del Estado (McCormack y Jones, 2020). Desde el punto de vista de la NST, es probable que cualquier esfuerzo por cerrar las brechas relacionadas con la producción fracase, por tres razones. En primer lugar, los actores estatales aparentemente carecen de la voluntad y la capacidad de coordinar a las empresas nacionales para satisfacer las necesidades críticas. En segundo lugar, la capacidad industrial nacional se habría marchitado a tal punto que quedan pocas empresas, si es que hay alguna, que puedan movilizarse para un proyecto nacional. En tercer lugar, la corrosión de la supervisión regulatoria ha politizado la contratación pública (NAO, 2020b).

Dejando de lado el tema de las adquisiciones, que en este contexto tiene escasa relevancia para la capacidad transformadora, evaluamos hasta qué punto la capacidad británica de movilizar y coordinar las capacidades industriales necesarias se ha marchitado sin remedio. Su sofisticación tecno-industrial hizo que la escasez de ventiladores fuera la prueba más seria de la capacidad transformadora.

Los actores estatales se movieron con rapidez para hacer frente a la inminente crisis, y a mediados de marzo hicieron un “llamamiento a las armas” conocido como el Reto del Ventilador. En una llamada telefónica con más de 100 de las principales empresas del país y agencias gubernamentales relacionadas con la industria, el jefe de la Oficina del Gabinete hizo un llamamiento para satisfacer la demanda urgente de equipos de ventilación, ya fuera aumentando la producción de los diseños existentes o creando productos completamente nuevos. Este programa tuvo cierto éxito gracias a un consorcio que se centró en adaptar y ampliar los diseños existentes. También se benefició de un campeón del programa (el director general Dick Elsy), incorporado a una de las propias redes de innovación del Estado británico: la Catapulta de Fabricación de Alto Valor<sup>8</sup>. Para crear el consorcio, Elsy se basó en la red de empresas que ya estaban en la órbita de la Catapulta (Excell, 2020), que finalmente incluyó a 33 empresas británicas de ingeniería que abarcaban los sectores aeroespacial, automovilístico, deporte de motor y médico. A principios de julio, el consorcio había duplicado con creces el stock disponible para el NHS. En concreto, amplió la producción del dispositivo de ventilación de emergencia Penlon ESO 2; estableció desde cero, siete nuevas instalaciones de

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8. La agencia gubernamental de innovación Innovate UK había creado las Catapultas en 2011. El objetivo: reunir a los actores públicos y privados para comercializar y ampliar las tecnologías en sectores de importancia estratégica. Véase Catapult Network (2021).

fabricación a gran escala en el Reino Unido, y reestructuró los sitios ya existentes. Logró un pico de producción superior a 400 dispositivos al día; estableció nuevas cadenas de suministro paralelas y adquirió alrededor de 42 millones de piezas y componentes electrónicos a través de una compleja red logística que permitió realizar una cadena de suministro de principio a fin en solo 1,5 semanas; se abasteció de piezas de más de 22 países, a pesar de la competencia mundial por las mismas; logró la plena aprobación de la MHRA para el ventilador Penlon en sólo tres semanas; contrató y formó a un equipo de montaje de primera línea de 3.500 personas; y entregó casi 13.500 ventiladores al NHS (Royal Academy of Engineering, 2020). Cuando la crisis se calmó en julio de 2020, el número de ventiladores disponibles para el NHS había ascendido a 25.000 (justo por debajo del objetivo de junio de 30.000). Solo 2.500 de ellos se habían adquirido en el extranjero, mientras que 14.000 se habían fabricado en el país en el marco del Reto de los Ventiladores. Un estudio de la Oficina Nacional de Auditoría sobre el Reto informó de la eficacia de la gestión del programa, lo que permitió disponer de capacidad de reserva en caso de que fuera necesaria (NAO, 2020a)<sup>9</sup>. Por lo tanto, el Desafío del Ventilador del Reino Unido puede considerarse, como mínimo, un modesto logro, y no el fracaso rotundo que se describía en la cobertura mediática inicial (por ejemplo, Stone, 2020).

Al igual que el Reino Unido, Australia había experimentado décadas de declive industrial y dependía casi por completo de las importaciones de suministros médicos manufacturados, desde los más básicos hasta los más sofisticados<sup>10</sup>. Sin embargo, a diferencia de Gran Bretaña, los primeros esfuerzos de Australia por contener el virus hicieron que nunca experimentara una escasez de respiradores. Esto significó que su capacidad de transformación nunca se puso a prueba. No obstante, previendo lo peor, Canberra trató de movilizar a las empresas nacionales para evitar una escasez. En abril de 2020, el gobierno federal puso en marcha el *Programa de Ventiladores Invasivos de Emergencia NOTUS*, coordinado por el Centro de Crecimiento de Fabricación Avanzada. La empresa local Grey Innovation fue seleccionada para producir ventiladores en colaboración con una red de proveedores y universidades locales. En agosto, el consorcio Grey había entregado 2.000 respiradores al gobierno federal, y otros 2.000 al gobierno de Victoria, que a esas alturas estaba lidiando con una segunda ola.

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9. La adquisición de PPE fue una historia diferente: los intentos de abastecerse con empresas locales resultaron politizados y costosos (Sánchez-Graells 2020). Como resultado, en comparación con el Reto de los Ventiladores, recibió una evaluación muy diferente, incluso condenatoria, por parte de la NAO (2020b).

10. Una notable excepción es el gigante biofarmacéutico australiano CSL, que ha producido una serie de soluciones farmacéuticas líderes en el mundo, incluyendo una gama de vacunas (AAMC 2016).

La reciente acción gubernamental difícilmente puede compensar años de declive, que podrían conducir de alguna manera a un renacimiento del dinamismo industrial. Nuestra afirmación es más modesta. Al afrontar los retos de una emergencia sanitaria nacional produciendo los respiradores necesarios, tanto el gobierno australiano como el británico activaron capacidades transformadoras que habían permanecido dormidas.

La elección política puede provocar un cambio de dirección

Podría parecer que Australia obtiene una buena calificación mientras que el Reino Unido es el último de la clase en lo que respecta a la gestión de una pandemia. Pero se trata de una historia que evoluciona y cuya conclusión está en algún momento en el futuro. Si seguimos con esta metáfora, consideremos el capítulo más reciente sobre la vacunación de la población, un aspecto fundamental de la capacidad de salud. En el momento de escribir este artículo, en esta fase de la historia, vemos que la suerte del Reino Unido y de Australia se ha invertido por completo. A principios de julio de 2021, el Reino Unido había vacunado completamente a aproximadamente el 50% de su población, en comparación con menos del 10% en Australia. Las débiles tasas de vacunación han dejado a Australia vulnerable a las nuevas cepas del virus, más infecciosas y peligrosas (especialmente la Delta). En julio de 2021, un largo período de casi normalidad se detuvo abruptamente, primero con el restablecimiento de los confinamientos en el estado más poblado de Australia, Nueva Gales del Sur, seguido de varios cierres en toda la nación.

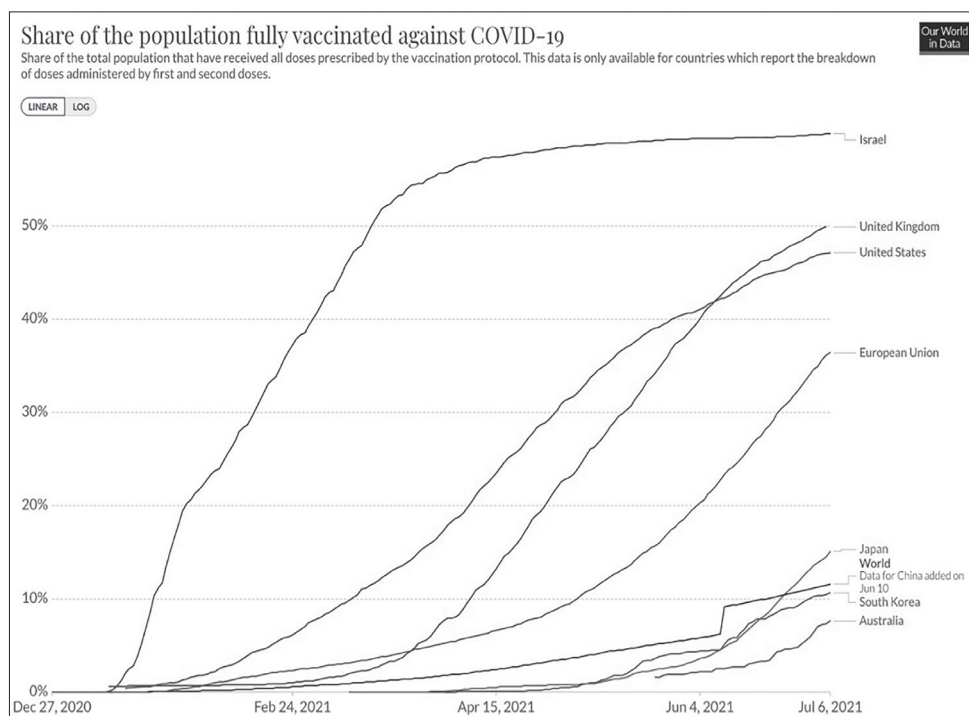
¿Cómo se explica el reciente cambio de rumbo de Australia? Lo que a primera vista puede parecer un caso de mala suerte se reduce a algunas decisiones políticas muy pobres, especialmente en las dos áreas de las que el gobierno federal es más responsable: la cuarentena y las vacunas.

A pesar del cierre de las fronteras, las repetidas violaciones de la cuarentena han ilustrado claramente la abdicación del liderazgo nacional, ya que el primer ministro trató de trasladar la responsabilidad federal de la cuarentena a las autoridades estatales. En virtud de la Ley de Bioseguridad de 2015, Morrison, como primer ministro, tenía el poder de implementar un sistema nacional de cuarentena. Al resistirse enérgicamente a las apelaciones de los gobiernos estatales y optar por no ejercer su poder, el PM Morrison trató de evitar la responsabilidad de cualquier infiltración y brotes virales (Williams, 2020). El sistema de cuarentena basado en hoteles que surgió para llenar el vacío no era adecuado para el propósito y produjo brotes regulares que se propagaron a la



comunidad. Antes de junio de 2021, los gobiernos estatales se convirtieron en expertos en la “limpieza” de los brotes a través del rastreo y las pruebas rápidas de contactos y el cierre ocasional a corto plazo. Durante este período, la abdicación de la responsabilidad federal importaba menos. Pero esto cambiaría drásticamente con la aparición de nuevas cepas virales como la Delta. En este sentido, la decisión del gobierno australiano de renunciar a la responsabilidad de la cuarentena amenaza ahora con revertir el hasta ahora buen desempeño del país ante la pandemia. Si a esta situación le añadimos una población mayoritariamente no vacunada, tenemos la receta para una catástrofe Delta (Figura 2).

**Figura 2. Porcentaje de la población totalmente vacunada  
contra el COVID-19 (julio de 2021)**



Fuente: <https://ourworldindata.org/covid-vaccinations> (consultado el 8 de julio de 2021).

En 2020, Australia tomó lo que parecía una decisión lógica de confiar en las vacunas que podían producirse en el país, ya sea bajo licencia (AstraZeneca [AZ]) o

utilizando una tecnología totalmente nacional, es decir, la vacuna de la Universidad de Queensland-CSL. En diciembre de 2020, esta estrategia se volvió arriesgada por un golpe de mala suerte; si bien la vacuna de la UQ demostró ser segura y eficaz en los ensayos de fase uno, también produjo una respuesta inmunitaria que crearía falsos positivos para el VIH, lo que llevó al abandono del ensayo. A pesar de este contratiempo, la supresión efectiva del virus creó la percepción de que había tiempo suficiente para esperar la ampliación local de la vacuna AZ (Kampmark, 2021). Sin embargo, esta estrategia también se vio sumida en el caos con la aparición de coágulos sanguíneos en los menores de 50 años; por consejo sanitario, esto descartó la opción de AZ para amplios segmentos de la población, creando así una importante escasez de suministros<sup>11</sup>. La peligrosa tasa de vacunación del país se vio agravada por el brote de la variante Delta en junio de 2021, creando una nueva sensación de urgencia que aumentó la demanda de vacunación.

Si bien el suministro extremadamente inadecuado retrasó la tasa de aumento de la vacunación, también lo hizo el enfoque caótico de la introducción gradual y el fracaso en la implementación de un sistema logístico capaz de entregar las vacunas en el lugar y el momento adecuados (Buckland *et al.*, 2021; Jackson y Curran, 2021). En lugar de establecer centros de vacunación masiva —como pedían los gobiernos estatales—, el gobierno federal propuso confiar principalmente en la red de médicos generales del país, una estrategia insostenible para la inmunización masiva (Duckett, 2021). Por último, una marcada falta de transparencia y una estrategia de comunicación deficiente han socavado la implementación y han alimentado las dudas sobre la vacuna por parte del público.

Volviendo a la experiencia británica, vemos que es prácticamente el reflejo de la de Australia. En casi todos los aspectos, las opciones han sido marcadamente diferentes. Ya en mayo de 2020, a petición del principal asesor científico del país, el Reino Unido creó un grupo de trabajo sobre vacunas en el Departamento de Negocios, Energía y Estrategia Industrial. Bajo la dirección de la biotecnóloga de capital de riesgo Kate Bingham, el grupo de trabajo se movió rápidamente para asegurar los primeros contratos para el suministro de múltiples vacunas. También colaboró estrechamente con el NHS para reclutar a participantes en los ensayos, probar la eficacia de las vacunas y avanzar en su rápida aprobación. Una vez asegurado el suministro, el NHS —bajo la dirección de Sir Simon Stevens— se encargó de diseñar y ejecutar el despliegue de la vacuna, con

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11. Australia recurrió a EE.UU. en busca de Pfizer, pero se enfrentó a un bloqueo de las exportaciones.

el importante apoyo de la Brigada Logística 101 del Ejército, bajo el mando del brigadier Phil Prosser (Baraniuk, 2021; Bingham, 2021; Neville y Warrell, 2021; Sasse, 2021).

Lo que resulta especialmente llamativo de la historia de las vacunas en el Reino Unido es que estas estrategias tan eficaces se produjeron al mismo tiempo que los fallidos intentos británicos de controlar el brote viral. Dado que los Estados no son unitarios, la manifestación de sus diferentes puntos fuertes y débiles no debería sorprender. El punto analítico más amplio por tener en cuenta es que cuando vemos una fortaleza particular. A menudo se debe, en gran medida, al papel de agentes altamente eficaces y orientados a objetivos que se apropian de un programa y son capaces de manipular las limitaciones institucionales existentes para lograr sus objetivos. En general, observamos que el papel fundamental del NHS en el despliegue de las vacunas no concuerda con la imagen de un sistema sanitario debilitado por la reforma de la NST.

Introducimos aquí una nota de precaución porque el cambio de dirección de Gran Bretaña puede estar a punto de revertirse, una vez más, pero esta vez en una dirección menos positiva. En julio de 2021, el primer ministro Johnson declaró su intención de eliminar todas las restricciones basadas en el COVID —el uso de máscaras, distanciamiento social, limitaciones de reuniones masivas— en medio de un brote Delta y mientras la mitad de la población seguía sin vacunar o con una vacunación insuficiente. Esta acción potencialmente perjudicial, descrita como “rendirse al COVID”, amenaza con desencadenar una nueva ronda de infecciones, hospitalizaciones e ingresos a las UCI. Si esta decisión se produce como muchos anticipan ahora (Kleczkowski, 2021; Mellor, 2021), no podríamos tener mejor recordatorio de la importancia de la acción en una historia de fortalezas y debilidades institucionales.

## Conclusión

Nos propusimos entender por qué a Australia y al Reino Unido les ha ido tan mal durante la crisis del COVID. Según una opinión influyente, la NST es el principal responsable de la propagación del virus porque ha socavado la capacidad del Estado. ¿Por qué, entonces, a pesar de haber adoptado reformas neoliberales similares, Australia se ha comportado significativamente mejor que el Reino Unido (sobre todo en el ámbito sanitario)? Para responder a esta pregunta, ampliamos el marco clásico de la capacidad estatal, introduciendo la categoría de capacidad sanitaria, e incorporando al análisis los agentes estatales y sus elecciones. Ante una emergencia sanitaria nacional, hemos

demostrado que la elección política es importante por cuatro razones. En primer lugar, las decisiones de los actores políticos pueden *hacer que las debilidades institucionales sean menos relevantes de lo que podrían ser*. En segundo lugar, las decisiones políticas pueden ayudar a *compensar las debilidades* mediante la búsqueda de soluciones creativas a problemas acuciantes. En tercer lugar, las decisiones políticas pueden permitir la activación de capacidades latentes. En cuarto y último lugar, las decisiones de los actores políticos pueden socavar por completo una estrategia que, de otro modo, sería eficaz, y provocar un cambio de dirección.

Como muestra nuestro análisis, los Estados no son unitarios. En lugar de ser uniformemente fuertes o débiles, sus capacidades varían en diferentes áreas y con el tiempo. Los puntos fuertes de Gran Bretaña en el campo de la distribución no se reflejaron en el ámbito de la salud (aunque fueron altamente cualificados por el eficaz despliegue de las vacunas). Australia, por el contrario, se destacó inicialmente tanto en el ámbito distributivo como en el salarial, pero desde entonces ha fallado en la cuarentena y la vacunación. Estas diferencias deberían prevenirnos contra la adopción de un instrumento contundente como la NST para entender las respuestas gubernamentales a la crisis de COVID. Nuestro objetivo en este documento no es sacar conclusiones firmes sobre cómo se desarrollará esta pandemia en el Reino Unido y Australia, sino más bien proporcionar un marco para entender las diversas respuestas nacionales y demostrar cómo podríamos investigar la presencia o ausencia de aspectos fundamentales de la capacidad estatal.

Nuestro argumento no es que las reformas neoliberales no sean importantes; claramente pueden crear y crear vulnerabilidades. Pero estas vulnerabilidades no están escritas en concreto. Como muestra nuestro análisis, pueden revertirse, a veces con sorprendente rapidez. Llegamos a la conclusión de que dicha reversión depende de la elección política, por lo que consideramos que los actores y sus decisiones son una variable importante en la ecuación de la capacidad del Estado.

En resumen, no cabe duda de que el recorte de costos, la privatización y la escasa supervisión reguladora pueden tener consecuencias nefastas. Pero nos parece innecesario recurrir a la abstracción del neoliberalismo (“el sistema”) cuando parece más acertado referirnos al fracaso del liderazgo y la elección política. Invocar el neoliberalismo con demasiada liberalidad como causa de los problemas del COVID sería desvirtuar su valor explicativo, y dejar a los líderes políticos y a las autoridades que toman las decisiones fuera de juego.

## Agradecimientos

Los autores desean agradecer a Caitlin Biddolph por su extraordinaria ayuda en la investigación y a dos revisores anónimos por sus útiles comentarios sobre versiones anteriores de este artículo.

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# STATE, LAW AND INSTITUTIONS: A STUDY ON JURIDIFICATION<sup>1</sup>

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## Abstract

The paper aims to analyse the current process of juridification that is altering the relation between the political and the legal realms. In the first part of the article, I discuss the existing literature on the theme: the dominant view — which finds in Habermas its precursor — reduce the increasing use of law to a process of bureaucratization, reification and depoliticization of the social field which transforms law into an instrument at the service of neoliberal governance. However, a mapping of the phenomenon reveals also an increasing use of legal remedies “from below”, to wit, by social actors who seek to reach out to courts and avail themselves of legal remedies in order to have social and political claims satisfied. I argue that this kind of juridical practices show new forms of negotiation between social actors and the state that are certainly political, even if they are played in spaces not traditionally appointed to political struggles. I claim that this “politics of juridification” require a radical re-thinking of both law as a medium and law as an institution. In order to do this, I call into question Tarde, Deleuze and Guattari and Latour, who help to redefine the juridical functioning in terms of semiotic machine, linkages and networks.

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1. Reception date: 20<sup>th</sup> March 2022; acceptance date: 23<sup>rd</sup> April 2022. The essay is the issue of a research project carried out within the ICI Berlin - Institute for Cultural Inquiry.

## **Keywords**

Juridification – Institution – Depoliticization – Habermas – Latour.

## **Resumen**

El artículo pretende analizar el actual proceso de juridificación que está alterando la relación entre los ámbitos político y jurídico. En la primera parte del artículo, discuto la literatura existente sobre el tema: la visión dominante -que encuentra en Habermas a su precursor- reduce el creciente uso del derecho a un proceso de burocratización, cosificación y despoliticización del campo social que transforma el derecho en un instrumento al servicio de la gobernanza neoliberal. Sin embargo, un mapeo del fenómeno revela también un creciente uso de los recursos legales “desde abajo”, es decir, por parte de los actores sociales que buscan llegar a los tribunales y hacer uso de los recursos legales para que se satisfagan las demandas sociales y políticas. Sostengo que este tipo de prácticas jurídicas muestran nuevas formas de negociación entre los actores sociales y el Estado que son ciertamente políticas, aunque se desarrollen en espacios no destinados tradicionalmente a las luchas políticas. Afirmo que esta “política de juridificación” requiere un replanteamiento radical tanto del derecho como medio como del derecho como institución. Para ello, pongo en tela de juicio a Tarde, Deleuze y Guattari y Latour, que contribuyen a redefinir el funcionamiento jurídico en términos de máquina semiótica, vínculos y redes.

## **Palabras clave**

Juridificación - Institución - Despoliticización - Habermas - Latour.

## Introduction

The current political-philosophical debate seems split into two very different positions: on one side, many authors announce the definitive crisis of modern sovereignty and the end of liberal democratic State; on the other side, thesis about a strong return of State authority are emerging, especially after the pandemic. Within this varied panorama, it is possible to identify at least a common element: symptoms of State transformations are diagnosed through a test of the relations between State and Law. Political and legal scholars argue that State governments, handling the pandemic, are becoming a new apparatus of capture able to penetrate through the very interstices of social space; moreover, this transformation seems to be mainly operated through a massive, excessive, even violent and unnecessary, use of juridical tools. However, an instrumental use of law doesn't represent a novelty with respect to the critics of neoliberal state: also before the pandemic, a proliferation of legal tools — such as contracts and trades — was an important element of the increasing process of monetization and regulation of social field.

Therefore, this expansion of law, which some scholars call *juridification*, represents an element of continuity between the discussions about the end of politics and the positions that announce a return of political and State authority in a conservative and reactionary way. For this reason, the article intends to study the category of juridification as litmus test for understanding the current relations between State and Law. The thesis argued in the paper is that juridification doesn't stand for a process of depoliticization; it shows instead a new kind of politics that matches neither with the traditional representative politics nor with a conservative shift by state governments. An analysis of current processes of juridification allows thinking of law and institutions in an innovative way which goes beyond the borders of modern concept of politics and, at the same time, which doesn't spell the end of (even State) politics. In order to achieve this goal, law will be interpreted as a medium for different practices of subjectivation, instead of an instrument for subjection.

## Juridification and depoliticization

In order to probe effectively the category of juridification, it's helpful to begin with its contextualisation in the philosophical debate. The word translates the German term *Verrechtlichung* used for the first time by Otto Kirchheimer to define the

gradual neutralization of class struggles during the Weimar Republic. This operation was made by an increasing legal institutionalisation and contractualisation of labour relations. Then, the concept of *juridification* became popular in contemporary debate through the work of Jürgen Habermas, who used the term in the second volume of *The Theory of Communicative Action*. In that book, Habermas presented juridification as an exemplum of the internal colonization of the “lifeworld” operated by the “system”. For the purpose of the article, it’s not necessary to explore the whole Habermas’ theory; rather, it is important to consider his understanding of juridification. For the German philosopher, an expansion of law has characterized the entire Modern age. From the origin of Modern State during the absolutism to the development of constitutional and democratic states in the XIX century, legal field of intervention constantly increased and expanded its boundaries. However, we are witnessing today a new phase of juridification that started from the development of welfare state and which is identified by an increasing “density” of legal ties. Law expands but with a different aim than in the past: not to conquer new spaces of intervention, but to return over and over again to terrains already regulated and normed. What is at stake here is an intensive and recursive use of law that intervenes to put its stamp on every kind of relations (social, political, economic) progressively increasing its level of specialization. The category of juridification refers precisely to this phenomenon of “densification” and specialization of juridical tissues, which — following Habermas — has disruptive consequences on social and political field.

The more the welfare state goes beyond pacifying the class conflict lodged in the sphere of production and spreads a net of client relationships over private spheres of life, the stronger are the anticipated pathological side effects of a juridification that entails both a bureaucratization and a monetarization of core areas of the lifeworld (Habermas, 2006, p. 364).

Juridification implies a bureaucratization and a monetarization of social bonds. For this reason, it presents “a dilemmatic structure”: even if welfare state politics promised to protect and integrate social actors, its use of legal instrument turned out into something completely different. Law became a tool for abstraction and formalization that breaks and fragments social relation so that power, on one side, and money, on the other, can be the privileged mediators for their reconstruction. Therefore, juridification is for Habermas synonymous of depoliticization: a process that empties social bonds



from their political character so that they could be thrown naked into the arms of the bureaucratic and capitalist machine.

A definition of juridification as a process of bureaucratization, reification and depoliticization of the social field, is shared by other scholars who criticize the phenomenon, arguing that it represents an irreversible transformation for the relation between law and politics. A strong imbalance in favour of law is emerging, with the risk that the traditional representative politics will be replaced by legal authority and by the increasing power of legal actors, to wit, judges of national and supranational courts. For this reason, juridification is described as “a paradoxical phenomenon” (Loick, 2014) of *depoliticisation* (Jessop, 2014), *legalisation* and *judicialisation* (Hirschl, 2008; Robertson, 2010; Shapiro & Sweet, 2002), “a turning to the courts as a substitute for traditional methods of politics” (Davis, 2010, p. 91) that strengthen neoliberal governance (Benbow, 2018). Judges, tribunals and courts seem to replace traditional politics and the effect is a kind of “legal pollution” (Erlich, 1976) where law becomes a soothing drug that neutralizes democratic processes.

## Law as a medium and law as an institution

Before declaring for certain the identity between juridification and depoliticization, we can take a step back. A neutralization of political conflicts and an increase of legal actors’ authority are visible and evident effects of juridification processes, but they don’t contain the whole phenomenon. They can’t describe its entire nature because they are only some of its consequences — not all of them. The main characteristic of juridification — as Habermas underlined in his book — is the increasing of density of legal relations: this means that the bonds binding us to other social actors in our everyday life acquire stability only if they enter a “clot” of legal rules and regulations. Following Habermas, this “densification” of legal relations is the result of law acting exclusively as a *medium* and, precisely, as a steering medium. The German philosopher makes indeed an interesting distinction between law as a medium and law as an institution<sup>2</sup>.

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2. It should be noticed that Habermas revoked the distinction between law as a medium and law as an institution in his later books, in particular in *Between Facts and Norms* (1992). For this reason, we use this distinction as a useful intuition in order to study the process of juridification, instead of a critical point of Habermas’ theory.

As long as the law functions as a complex *medium* bound up with money and power, it extends to formally organized domains of action that, as such, are directly constituted in the forms of bourgeois formal law. By contrast, *legal institutions* have no constitutive power, but only a regulative function. They are embedded in a broader political, cultural, and social context; they stand in a continuum with moral norms and are superimposed on communicatively structured areas of action. They give to these informally constituted domains of action a binding form backed by state sanction. From this standpoint we can distinguish processes of juridification according to whether they are linked to antecedent institutions of the lifeworld and juridically superimposed on socially integrated areas of action, or whether they merely increase the density of legal relationships that are constitutive of systemically integrated areas of action (Habermas, 2006, p. 366).

Following Habermas, law as a medium and law as an institution are like two sides of a rope: pulling to one side means necessarily losing ground on the other. In the process of juridification, law as a medium prevails at the expense of legal institutions. In this way, law becomes responsible for operations of abstraction which freeze the vital and political nature of social relations. The reason why this happens is attributable to the mainly procedural character of law as a medium. A procedure legitimizes itself on the bases of the accuracy of the execution and the effectiveness of the results: it doesn't need to dialogue with the social components of the lifeworld in order to obtain a legitimation. On the contrary, legal institutions — which have “no constitutive power, but only a regulative function” — are obliged to maintain a connection with the communicative structures of the lifeworld because they need an external legitimation.

I claim that this distinction between medium and institution is useful to clarify the separation among the expansion of legal field that characterized the whole Modern Age and the densification of legal tissue which belongs to our present. The movement of expansion identifies a quantitative growth of legal institutions; the “coagulation” of juridical tissue “indicates an increased recourse to the medium of law” (Habermas, 2006, p. 366). This latter consists in the prevailing of a pure instrumental logic: law becomes a tool for the organizational needs of the system, and therefore it is completely indifferent to the demands for freedom coming from the lifeworld. “Law no longer works here as an ‘institution’ wherein the claims of the lifeworld are made manifest and thus substantively legitimate, but, rather, as ‘medium’, that is, as pure instrument for the organization by the system” (Loick, 2014 pp. 760-761).

The German sociologist Gunther Teubner — who agrees with Habermas’ analysis of juridification — noticed that this process is changing the nature and the role of law. Returning to Max Weber’s distinction between “formal and material qualities of modern law” (Weber, 1978, p. 644), Teubner claims that juridification coincides with a *materialization* and *proceduralization*<sup>3</sup> of law. Material and procedural aspects of legal actions are precisely what the system use in order to organize and regulate social spheres. “Juridification does not merely mean proliferation of law; it signifies a process in which the interventionist social state produces a new type of law, regulatory law” (Teubner, 1987, p. 18). In other words, law becomes an instrument at the service of neoliberal governance.

## Legalism from below

Moving beyond Habermas’ and Teubner’s negative evaluation of juridification, it is important to keep in mind two relevant elements of their analysis, which are absolutely essential for a correct understanding of the phenomenon also for those who try developing a different approach. The first point is that juridification doesn’t consist in a simple proliferation of norms and rules; however large this proliferation is, it’s not the quantitative aspect that matters for a correct use of the category. On the contrary, juridification refers to the creation of “legal clots”, a kind of “juridical assemblages” which are held together by law. The second point is that law in this process works as a medium, that is, a technical and material tool which represents a reservoir of practices and procedures.

Keeping in mind these two elements, we can try to move on the other side of juridification: to wit, taking the point of view of social actors who increasingly recourse to the courts in order to seek satisfaction for their social and political demands. It deals with looking at the phenomenon of juridification neither from a macro-perspective (like the one of neoliberal power or the market) nor uniquely from the point of view of legal actors (that is, judges of national and supranational Court), but rather from the standpoint of *law-users*. A mapping of juridification process (Blichner & Molander, 2008) revealed that some social actors in some local context choose to use legal remedies as a privileged tool in order to solve controversies, conflicts, discriminations and fractures of the social tissue they inhabit.

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3. This term refers in particular to Wiethölter, 1965.

An important example is the one offered by the anthropologist Julia Eckert, who showed how widespread is the practice to reach out to the court and avail themselves of legal remedies in urban India. In particular, social actors who suffer discrimination and abuse of power (for example, people who gets arrested without proper procedures) are increasingly “engaged in a protest that uses legal terms against the transgressions of law by state agents and other bodies of governmental authority” (Eckert, 2006, p.45). The intention of starting a lawsuit doesn’t consist in this case with a request for the recognition of their rights. It deals rather with an attempt to *negotiate* in court the interpretation of those norms that have been previously used in order to perpetuate abuses and discriminations. “Particularly those who have to face transgressions of state legal norms by state agencies on an everyday basis increasingly make use of the law to *negotiate* their rights” (p.46). The increasing recourse to legal remedies has also an interesting effect that can already be seen in urban India: social actors — especially who found more often in the situation of struggling against the abuse of power and for example getting out of jail — are accumulating expertise and knowledge in legal field. For this reason, they become mediators for other people who want to start lawsuits or use legal tools. “People, rather than rebelling outright, enter into the rules of the game and hold these rules against those who officially represent them, resistance using channels of law with increasing frequency” (Eckert, 2006, p.71). Here, juridification turns to what Eckert calls a “legal-ism from below” where law, instead of a steering medium, serve as “a weapon of the weak”. This of the weak doesn’t eliminate the “paradox” of legal recognition underlined by many authors, such as Wendy Brown (2000). Social actors who suffer discrimination appeal to the law, but at the same time denounce its influence; moreover, they ask for a legal recognition of their singularities and they gain instead abstract rights which “normalize” and level out any difference. However, the map of current process of juridification reveals a law’s twist because legal remedies are used to solve emerging conflicts that undermine the social and institutional balance rather than to demand legal recognition. A new functioning of law is here at stake: juridical practices serve as a tool to *remedy* and *repair* social fractures. In this way, juridification is not only synonymous with an implementation of social regulation and an increase of judges’ authority. The phenomenon could also be defined as “a process whereby conflicts increasingly are being solved by or with reference to law” so that “people increasingly tend to think of themselves and others as legal subjects” (Blichner & Molander, 2008, p. 39).

The emphasis on the remedial and reparative nature of law is absolutely central in order to move from a “technical” interpretation of law’s function to a political one. Nevertheless, there is here a growing risk to fall into a trap: to wit, assigning law the function to repair politics’ shortcomings. In this case, law should intervene *ex post* and act like a medicine able to make up for the lack of legislators. This reading of the remedial nature of law creates a vicious cycle because it confirms what the supporters of the imminent crisis of politics and State already said, that is, political and democratic dynamics are gradually being replaced by law. Juridification processes that come from below would be themselves part of a broader phenomenon of depoliticization. On the contrary, in order to avoid this vicious cycle:

the ability of the courts to restrain executive action should not be regarded as an encroachment on the democratic process, nor as a poor substitute for alternative forms of direct participation. Rather it should be seen as an alternative avenue through which governmental decisions may be challenged and, as such, an essential and defensible component of our parliamentary democracy (Masterman, 2009, p. 551).

As Masterman points out, juridification is a component of the democratic mechanism and not its substitute. Getting out from the impasse that reduces juridification to a depoliticizing phenomenon means rethinking the remedial and reparative nature of law so that jurisprudence could be seen as an instrument for “creative negotiation” (Marchetti & Renna, 2016, p. 23) between the field of general and abstract rules and the specific and concrete situation that is involved in each legal case.

## **Law as a semiotic machine**

In an attempt to break the identification between juridification and depoliticization, it seems necessary a theoretical engagement in the definition of law’s remedial nature alongside a mapping of the current process of “legalism from below”. This kind of theoretical operation has rarely been attempted in the literature that studies the phenomenon of juridification; nevertheless, it appears crucial in order both to understand the relationship between politics and law, and to focus on those material, technical and procedural aspects of law that Habermas identified as the main responsible for the

detachment between legal field and social spheres. Changing the way of thinking about law as a *medium* implies also a transformation of the concept of legal institution, as well as an approach on the separation between law as a medium and law as an institution different from that of Habermas.

In the space of this article, I can only indicate a possible path — not the only one<sup>4</sup> — that leads to a reconsideration of both material and institutional nature of law in an innovative way. This path calls into question some authors who usually don't be immediately recognized for their work on law and legal practice, such as Gabriel Tarde, Gilles Deleuze and Félix Guattari, and Bruno Latour. These authors share a *processual view of society*<sup>5</sup>: the social is never static, but a dynamic process of composition. Social actors move in every direction creating bonds, networks, assemblages so that the primary social element is “relational” rather than a solid and atomistic one. This particular morphology of the social help to rethink political and legal practices in a dynamic and innovative way: social actors are engaged in relational flows — which are always in becoming, rather than in crystallized groups that constantly repeat the same standard. For this reason, it needs an instrument of regulation of the social which is both flexible in reflecting the changing of social flows and able to partially contain the contingency and the precariousness of every established connection.

In order to understand if law could be this kind of instrument, we start with the analysis of Bruno Latour's *Note brève sur l'écologie du droit saisie comme énonciation* (Latour, 2004) — an article published soon after the release in France of *The Making of Law* (2002). In the text, Latour appears inadvertently to reproduce the distinction between law as a medium and law as an institution, but in different terms. The French philosopher talks about the difference between *le droit comme institution* (law as an institution) and *le droit comme régime d'énonciation* (law as a regime of enunciation). In the comment of Latour's text, Kyle McGee noticed that this distinction is developed from a simple question: “What does the law do?”. The answer sounds equally simple: “It says things”. However, this means that “the whole process of enunciation rather than

4. Another possibility would be, for example, to call into question the authors who belong to *legal institutionalism*. This latter is not a unit school of thought, but the work of jurists such as Maurice Hauriou and Santi Romano, combined with Karl Llewellyn's reflection on legal institutions, could represent an interesting point of departure in order to rethink both procedural and institutional functions of law. For a reading of these authors who goes in the direction we suggest, see: Chignola, 2020; Croce, 2021; Salvatore, 2019.

5. In the space of this article, I can reconstruct neither the complex “morphology” of the social field that these authors developed in their work nor the numerous connections among their perspectives. See: Tarde, 1903; Tarde, 1999; Deleuze & Guattari, 1987 (in particular pp. 219-221 where there is an homage to Tarde); Latour, 2005 (where Tarde is presented as a precursor of Actor-Network Theory).

solely the utterance itself composes the beating heart, systole-diastole, of legality” (McGee, 2012, p. 6). A legal action is always a speech act: a statement or an utterance, but with a particular quality. Legal words aren’t meant to communicate, dialogue or transmit a message; they intend to *order*. This is precisely the reason why Latour talks about “a regime of enunciation”: the expression comes from Deleuze and Guattari’s reflection on language as a pragmatic system. Following the authors of *A Thousand Plateaus*, every statement has always a performative function, to wit, it works as an order-word.

The elementary unit of language – the statement – is the order-word. Rather than common sense, a faculty for the centralization of information, we must define an abominable faculty consisting in emitting, receiving, and transmitting order-words. Language is made not to be believed but to be obeyed, and to compel obedience.” (Deleuze & Guattari, 1987, p. 76).

The performance of a statement produces effects at two different levels: on one side, it has resonance effects on other speech acts, creating what Deleuze and Guattari call “regimes of signs” or “semiotic chains”. On the other side, it produces cutting, selecting and distributing effects on the materiality of the bodies to which the legal word is addressed<sup>6</sup>. Then, enunciating means ordering, but in the sense that a composition and an organization of both statements and bodies is produced; the result is a hybrid assemblage “of actors, both ‘material’ and ‘semiotic’, bodily and linguistic, corporeal and incorporeal” (McGee, 2012, p. 7). An order-word works precisely because it is passing some flows instead of others: it selects, distributes, cuts, folds. For this reason, Deleuze and Guattari write in their book on Kafka that: “the statement (*énoncé*) may be one of submission, or of protestation, or of revolt, and so on; but it is always part of the machine. The statement is always *juridical*” (Deleuze & Guattari, 1986, p. 82). No matter what the purpose of the statement is, it has always pragmatic and performative effects: this ability to affect both the material and the semiotic field is exactly what distinguishes the juridical speech. Law’s words order, organize, regulate, compose or decompose, and they always produce material and semiotic effects on the way we live and relate to our social bonds.

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6. For a reconstruction of Deleuze and Guattari’s work on pragmatic language and its connection with law and jurisprudence, see Rametta, 2020. Here I cannot but leave aside the analysis of Deleuze’s reflection on law; on this topic, see: Braidotti & Colebrook & Hanafin, 2009; De Sutter & McGee, 2012.

## Linkages and networks

Reading the instrumental, procedural and technical nature of law as a semiotic function in the sense suggested by Deleuze and Guattari, could help understand the political scope of juridification process coming from below. Social actors don't use legal remedies in order to ask a legal recognition, that is, a granting of abstract and liberal rights. Instead, they recourse to law so that its semiotic machine could intervene to untie the conflictual relations that jeopardize the endurance of the social field, or to compose and tie those social interactions which need some kind of stability. In that sense, the process of juridification that are increasing in urban India could be read as an attempt to cross the legal border in order to break the discriminating power relations that affect the social tissue. Other examples of juridification, such as the strategic litigation used by the LGBTQIA+ community, are attempts to provide stability and endurance to social relations through the medium of law (this is the case, for example, for non-conjugal families and same-sex couples<sup>7</sup>).

In both cases — whether used to untie or to compose social bonds — law becomes a semiotic medium able to transfer a certain interaction “from a condition of legal *unspeakability* to one of legal *speakability*” (Croce, 2018, p. 17). As Mariano Croce points out:

This recognition model uses juridification — viz., the increasing use of law as a political mean — as an effective instrument to bring out the multiple ways in which social actors self-organize and how this self-organization can be consolidated with recourse to a legal proxy. [...] The recognition mechanism changes significantly: it does not admit formerly excluded people based on legal schemes that are already in place but enable excluded networks to expand existing law through normative negotiations (Croce, 2020, p. 13-14).

In this case, law functions as a remedy that doesn't just neutralize or extinguish social conflicts. On the contrary, it offers procedures, techniques and knowledge to social actors so that they can negotiate the way to pin down the network relations in which they are tied. It deals with a process of social organization in which the agency is distributed among all the actors, and in which the bargain is produced following a *jurisprudential logic*, to wit, case by case. Law as a semiotic medium is no more an instrument that

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7. On this topic, see: Croce, 2018; Palazzo, 2021.



empties social spheres of their political nature; as Latour points out, law as a regime of enunciation works as a linkage (*enchaînement*): it plays the role of mediator “permettant de relier, retracer, tenir ensemble, rattacher, suturer, recoudre” (Latour, 2004, p. 2). The remedial nature of law is here transformed in an operation of continuous mediation, where the prefix *re-* stands for the repetition of juridical intervention because of the impossibility to achieve a definitive contractualisation of social relations. These latter constantly change, and their contingency has to be both reduced and preserved by law: reduced because social actors use juridical practice especially to obtain stable effects of composition or resolution of their social bonds; preserved because these effects have to maintain a degree of flexibility. Stable doesn't mean permanent, otherwise legal categories risk to become chains rather than linkages.

Thus, following Latour and Deleuze and Guattari, the procedural and instrumental aspect of law is translated in a semiotic function that creates linkages. This implies also a different approach to the institutional nature of law: for Habermas legal institutions are the results of an expansion of the legal field that contributes to the colonization of the lifeworld operated by the system. Law as an institution is instead defined by Latour as a network (*reseau*): “institutions don't exist under the mode of the sphere, the domain or the region, but under the mode of the network – *à la* Tarde” (Latour, 2004, p. 6, my translation). Legal institutions are the container of all the process of negotiation that social actors make through the juridical tools; it reflects the contingency and the becoming of social flows, and it can't be therefore the expression of a permanent and static order.

For this reason, Latour uses Tarde's concept of network (and more generally its micro-sociological approach) in order to think the institutions as assemblages, “clots” of juridical relations which are kept together by the repetition and imitation of certain practices and standards, and which remains at the same time open to a re-negotiation of those practices and standards when fractures come to tear the connective tissue. Institutions are networks: not the static result of a rigid social organization, but a negotiation process. The effect of this kind of institutional phenomena is an increased density of social bonds, but this means here a growing engagement of social actors in the creation of new bodies of regulation, rather than a loss of political agency.

## Concluding remarks

The analysis of the current process of juridification was meant to understand the alterations in the relationship between political and legal field. Our concluding remarks

highlights three different points which comes out from our analysis. Firstly, a mapping of juridification underlines the ambiguous and heterogeneous nature of the phenomenon. On one side, it produces effects of depoliticization and neutralization of democratic process that couldn't be underestimated; on the other side, there is also a recourse to law from below, operated by social actors, which appears to have a positive impact on the composition and organization of the social field. Secondly, both the definition of juridification as a "densification" of legal relations and the distinction between law as a medium and law as an institution, have to be reconsidered in order to recognize the positive effects of the increasing use of juridical remedies. In particular, the procedural and technical aspects of law could be traced to its semiotic function that allows social actors to negotiate the forms and the stability of their bonds. In this way, law as a medium is conceived as a regime of enunciation that works as a linkage, and law as an institution becomes a creative process that produces networks and assemblages. Thirdly, the densification of the juridical field — instead of a way to crystallize social spheres and neutralize their political potential — is a phenomenon that shows a new kind of politics.

By using law as a medium to define their position in relation to other social actors, many law-users are developing new institutional processes of negotiation, mediation and organization of the social field. These processes appear political actions rather than forms of depoliticization, even if they are played in spaces not appointed to political struggles. In this sense, juridification could help to rethink politics beyond its traditional borders: instead of announcing an imminent end of the State or its conservative turn, the phenomenon of juridification reveals new negotiation practices between social groups and the state in which social actors are directly involved — through the medium of law — in the creation of forms of regulation of the social body. This opens the door to a legal and institutional pluralism that could be a weapon against reactionary tendencies in state politics.

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# POLITICAL AND EPISTEMIC MEDIATION: “COMPLEX SOVEREIGNTY” AND REPRESENTATIVE DEMOCRACY<sup>1</sup>

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## Abstract

This article investigates the complex balance between political mediation and epistemic mediation within representative democracy. The proposed path develops starting from the concept of “complex sovereignty”, which has a long and articulated history behind it but is also used in the most recent analyses of political authority. The aim is to make this concept *more complex* by trying to include not only the dynamics of political mediation but also epistemic ones through the *pluralization* of the concept of people and time, as well as of the concept of competence. In the last part of the article, the arguments put forward will be discussed within a more general theoretical scheme that identifies complexity as the distinctive feature of democracy.

## Keywords

Political Representation; Epistemic Mediation; Complex Sovereignty; Representative Democracy; Disintermediation.

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1. Reception date: 21<sup>th</sup> March 2022; acceptance date: 24<sup>th</sup> April 2022. The essay is the issue of a research project carried out within the Università Cattolica del Sacro Cuore (Milano).

## **Resumen**

Este artículo investiga el complejo equilibrio entre la mediación política y la mediación epistémica dentro de la democracia representativa. El camino propuesto se desarrolla a partir del concepto de “soberanía compleja”, que tiene una larga y articulada historia a sus espaldas pero que también se utiliza en los análisis más recientes de la autoridad política. Se trata de complejizar este concepto tratando de incluir no sólo las dinámicas de mediación política sino también las epistémicas a través de la pluralización del concepto de pueblo y tiempo, así como del concepto de competencia. En la última parte del artículo se discutirán los argumentos expuestos dentro de un esquema teórico más general que identifica la complejidad como rasgo distintivo de la democracia.

## **Palabras clave**

Representación política; Mediación epistémica; Soberanía compleja; Democracia representativa; Desintermediación.



## Introduction and aims

In contemporary political theory concerning the future of democracy, two themes are intertwined more than others: the development of technocratic powers and the theme relating to the transformation of political representation. This is inevitable because the accusation directed at technocratic power is that, on the one hand, of disfiguring representation, above all because it would orient the relationship between rulers and the governed in an antidemocratic direction, and on the other hand, of promoting and supporting those tendencies towards depoliticization taking place in Western democratic societies.

A possible key to deepen the link between these two themes at the centre of contemporary political theory is linked to a specific aspect of the broad and articulated crisis of democracy, namely the crisis of mediation<sup>2</sup>. This includes the development of immediate modes of communication and interaction (typical above all of social logics), the structural crisis of the mediation of political parties (Mair, 2013), the change in the selection criteria of political classes (Best & Higley, 2018), and the crisis of the recognition of epistemic mediations (Pamuk, 2021): all they highlight how the concept of mediation is still central to understanding political dynamics. In the following pages, two of the main declinations by which mediation is expressed — *political* mediation and *epistemic* mediation — will be considered; these are threatened by a series of tendencies that aim to cancel them. This is worrying because the current era foresees an increasingly complex articulation of democratic decisions and, therefore, requires an increasingly incisive osmosis between these two types of mediation. In other words, to take up an important suggestion, although technocracy and democracy are antithetical — democracy is based on the assumption that everyone can decide everything, whereas technocracy claims that the few who possess the necessary knowledge decide — it is nevertheless significant to note that the problems to be solved in contemporary democracies are increasingly complex and require adequate preparation (Bobbio, 2010); therefore, it is important to be able to find a balance between political mediation and epistemic mediation.

This article aims to deepen this balance, which of course is not easy to achieve or to maintain within the broad and articulated crisis of democracy (Bazzicalupo, 2014). The path that will be proposed will develop starting from the concept of *complex sovereignty*,

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2. An ancient theme and widely analyzed in political philosophy (Galli, 2010).

which has a long and articulated history — present in the reflections of Condorcet and developed by Fichte (Rosanvallon, 2017, pp. 108-122) — and also used in the most recent analyses on political authority (Grande & Pauly, 2005). The aim is to rediscover some original aspects of this concept to grasp the problematic nodes that lie behind the relationship between technocracy and democracy. Above all, we will try to consider the concept of complex sovereignty not only in relation to political mediation but also including epistemic mediation to propose an articulated theory of democracy that tries to place the opposition between democratic legitimacy and epistemic legitimacy in a more realistic and complex framework.

The apparent contradiction to be resolved revolves around the fact that the attempt to deconstruct political sovereignty by technocratic power accentuates the crisis of political representation and therefore should be weakened. However, at the same time, technocratic powers, through forms of epistemic mediation, are nevertheless indispensable for democracy, despite their problematic action. The balance between political mediation and epistemic mediation will be discussed, in conclusion, within a more general theoretical scheme that identifies “complexity” as the distinctive feature of the theory of democracy (Innerarity, 2022) and where *complex sovereignty* occupies a relevant and by no means negligible position.

## **Political mediation and epistemic mediation: the principle of delegation**

Since the second half of the twentieth century, Western democracies have witnessed a development of the horizontal dimension of politics so impetuous as to overshadow its vertical dimension (Sartori, 2011). In other words, the development of forms of unconventional participation, the emergence of non-institutionalized movements, and the increasingly felt need to promote ways of direct participation in political life have led to a development of the horizontal dimensions of power, which have certainly had the merit of revitalizing some important practices of democracy, but, at the same time, they have obscured a fundamental idea, namely that according to which “the democracy of the moderns is representative and develops vertically, from the citizen upwards (up to the government that governs it)” (Sartori, 2011, p. 114). This is one of the main causes of what we now call the crisis of political representation because, with the erosion of the balance between the vertical and horizontal

dimensions of power, even the logics that determine the relationship between rulers and governed have undergone alterations<sup>3</sup>.

The tendency to neglect the vertical dimension of democracy has led to a relative decrease in attention on that intermediate area that defines the distance between those who govern and those who are governed, which is instead central to the dynamics of political representation (Campati, 2022a; Müller, 2021). In this sense, as is well known, the rhetoric of disintermediation has widened forcefully, fuelling a real revolt against intermediate bodies (Urbinati, 2015), which, however, are still at the base of some proposals for the revitalization of democratic systems, especially within a framework of democratic corporatism (Pabst, 2021, pp. 91-106, 134-143). In fact, in the history of modern democracy, intermediate bodies have always been at the centre of cultural and political controversies between those who want to cancel them and those who want to promote them. There is no doubt, however, that today, the relationship between democracy and disintermediation is characterized by some rather ambiguous trends that need to be monitored (Campati & Palano, 2022). Many of these ambiguities can be traced back precisely to the tension between epistemic mediation and political mediation.

*Epistemic mediation* is understood as a dynamic that develops within the more general reflection on *technocracy* and is based on a basic observation according to which the unequal distribution of knowledge — the *division of cognitive labour* (Dorato, 2019, p. 14) — makes it inevitable that many individual or collective decisions are based on some kind of mediation or consultation with experts more competent than the individual citizen. In the actions we perform in daily life, consciously or unconsciously, we rely on someone's expertise to make those particular actions possible (for example, when traveling by aeroplane, we rely on the competence of the pilot and trust the skills of those who designed and built the aircraft). In dramatic ways, we realized the indispensability of the competence of some professional figures (doctors) during the Covid-19 pandemic, when it became clear that the rhetoric that propagates the idea of epistemic undifferentiation is misleading: A new chapter has been added to the complex relationship between politics and competence, which must be constantly monitored and rethought (Pamuk, 2021). This complexity has been fuelled over the years also by those hypotheses that provide for a twist of representative democracy to meritocratic faith,

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3. On horizontal and vertical conceptions of politics, see Bartolini (2022, pp. 35-43) and Boni (2021). On the extensive literature on the transformations of political representation, see Castiglione and Pollak (2019) and Albertone and Castiglione (2018); Di Sciullo (2022).

inspired by the efficiency guaranteed by some political regimes, such as the Chinese one (Bell, 2015).

In the purely political sphere, all the suggestive hypotheses proposed in recent years concerning the possibility of guaranteeing *permanent* and *direct* contacts, therefore without mediation, between citizens and political decision-makers have failed to improve the functioning of representative democracy. In fact, as has been observed, our societies are too complex, articulated, and difficult to manage to be governed, for example, by drawing lots for public office or through a continuous flow of electronic voting. The hypothesis of politics without mediation does not make power “more democratic” but distances it even more from citizens: Therefore, a network of mediations is still indispensable, because one does not govern without skills and knowledge and, at the same time, without orienting the large bureaucratic apparatuses (Schia-vone, 2013, p. 96)<sup>4</sup>.

All these findings on epistemic and political mediations demonstrate that the *principle of delegation* is indispensable in both the cognitive and political fields (Dorato, 2019, p. 14). Therefore, the growing attitude of suspicion towards *knowledge mediators* (experts) and *political mediators* (the political class and political parties) undermines the entire architecture of representative democracy because it cannot do without such mediations. The causes of the wide diffusion of this attitude are numerous and now cemented in a large part of the population, thanks to the use of information and communication technology (ICT), and it can be summarized in the widespread trend that we indicate with the term *disintermediation* (Gellman, 1996). In fact, the multiplication of sources of information and the reduction of the costs of producing and distributing opinions make it possible to erase the gap between “high” and “low”, but, at the same time, they also allow the opinions of experts and amateurs to be placed on the same level, enabling each individual to aspire to present himself or herself as an “agent of truth” (Palano, 2020, p. 162). In short, in the words of Dorato (2019, p. 67):

“the solution to the fundamental conflict between the principle of delegation made necessary by the division of knowledge and the principle of the decision-making autonomy of the citizen, however, cannot consist in making everyone express

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4. A specific study should be made on the mediation function of political parties (cf. Mair, 2013; Mancini, 2015; and, more generally, Katz & Crotty, 2006).

themselves on everything. Rather, it must consist in organizing a representative democracy in such a way that the rationality of a decision based on the principle of competence and representation can coexist with our autonomy"<sup>5</sup>.

Noting that the principle of political and epistemic delegation is a crucial element for the functioning of the democratic system, it is now necessary to direct attention to a conceptual formula that explains how this assumption is valid, that of "complex sovereignty", elaborated by Pierre Rosanvallon (2000) in his work on the genesis of representative government. In fact, to grasp the complexity of the link between political mediation and epistemic mediation, it is necessary to dwell, at first, on some elements of the theory of representation.

### **Complex sovereignty: pluralization of the people, the time of politics (and competences)**

According to Rosanvallon's (2000) reconstruction, one of the central figures to understanding the genesis of representative democracy is surely Nicolas de Condorcet because he "reproblematizes" an issue that led to an *impasse* in political debate during the French Revolution<sup>6</sup>. In fact, whereas many of his contemporaries saw representative government as an *alternative* to the impossibility of direct and immediate democracy, he managed to identify an autonomous and well-defined model that is the basis of modern democratic constitutionalism (Urbinati, 2020, p. 175). In other words, according to Rosanvallon (2011), Condorcet's "main idea" is to "allow for different forms of popular sovereignty" (p. 108) to define an *indirect* democracy and not simply a model of democracy that must take note of the impossibility of direct contact between those who have power and those who do not.

The pluralization that Condorcet describes investigates the *modalities* and *temporalities* of expression of political life. Therefore, it allows us to overcome the opposition between Sieyès' conception, according to which the collective will can exist only through

5. The translation from Italian into English is by the author. On the implications of the "symbolic mediation" of the intellectual technocrat, also in relation to the function of political mediation, see Antonelli (2019, pp. 89-91).

6. It is no coincidence that Dorato (2019, pp. 105-123) also uses Condorcet's theorem to demonstrate that an increase in scientific literacy is a necessary condition for citizens and the public to be able to decide in the most autonomous, reactional, and free way possible. Urbinati (2014, p. 115) recalls that supporters of epistemic democracy consider Condorcet a mentor of theirs.

an organ that gives it shape, and that of the Parisian “sectionaries”, who, instead, imagine the people as subjects that are immediately encountered on the street (Rosanvallon, 2011, p. 109). In short, Condorcet’s intent is to present representative democracy not as the synthesis of contradictory principles but as a specific model that is opposed to an immediate democracy, which cancels mediations and makes the relationship between representatives and those they represent rather confused. In these terms, complex sovereignty “can be defined as the political form adequate to a more faithful expression of the people, inasmuch as functionally *and* materially multiplied” (Rosanvallon, 2011, pp. 108-109).

The pluralization of sovereignty concerns the modalities and temporalities of politics (Cuhna & Cassimiro, 2022). As for the former, Rosanvallon (2011) recalls that the people are not a monolith but present themselves in at least three forms: electoral people, social people, and the people as principle (pp. 109-110). The first is easily identifiable because it assumes numerical consistency in the ballot boxes and manifests itself in the division between a majority and a minority, even if for this reason it is evanescent and presents itself in a discontinuous form. Social people, on the other hand, are the set of an uninterrupted series of minorities, active or passive, so they are the sum of all the protests and initiatives of all kinds present in society. Finally, principled people give consistency to the electoral people in the form of inclusive equality, based on the possibility for everyone to be fully considered in their existence and dignity. These are the results of the pluralization of ways of doing politics.

However, as anticipated, Rosanvallon (2000) recalls that even the temporalities of the political must be pluralized. A central point in the theory of political representation is defined here: In fact, he maintains “that is why the constituent power understood as *direct existence* of popular sovereignty cannot be taken as a rule of democratic life” (Rosanvallon, 2011, p. 111) because it is impossible that it can be expressed in immediate form, as democracy takes on meaning and form only as a construction in history. In this sense, democracy is a function of time, and the people, as a collective political subject, are also a figure of time (Rosanvallon, 2011, p. 179). In essence, it is necessary to hold together a series of temporal dimensions that pluralize the temporalities of democracy: vigilant time of memory, long time of constitution, limited time of a parliamentary mandate, short time of opinion, and so on must confront and adapt continuously in order to give consistency to the democratic ideal. As is evident, according to this scheme, democracy is the set of a series of tensions that are never definitively resolved but that are continually stimulated by internal and external transformations.

Therefore, if political mediation (in a representative democratic regime) is based on the pluralization of the people and the time of politics, as far as epistemic mediation is concerned, of course, a specific discourse must be made. However, it is not entirely accidental that the two elements at the base of the pluralization proposed by Rosanvallon (2011) (*people* and *time*) can be taken as coordinates to analyse the epistemic dimension of democracy. In fact, the accusation that is addressed to the holders of epistemic mediation (individual personalities and institutions) is that of not being democratically legitimized through an electoral mechanism of *input legitimacy* (Scharpf, 1998), and therefore, their actions would be in clear contradiction to popular sovereignty. Starting from this observation, as is known, a heated and varied debate has opened around the *epistocracy*, which also includes radical proposals on the role of the competent individuals within democracy (Brennan, 2016; Estlund, 2008; Nichols, 2017) and that variously recall the well-known concept of "epistemic democracy" (Cohen, 1986). The most important fact to highlight is that surely the various attempts to assert technocratic powers as more relevant than democratically elected institutions represents an attempt at depoliticization, which is rightly worrying because it weakens the indispensable procedures of participation and popular legitimation<sup>7</sup>: In short, the risk is that epistemic doctrine reduces democracy to a chapter in the search for truth (Urbinati, 2014, p. 127). At the same time, as already mentioned, the figures of epistemic mediation are indispensable for the functioning of democratic institutional procedures and for the formulation of public policies, regulated by authorities operating in very different areas from each other. It is therefore appropriate to try to overcome the polarization that sees the *democratic legitimacy* that requires that everyone's speech be received with respect and tolerance and the *democratic competence* that requires that the discourse be subject to a disciplinary authority that distinguishes good ideas from bad ones (Post, 2012, p. 34). One way to achieve this goal is precisely to insert this dichotomy within the concept of "complex sovereignty" to certify the indispensability of a pluralization of mediations: political mediation linked to democratic legitimacy and epistemic mediation linked to competence.

The second element of the pluralization of popular sovereignty proposed by Rosanvallon (2011), after the people, is time. As we have anticipated, even with respect to this second element, we can find a link with epistemic mediation because sometimes time is

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7. Innerarity (2022, p. 275) writes, "Direct democracy and plebiscite forms of decision are instruments of an apolitical character, and if they enjoy greater prestige today than they really deserve, it is essentially because they fall within that general tone of a democracy without politics that distinguishes our society". All quotes from Innerarity (2022) were translated from Italian into English by the author.

the dimension that is evoked when recourse to epistemic power is used. Of course, this is not always the case. Epistemic authorities are often permanent and governed by specific temporal logics, and there is no doubt that they too are influenced by the dynamics of acceleration (Rosa, 2010), especially in an era in which the “exceptional” moments to be governed seem to be increasingly numerous (the management of Covid-19 is perhaps the latest emblematic example in this sense). Therefore, just as “the notion of general will loses all consistency if it is considered only in the form of immediacy” (Rosanvallon, 2011, p. 178), in the same way, the notion of epistemic mediation cannot be exhausted immediately, in the resolution of a problem that imposes itself suddenly, but must be “pluralized”, that is, inserted within a dynamic that provides for the balance between temporal diversities: in the first place, the immediate time of the decision to be taken on the wave of urgency and the time of reflection that precedes the decision of the political authority.

To summarize, the pluralization of sovereignty proposed by Rosanvallon (2011), in the wake of Condorcet investigates the modes and temporalities of politics, thus determining the creation of a plural vision of the people and a plural vision of the times of politics, which are the basis for the creation of the concept of political mediation within a representative democracy. What has been proposed in the previous pages is to reflect on epistemic mediation starting again from the notions of people and time (both are decisive for understanding the complex relationship between democracy and the epistemic dimension) and thus try to enrich the concept of pluralization of sovereignty. In other words, the classic notion of “complex sovereignty” would thus include both types of mediation (political and epistemic), becoming a conceptual dimension capable of grasping some important dynamics of the transformation of democracy, starting from the fact that the latter is an articulated system, regulated by a series of balances, and often unstable. In fact, one of the shortcomings in the broad debate on democracy is an oversimplification, sometimes based on a conceptual and ideological confusion that needs to be overcome.

## **Complex democracy: expanded sovereignty**

The myriad of publications dedicated to the health of the democratic system sometimes do not help to fully understand the transformations that affect it because conceptual categories, historical examples, and perspectives very different from each other are used, which risks confusing the levels of analysis. It is therefore inevitable that, despite



careful analyses on the genesis and development of democracy (Butti de Lima, 2019; Crick, 2002; Dunn, 2005; Petrucciani, 2014; Salvadori, 2016), some simplifications on the functioning of representative democracy are spreading, especially in public opinion. Two examples are represented by political and epistemic mediation, as we have mentioned: both accused by the *ideology of immediacy* (Innerarity, 2020, pp. 160–161) but both indispensable for the functioning of democracy.

To avoid simplifications, it is therefore important to study representative democracy with an approach that puts it “up to the complex ways of organizing and functioning of our societies” (Scuccimarra, 2017, p. 17). In fact, as Daniel Innerarity (2022, pp. 9–11) pointed out in his latest book, the main threat to democracy today is not violence or inefficiency but simplification, which is expressed with two faces: a conceptual inadequacy and an ideological tool. There is much concrete evidence of this, and some of the evidence that Innerarity (2022) indicates recalls the double question of political and epistemic mediation: for example, the simplifying opposition between elite and people, or the extension of the category of efficiency to the main element of the political system. After acknowledging the difficulties that an excess of simplification produces, Innerarity (2022) elaborates a *theory of complex democracy* to delimit a conceptual horizon suitable for the needs of contemporary democratic life, in the full conviction that “democracy is not incompatible with complexity, on the contrary: its internal dynamism and its capacity for self-transformation make it the system of government with the best structures to manage it” (p. 19). The challenge posed by this interpretation is difficult because it aims to integrate the conceptual equipment of a discipline (political philosophy) with that of the natural sciences, thus defining a *post-disciplinary* horizon (Innerarity, 2022, pp. 53–55)<sup>8</sup>. Leaving aside this suggestive interpretation, which cannot be studied in depth here, it is, however, important to underline how the theory of complex democracy offers a foundation on which to place the reflection on “complex sovereignty” in the terms with which it was presented in the previous pages.

There are several reasons that justify this, starting from the sharing of the three basic assumptions that Innerarity (2022) places at the base of his theory (pp. 92–93) and which are also congruent for the perspective adopted in this article: First, complexity is a factor of greater democracy, especially because the latter is bound to the ability to

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8. Innerarity's (2022) proposal is to attempt a dialogue between political theory and the natural sciences and their concepts to bridge the rift between the natural sciences and the human sciences, in the wake of what the ideologues of modern democracy did (p. 53). In fact, the use of natural sciences to understand political phenomena is a perspective adopted by several scholars, such as Walter Bagehot, a well-known intellectual during the Victorian Age, especially for some of his interventions on the relationship between “science” and “politics” (Campati, 2022b).

introduce all ideas into the processes of formation of political will, the experiences and perspectives of a society that no longer tolerates the logic of hierarchical deliberative procedures. Second, democracy is the regime of complexity because it articulates social pluralism better than other regimes and makes it possible to learn about society. From this perspective, democracy is therefore also the fertile ground for the creation and development of intermediate bodies. Finally, the third element Innerarity (2022) indicated recalls that democracy and complexity are united by the difficulty of governing considering the variety of requirements of a plural system. This point refers more directly to the question of representative government and therefore to the intrinsic contradiction that is inherent in it, namely the need to allow the participation of all but within a logic that provides intermediaries to express the popular will.

On the basis of these premises, Innerarity (2022, p. 287) sets some objectives, including overcoming the antagonism between populism and democracy, which is presented as a negative consequence of the polarization between competence and participation. In fact, he explains that the impetus with which the opposition of technocracy and populism has burst into the current ideological landscape is proof of how the terms of the issue are not well centred. The connection between this contrast and the dual declination of mediation analysed above is quite evident. In fact, it is known that the impulse to immediacy, and therefore to the annulment of mediation, is one of the main characteristics of populism (Rosanvallon, 2020), which criticizes the action of intermediate institutions in favour of forms of political immediacy. In the same way, one of the declinations of the technocratic problem — as pointed out in the first paragraph — is the problematic acceptance, in a democracy, of epistemic mediation.

Therefore, there is a point of contact between the desire to overcome the antagonism between populism and democracy and the intent to include in the concept of “complex sovereignty” political mediation and epistemic mediation with their respective pluralizations. In this way, it is possible to add an element to the theory of complex democracy and, in particular, to the reflection on political representation. In short, to overcome the antagonism between populism and democracy, it is necessary to “complicate” sovereignty, that is, consider it in its totality (Galli, 2019), without adopting simplifying shortcuts. In this way, the polarization between democratic legitimacy and epistemic legitimacy is attenuated, and the reflection on the transformations of democracy is brought back into a problematizing logic, which is perhaps the only one capable of grasping the most radical transformations.

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# RESTORATION OF SOVEREIGNTY? INTERPRETATIVE LECTURES OF SOVEREIGNISM BEYOND NATIONALISM AND POPULISM<sup>1</sup>

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## **Abstract**

Sovereignism has been lately widely used in the public debate, particularly in the context of the European Union, often misused as a plain synonym of nationalism or populism and paying little attention to the different levels of analysis. In this article we attempt to explore the concept by proposing interpretative lectures based on several theoretical approaches, including discourse theory and cleavage theory. In particular, we seek to better understand the concept of “sovereignism” through a comparison of articulations and linkages with the concepts of populism and nationalism. We also show the different nuances that the concept of sovereignism has acquired in some specific

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1. Reception date: 15<sup>th</sup> March 2022; acceptance date: 19<sup>th</sup> April 2022. The essay is the issue of a research project carried out within the Catholic University of Bristol and the Università Cattolica del Sacro Cuore (Milano).

contexts, for example in Italy, where it has become a buzzword for far-right parties and movements, such as Matteo Salvini's Lega and CasaPound. In conclusion, we acknowledge the important elements of continuity with populism and nationalism, but also stress the elements that would characterise sovereignty as an ideology in its own right, such as the narratives based on the return to a past where sovereignty would be the exclusive preserve of the people and the nation.

### **Keywords**

Sovereignism; populism; nationalism; cleavage theory; discourse theory; far-right parties; ideology; past.

### **Resumen**

El soberanismo ha sido últimamente muy utilizado en el debate público, especialmente en el contexto de la Unión Europea, a menudo mal utilizado como un simple sinónimo de nacionalismo o populismo y prestando poca atención a los diferentes niveles de análisis. En este artículo intentamos explorar el concepto proponiendo lecturas interpretativas basadas en varios enfoques teóricos, incluyendo la teoría del discurso y la teoría de los clivajes. En particular, tratamos de comprender mejor el concepto de "soberanismo" mediante una comparación de las articulaciones y los vínculos con los conceptos de populismo y nacionalismo. También mostramos los diferentes matices que el concepto de soberanismo ha adquirido en algunos contextos específicos, por ejemplo en Italia, donde se ha convertido en una palabra de moda para los partidos y movimientos de extrema derecha, como la Lega de Matteo Salvini y CasaPound. En conclusión, reconocemos los importantes elementos de continuidad con el populismo y el nacionalismo, pero también destacamos los elementos que caracterizarían al soberanismo como una ideología propia, como las narrativas basadas en el retorno a un pasado donde la soberanía sería patrimonio exclusivo del pueblo y la nación.

### **Palabras clave**

Soberanismo; populismo; nacionalismo; teoría del clivaje; teoría del discurso; partidos de extrema derecha; ideología; pasado.



The future has been transformed from being the natural habitat of hopes and the most legitimate expectations into a scenario of nightmares: the terror of losing one's job and the social status associated with it, the terror of having one's home and the rest of one's goods and chattels confiscated, the terror of watching helplessly as our children fall helplessly down the downward spiral of loss of well-being and prestige, and the terror of seeing the skills we have worked so hard to learn and memorise stripped of what little market value they might have left. The road to the future thus bears for us an uncanny resemblance to a path of corruption and degeneration. Could the road back to the past not be used as a route to clean up all those harms committed by the futures that were once present?

Zygmunt Bauman, *Retrotopia*

The xenophobic resurgence we are now witnessing has moved from the margins to the centre of politics. It is nothing like the vehement violence of fascism and Nazism, but it is part of the same broader political family. When nostalgia and pessimism are politicised they, quite logically, produce demands for various kinds of exclusion.

Colin Crouch, *The 'left behind' and pessimistic nostalgia*

## Introduction

In *Retrotopia* (2017), one of latest works by Zygmunt Bauman (1925-2017), it is argued that when the future appears uncertain and fearful, contemporary mankind is sort of tempted to look at and idealize the past, i.e., retrotopia as an ideal time situated in the past, a neologism<sup>2</sup> based on the combination of the Greek word τόπος “place” and the Latin suffix -retro, meaning “backwards, behind”<sup>3</sup>. Now precisely the discourse(s) built around the narrative of a lost sovereignty is what underpins sovereignty. In this article we attempt to put forward some lines of interpretation regarding the concept of “sovereignism”. To this end we propose a series of theoretical approaches, including the discourse theory and the cleavage theory and, in the attempt to show its articulations and linkages with the concepts of nationalism and populism. As for the discourse theory, following the interpretation proposed, among others, by Mueller

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2. See [https://www.treccani.it/enciclopedia/retrotopia\\_%28altro%29/](https://www.treccani.it/enciclopedia/retrotopia_%28altro%29/).

3. Colin Crouch (2019) spoke of “politicised nostalgic pessimism” in an attempt to find an explanation behind the renewed fortunes of political movements and parties belonging to the extreme right of the political spectrum.

and Heidelberger (2020), we consider that what distinguishes sovereignism from nationalism and populism is the rather vague idea of restoring a lost sovereignty. “Sovereignty” here is to be understood not in a precise and consistent manner (i.e., as for the political science field), rather as a more or less concrete, and more or less idealized, place and time, in which the people and the nation were allegedly deemed to hold the political power, disposing of full control over a given territory, its borders, policy-making, etc. In this sense it is understandable how sovereignism develops in constant opposition to phenomena such as globalisation and Europeanism, including their respective elites, which would have allegedly taken the original sovereignty away from the people and the nation. Moving to the cleavage theory, we consider widely acknowledged aspects, i.e. empirical, normative and organisational, to propose a definition as core theoretical assertion of cleavages in relation to sovereignism: *a cleavage structure “is a socially and culturally rooted conflict that shapes antithetical positions in societies through political parties”* (Scopelliti, 2021, p.1), in order to show linkages between nationalism, populism and sovereignism.

## **The sovereignist discourse: between nationalism and populism?**

The academic debate over sovereignty (including the real or supposed lack of it) is huge, with the scholarship concerning “sovereignism” that has been developing quickly in recent times, in parallel with macro-phenomena as globalization and supranational integration, as in the case of the European Union<sup>4</sup>. As we said above, the aim of this paper is to shed some light on the concept of sovereignism, unsurprisingly a rather elusive and slippery one, by proposing to approach it through several theoretical lenses, including the discourse theory and the cleavage theory, which we consider could be helpful in framing articulations and linkages existing with (a) nationalism and (b) populism<sup>5</sup>, in order to possibly find common denominators, but also the original traits of sovereignism. Starting with discourse theory, we aim to show how sovereignism has features in common with nationalism and populism and that, unlike these, it places its empha-

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4. On the sui generis nature of the European Union there is a rich and boundless scholarly literature, ranging from interpretations who have spoken of it as a supranational union to others who consider it a unique international organization.

5. In doing so we follow in particular the approaches proposed by de Cleen (2017) in analysing the relationship between populism and nationalism and the insights proposed by Verzichelli (2021) on the linkages between populism and sovereignism. On this see the volume edited by Basile & Mazzoleni (2021) populism and sovereignism

sis on a “return”, even a vague one, to a sovereignty placed in the past: in this sense it is interesting the focus on some insight related to Bauman’s (2017) notion of *retrotopia*, i.e., retrotopia as an “ideal shelter” situated in the past. What is important is not whether that past was really a place where the people or the nation possessed sovereignty (understood in the most generic sense), but rather the ability of the sovereigntist leader to evoke a kind of nostalgia for a place and time. In this sense it is compensable how much the ideology of sovereigntism, if we want to speak of ideology, has elements in common with nationalism and populism. Just like populism, sovereigntism is an interesting concept and ideology which, however, is often overused and misused<sup>6</sup>. In an article appeared in 2019, Colin Crouch explained about pessimistic nostalgia and the role of the past:

It is fairly easy to explain why the early 21st century is becoming one of the periods in which pessimistic nostalgia is successfully weaponised, at least in the western world. First, the move of the advanced economies into post-industrialism has produced considerable upheaval, removing what seemed to have been certainties from many people’s lives. While automation and robotisation are probably the main causes of the decline in industrial employment, globalisation has also been involved, which provides some useful ‘foreigner’ targets among both developing economies and immigrants. Second, the financial crisis of 2007–8 showed another dark side of the internationalisation of the economy, and suggested that public authorities were unable to keep economic life secure. Until that moment, even many people who might have felt left behind in various ways could at least count on becoming a little better off each year. That is no longer the case. Third, waves of immigrants and refugees coming into the western world from poorer countries have provided easy targets for those feeling a need to restrict access to the good things of life in a declining world. [...] These sources of insecurity and declining trust in the capacity of public authorities to ensure stability have appeared after a prolonged period of

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6. In this direction, the Italian case, among others, is very interesting, since here sovereignty has recently been completely absorbed by radical right-wing populist parties and far-right movements, as the case of Matteo Salvini’s Lega and CasaPound can well demonstrate (with the well-known “Sovranità” project of 2015). If we take the Italian case, it is very interesting that the terms *sovranism* (“sovereignism”) and *sovranista* (“sovereigntist”) are used almost as synonyms for radical right and extreme right, especially by these political subjects but also by much of the mainstream media, and not only (Bruno, 2022). As Bruno has pointed out (2022, p. 63): “Sovranista, along with ‘patriota’, is the term that is currently widely used by radical right-wing politicians to describe themselves. The same goes for the media: La voce del Patriota, for instance, defines itself as ‘informazione sovranista’ [‘Sovereigntist news’], while Il Primato Nazionale prides itself on being “l’unico quotidiano sovranista Italiano indipendente” (‘the only independent Italian sovereigntist newspaper’). In particular, we no longer find an exclusive association with nation, as at the basis of the original sovereignty, which as we shall see was born in other contexts.

dominance by liberal attitudes, favouring the admission of various kinds of ‘outsider’: the formation of multicultural societies; the entry of women into spaces previously reserved to men; a growing role for international organisations in what many people had believed to be their ‘sovereign’ national affairs.

We can now focus on the discursive articulations and linkages between sovereignism, nationalism and populism. Sovereignism does have important points of contact, but also some fundamental differences, with nationalism and populism. In terms of discourse, as we have seen, sovereignism and nationalism shares the emphasis on the nation-state, the control of territory, borders and nation-wide decision-making. However they differ mainly (a) on the dynamic which concerns a return to previously lost national sovereignty (and which, had to be present at least on the level of a narrative of a mythical and distant past) and (b) on the level of polemical targets, which are not so much other nation-states or other communities, but rather supranational institutions and bodies, and the multicultural elites that would have benefited from globalisation to plunder the nation of its sovereignty. In particular, related to the first point, the element of the “return” and “restoration” of the allegedly lost sovereignty is key both at the ideational and discursive level. As Mueller & Heidelberger (2020) have emphasized, the key feature of sovereignism lies in the vague desire of restoring the past, which however, does not necessarily mean that this past really existed. The element of returning to an allegedly idealized past is central in right-wing populist rhetoric. In 2016 Donald Trump was able to make a fortune on what sociologists as Zygmunt Bauman and Colin Crouch have called “pessimistic nostalgia” and “retrotopia”: discontented with the present and uncertain about the future, the temptation to idealise the past, perhaps longing for a return to authoritarian and autarchic nation-states, led by supposed strongmen, and to strongly identity-based and pre-multicultural societies, may have fertile ground. The discourse framed by sovereignism has also some traits in common with populism, with corrupt elites in cahoots with supranational institutions and bureaucracies, or with the financial markets, seen as guilty of plundering sovereignty<sup>7</sup>. In fact, both sovereignism and populism frame their political discourse in terms of recovery of a lost

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7. Sovereignism has been particularly influenced and shaped in and by anti-globalisation, anti-EU, dimensions. In particular, in relation to the EU, and due to the process of European integration and its prerogatives on a growing number of policy areas, sovereignism can be characterised by a political, cultural and economic tensions, between the EU (and its institutions) and the Member States composing it. If it is undeniable that the bottom-up demands related to sovereignism relate to a growing demand of sovereignty (vis-à-vis globalization or the EU or the corrupted elites) that surely pertain to some core themes, the relevance of sovereignism for understanding of the populist discourse, sovereignty has been largely under-theorised by scholars dealing with populism (see in particular Basile and Mazzoleni, 2021).

sovereignty from globalized and allegedly unresponsive elites. However, if the figure of the leader in populism is the “spokesperson” for popular demands and/or demands to defend the people (popular sovereignty), here the leader channels demands to return to sovereignty in the name of the nation and not of the people. Of course, in practice it is understandable that, especially at the level of far-right populism, there is much overlap and it is almost impossible to clearly separate the positions in terms of the approach and articulation of populist and sovereignist discourses<sup>8</sup>. In fact, if it is undeniable that the bottom-up demands related to sovereignty related to a growing demand of sovereignty (vis-à-vis globalization or the EU or the corrupted elites), these surely pertain to some core themes of populism (Basile & Mazzoleni, 2021). According to Verzichelli (2019), the three dimensions of sovereignty, i.e., cultural, political and economic, dealing respectively with preserving cultural and ethnic identities, defending people’s sovereignty against corrupted elites and protect a nation prosperity vis-à-vis the demands of solidarity coming from other nations, are very often found in populist discourses (Verzichelli, 2021, p. 109)<sup>9</sup>, making the sovereignty-populism linkage is a challenge for comparative politics<sup>10</sup>. In conclusion, sovereignty has several elements in common with nationalism and populism, yet it is a concept that can only partly be traced back to those, as it moves in a somewhat unique and complex context.

## Exploring far-right parties’ ideologies through the cleavage theory

What is a cleavage structure?

Although cleavage theory had a significant and enduring impact on political science

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8. According to Basile and Mazzoleni (2021) there could be sovereignty without populism, but there is no populist discourse, or populism tout court, that does not include sovereignist arguments and demands.

9. As de Cleen (2017, p. 4) talking of the articulation between the construction of populism and nationalism by populist radical-right parties, points out the concept of nationalism is based on the construction of people, community but essentially on “nation” and “[...] the nation can only be constructed through the distinction between one nation and other nations, and between members of the nation and non-members”. Thus, if in the case of nationalism the opposition or external group is those of other nations, in the case of sovereignty it is the European Union, and its institutions, which in populist rhetoric are often described as technocratic and the bearers of a top-down approach to politics, which severely limits the sovereignty of a nation (part of the EU). It is therefore nothing new that European institutions and “supranational” bureaucracies are one of the polemical targets of populist parties from both the right and the left. In this sense, sovereignty therefore also has some elements in common with the concept of populism.

10. Again de Cleen (2017) has shown clearly, populism and nationalism have some characteristics in common and important differences. The construction-distinction implemented by nationalist politics is based on an “in-out” antagonism between nation/community and other nations/communities, populist politics is based on a down-up opposition between the people, pure, and corrupt elites.

more than five decades ago (Lipset & Rokkan, 1967), there has been a general misunderstanding of *what* a cleavage is and how to define it (see the contributions of Zuckerman, 1975; Bartolini & Mair, 2007; Deegan-Krause, 2007, p. 538; Franklin, 2010; Kriesi, 2010). Firstly, the difference between ‘cleavage’ and other political concepts such as ‘division’ should be distinguished (Bartolini & Mair, 2007, p. 198). In this sense, Zuckerman (1975, p. 231) points out this semantic misunderstanding in the literature of his time by emphasising that, for instance, divisions within society do not necessarily turn into conflicts. In line with Lipset and Rokkan (1967), divided groups are entities in conflict only once they are antithetical towards each other over the same issue and, therefore, they provide opposite solutions. Therefore, the antithetic element of a conflict between groups of people is necessary for a ‘division’ to be identified as a cleavage. Indeed, a cleavage is most importantly a conflict in which you can discern two antithetical sides that clash against each other over the same issue (see Rokkan, 1999; Franklin, 2010). For instance, Marks et al. (2017, p. 5) define the GAL/TAN conflict as being a new cleavage. This conflict is framed as a ‘cultural cleavage’<sup>11</sup> with green alternative and libertarian (GAL) values on one side, and on the other side traditional, authoritarian and nativist values (TAN). However, this divide cannot be defined as a cleavage because it does not fulfil the antithetical requirement of “objective distinction between the interests of those on different sides of a cleavage” (Franklin, 2010, p. 650). Indeed, rather than focusing on one topic (represented by two antithetical sides), this is a divide because it represents different and unilateral sides. For instance, the pro-environment stance is in the GAL side without its counterpart on the TAN side or the pro-traditionalist stance on the TAN side without its counterpart on the GAL side.

Having determined that cleavage structures are conflicts with antithetical sides over the same issue, it is still a matter of discussion as to how these sides can best be identified. In this sense, Bartolini and Mair (2007) discussed this in detail. There is ambiguity regarding definitions among scholars, for example, in differentiating between social cleavages from cultural cleavages. On the one hand, contributors to the structural dealignment (Brooks et al., 2006; Lachat, 2007), for instance, imply that cleavage structures are conflicts which are generated by societal stratification (Bartolini and Mair, 2007, p. 198). To quote Zuckerman (1975, p. 324): “cleavages *originate* in the social realm [and, eventually] they are politicized” (*our emphasis*). On the other hand, contributors to the post-materialist school (Inglehart, 1977, 1984; Dalton et al., 1984), for

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11. By cultural cleavage is meant by the authors as a conflict generated from opposite beliefs.

instance, argue that cleavages are mostly determined by factors representing opposite beliefs/values rather than any particular societal factors. In line with that, Dalton and Flanagan (1982, p. 4, cited in Bartolini & Mair, 2007; see also Dalton et al., 1984) also state that “it is a set of beliefs rather any demographic attribute that defines one’s location along the cleavage”. Both interpretations provide useful insights into identifying cleavage structures. Yet, Bartolini and Mair (2007), successfully, provide conceptual clarity to the notion of cleavage structures by combining both these two aspects and adding a third one which links the relationship between cleavage structures and political parties: the organisational aspect of a cleavage.<sup>12</sup>

Bartolini and Mair (2007) propose three aspects that are equally important and are interrelated with each other and, thus, are all necessary to define a divide as a cleavage. First, referring to the above “social realm” argued by Zuckerman (1975, p. 324), it is necessary to identify the cleavage from its *empirical* aspect. A cleavage is, thus, related to those sociodemographic characteristics which separate individuals into two different antithetical groups<sup>13</sup>. By sociodemographic characteristics, Bartolini and Mair (2007) indicate that all those attributes that denote the individuals’ unchangeable state of being. It means that once an individual belongs to a certain sociodemographic characteristic, it is less likely for them to “socially move” from one category to its antithetical one (Fabbrini, 2001). This low mobility characteristic is fundamental to the formation of anti-thetical sociodemographic groups. Indeed, self-containing and non-overlapping groups will reinforce more attitudes of solidarity among its members, and, therefore, will accentuate conflict with their antithetical counterparts (Fabbrini, 2001, p. 277; see also Kriesi, 2010). Secondly, a cleavage also requires a *normative* aspect, which means that, beyond the existence of sociodemographic characteristics that differentiate individuals in antithetical groups, there must be a common set of values or ideas that provide a sense of collective belonging for these groups<sup>14</sup>. Indeed, without a set of common values or ideas that distinguish antithetical groups, beyond the sociodemographic differences, “no objective social division will be transformed into a salient socio-political change” (Gallagher et al., 2011, p. 280). Finally, there must be a *behavioural/organisational* aspect which is inextricably linked to the cleavage. It means that “a cleavage must find its

12. This last element is fundamental for this study as it also determines how political parties behave.

13. Taking into consideration the classical cleavage structures, the sociodemographic differences that scholars have usually assigned to them were, for instance, the people’s church attendance (Religious cleavage), ethnicity or languages spoken (Regional Cleavage), size of the community (Community cleavage) and, finally, type of job or family income (Class cleavage).

14. Similar to the first aspect, the classical cleavages are usually measured as people’s personal religious beliefs (Religious cleavage), people’s belonging to any sub-national identity (Regional cleavage), territorial self-belonging (Community cleavage) and socioeconomic class self-belonging (Class cleavage).

organizational expression” (Mair, 2006, p. 373), for instance, through political parties, trade unions, churches or civil societies and, therefore, must be institutionalised since “through the institutionalization of a conflict, the resulting cleavage leads to stability and social peace” (Goldberg, 2016, p. 14).

This last aspect is particularly salient in the Rokkanian view of a cleavage, since cleavages are inherently “unorganised” (Bartolini and Mair, 2007, p. 202). By unorganised Bartolini and Mair (2007) mean, for example, that when only considering the empirical (or normative) aspect of a cleavage, we would not identify a conflict, but we would rather find distinguished sociodemographic groups within society. Nevertheless, the existence of these groups does not necessarily produce cleavage structures. Let us consider, for instance, the ideological or material disagreements between different generational groups. Age stratification was identified in the 1960s and in the early 1970s as a possible measure of conflict that could drive different groups of people to claim different demands from their representatives. Although Lipset (1971, pp. 743-744) had already argued that youth movements were not an expression of cleavage conflict with age as its core ideology, Foner (1974) explored age stratification as the basis of a political cleavage, but he eventually concluded that the temporary status (of younger people) undermined the incentive to organise large scale movements because people are “unwilling to risk future rewards by engaging in activities that could lead to disciplinary measures, even arrest or expulsion from school or job”. Moreover, unlike other sociodemographic groups (such as class, religion, gender or education), aging is the universal and inevitable type of ‘mobility’ between social strata that each person will eventually experience (Foner, 1974, pp. 192-193).

Similarly, when looking at the normative element of a cleavage, important societal conflicts may exist, but they do not always necessarily produce cleavages. For instance, there has been a long-term self-consciousness among women, but it has lacked a proper political representation because this conflict has been subordinated by other classical cleavages. For instance, the traditional class cleavage (or left vs. right conflict) intercepted this topic from the left, considering women as one of the minority groups that needs to be defended in order to reduce gender gaps in modern societies (Edlund & Pande, 2002); and from the right, this topic has been intercepted by conservatives and radical rightists as a way to criticise the ‘submissiveness of women’ in Muslim communities (Schwörer & Fernández-García, 2020). Consequently, the empirical element and the normative element are insufficient to produce cleavage structures, which inexorably necessitate an institutional/organisational component (such as political parties) in order



for a cleavage to be brought into the political world and, therefore, gain relevance (Mair, 2006, p. 373; von Schoultz, 2017, p. 34).

Considering the above widely acknowledged aspects (empirical, normative and organisational), we have adopted the following definition as a core theoretical assertion of cleavages for this paper: *a cleavage structure “is a socially and culturally rooted conflict that shapes antithetical positions in societies through political parties”* (Scopelliti, 2021, p.1).

Nationalism, populism and sovereignty through the lens of the cleavage theory

In the following section, we review the three ideologies (nationalism, populism and sovereignty) that are often associated with far-right parties through the three empirical aspects explained above. Table 1 is the schematic representation of the cleavage theory framework.

Table 1 Nationalism, Populism and Sovereignism through the Bartolini and Mair’s (2007) theoretical framework

Empirical Aspect	Normative Aspect	Organisational Aspect
Low level of education	Nationalism	Far-right parties
	People-centre and anti-elitism	
	Sovereignism	

Starting with the empirical aspect, table 1 shows that all three ideological conflicts indicate identical sociodemographic characteristics. This is not surprising, in fact multiple studies demonstrate empirical and theoretical evidence that low level of education can often be associated with ideologies such as nationalism, populism and sovereignty. For instance, starting with nationalism, a person who is uneducated or less educated must compete with other mobilised workers who are better accustomed to working in poorer working conditions in terms of salaries and employment rights. This competition, thus, threatens the Western European workers’ ability to sustain their income and lifestyle (Dalton et al., 1984; Kriesi, 1993; Kriesi et al., 2006). Moreover, education allows a person to understand and embrace different types of lifestyles creating

empathy for others who do not belong to the same identarian group (Inglehart, 1990; Bornschieer and Kriesi, 2012; Kuhn et al., 2016). From voting studies, scholars have also demonstrated that uneducated people are more likely to embrace populist values (see e.g., Spruyt et al., 2016; Milner, 2020). And from these studies, more recent theoretical contributions propose about the advent of new cleavage structures — see e.g., the cultural backlash of Norris and Inglehart (2019) — where populism shall be interpreted “as a nostalgic reaction to value change in Western societies, leading to rejection of pluralism especially among men, older, and less educated generations who see themselves as the losers of globalization” (Staerklé & Green, 2018, p. 432). Finally, the recent literature on Euroscepticism usually associates a high level of education with pro-European individuals’ attitudes (Kuhn, 2015). Indeed, thanks to the European integration process, the most educated people are more likely to perceive in their daily lives the benefits of the EU in terms of jobs and educational opportunities and, therefore, they “conceive their identities as being consistent with international governance” (Marks et al., 2020). The recognition of diplomas at the European level gives more working opportunities for graduates to change or improve their living condition looking for a job in other European countries. Moreover, culturally speaking, the Erasmus+ programme is another European initiative that encourages young undergraduate and postgraduate students to live for a short period of time in other European countries and reinforces their European identity by learning the local language and customs (Bascelli, 2018; Samuk et al., 2021). By contrast, less-educated people are excluded by these life changing benefits and, for that reason, they feel less attached to the European institutions and more attached to their national identity.

As concerns the normative aspect, we can observe from table 1 that all three ideological conflicts have unique denominations and, for that reason, different characteristics. Starting with nationalism, the main constitutive features of such ideological conflict can be summarized in two principal strands: nativism, and authoritarianism. In this paper nativism is in line with its dominant definition that is shared by different disciplines. In sociology, Jens Rydgren (2018) argues that nationalism aims to the mythization of a familiar past where population is ethnically homogeneous. In politics, Cas Mudde (2007, p. 22) also claims that nationalism reject cosmopolitan sentiments and believe that “states should be inhabited exclusively by members of the native group (the nation) and that non-native elements (persons and ideas) are fundamentally threatening to the nation-state’s homogeneity”. Therefore, nativism is referred to as a feature that establishes the ‘membership’ of citizens to their nation by ethnic terms (Betz, 1994). While

multiculturalism should be considered as a threat to the national heritage and cultural traditions (Triandafyllidou, 1998), the primary concern of far-right parties is to impede access to minorities who ethnically differ from the majoritarian ethnic group; or, alternatively, to enforce them a full assimilation of the national culture (Rovny, 2013). The second feature of nationalism is authoritarianism. This feature finds its theoretical roots from Adorno and his colleagues (1950) who intended to identify the potential traits of fascist individuals, like: obedience, conformity, and violence. As such, at the very basis of the nationalist ideology is the believe that society should be strictly controlled by the state in order to maintain security and order within the borders of the country (Mudde, 2007, pp. 22-23). Moreover, Flanagan and Lee (2003, p. 238) speak of authoritarianism a self-denial value where the loyalty to the group and the unchecked leaders is to be granted by everyone in the country. Thus, there is no limit for far-right parties to impose law and order “not only against external threats (immigrants and asylum seekers) and criminal elements, but also against its critics and political opponents” (Heinisch, 2003, p. 95).

Moving to populism, if one takes the definition of Cas Mudde, one of the foremost experts in the world on populism, he considers it as a “thin-cantered ideology that considers society to be ultimately separated into two homogenous and antagonistic groups: ‘the pure people’ and ‘the corrupt elite,’ and argues that politics should be an expression of the *volonté générale* (general will) of the people” (Mudde, 2004, p. 543). Although this ‘ideational’ approach has become most dominant in the political science literature (Hawkins and Kaltwasser, 2017), it still remains very ambiguous. The identification of ‘the pure people’ and the ‘corrupted elite’ can mean different things for different types of populist parties that can vary along the left vs. right political spectrum. For instance, Bugaric (2019) speaks of populist radical left parties as those political forces that change the current status quo through the reduction of income inequality and slightly retreating from the economic consequences of globalization (see also Huber and Schimpf, 2017; Norris and Inglehart, 2019). On the other hand, studies on populist far-right parties (including this paper) argue that the populist ideology is more focused to overcome the corrupted elite in the defence of the interests of the ‘pure (native) people’, which purity is, therefore, determined by one’s ethnic belonging to the majority group in the country (Rydgren, 2007). For the latter, the fight against the establishment is meant to keep untouched the ethnic and cultural homogeneity of the population.

Finally, the last ideology that is often associated with far-right political parties is the concept of sovereigntism. The term sovereigntism finds its origin from the Quebecois independentist claims of the 1980s (Thériault, 1994) and, subsequently, this concept

has again been emphasised by the French politician Jean-Pierre Chevènement in the early 1990s while the Western European countries were about to tie hand in glove with each other, politically and economically, through the proposition and ratification of the Maastricht treaty. Chevènement (1997), for instance, explains how the European political elites (and people) relied on most of their expectations from the European integration process as the opportunity to leave behind the experience of war and disruption that nationalist values have provoked in the 20<sup>th</sup> century, with the promise to build a new transnational institution that would reflect the American experience: the United States of Europe (Dujardin, 2019; Varsori, 2020). Such promise is at the real basis of the Maastricht Treaty's supporters who welcomed such transnational agreement as a premise of economic and social stability. In fact, the transition of sovereignty from the national to the transitional level is even more evident since the European integration process has "extended EU authority over wide ranges of [European citizens'] public life" (Hooghe & Marks, 2018, p. 113). However, the European commission has received numerous critics from the European public opinion and party systems on the proposed policies to solve the Eurozone crisis in 2008 and the refugee crisis in 2015 (Vassallo & Valbruzzi, 2018, pp. 99-100). Therefore, as the European institutions were not able to achieve collective compromises at the supranational level, this political impasse has established the basis of sovereigntism's ideas which goal is to pursue and maintain national self-determination though the antagonization of the European integration process (Goodliffe, 2015; Ivaldi, 2018). Accordingly, national interests must precede European ones. For that reason, anything that would promote multilevel governance, at the transnational level, shall be perceived as a threat that weakens the national sovereignty and homogeneity (Vasilopoulou, 2018).

To conclude, concerning the organisational aspect, "just as the religious cleavage and the class cleavage were raised by Catholic and socialist parties on one side of the divide" (Hooghe and Marks, 2018, p. 111), ideas and values of the three ideologies explored above are mostly mobilised by the far-right parties. Studies on nationalism, populism and sovereigntism have confirmed that far-right parties are the typical organisational expression of such ideologies. Starting with nationalism, far-right parties espouse nativist policies such as proposing a welfare chauvinism that focuses on State intervention "to guarantee that jobs, housing, and other benefits are preserved for the native population are a natural outgrowth of the nativist desire to put 'our own people first'" (Golder, 2016, p. 480). Alongside, far-right parties also tend to have an opportunistic approach towards the possibilities provided by democratic regimes. Indeed, once far-right parties

consolidate their power (winning the elections), they “express extreme forms of majoritarianism that allow them to strengthen the majoritarian institutions at the expense of opposing forces” (Scopelliti, 2020, p. 1; see also Mudde, 2013, 2014; Castillo-Ortiz, 2019; Urbinati, 2019). For instance, governing far-right parties, such as Fidesz in Hungary or Law and Justice in Poland, have demonstrated that, once in government, they do not respect no longer “the rule of law, or democracy in the sense that competitive elections are held, but the economic or political rights or the rights of certain minorities are repressed” (Wintrobe, 2018, p. 218).

As concerns populism, far-right parties are often associated with such ideology because of their tendency (in the 2000s and 2010s) to be the fringes of the European party systems. In fact, far-right parties used to suffer from national electoral systems and *cordon sanitaire* employed by the centre-right and centre-left mainstream parties. Accordingly, these parties would experience political stigmatization and under-representation in the European national parliaments. However, thanks to this electoral premises, far-right parties are perfectly suited to embody such ideological conflict “because populism involves activating the people’s resentment toward the existing power structure and the dominant values in society” and, “in Europe, the elite typically includes the established political parties, intellectuals, the economic upper class, and the media” (Golder, 2016, p. 479). In such political context, far-right parties claim to fight the national (and international) political elites, while representing the interests of the people, which is narrated as the morally superior group of society.

With regards to sovereigntism, the European integration process has mostly been supported by mainstream parties from both the left-wing and right-wing between the early 1980s and the early 1990s. They were the years of the permissive consensus; a period of time when the political elites would negotiate on insulated deals without asking an explicit mandate from their national electors (Hooghe and Marks, 2009). In addition, at party level, all the established political forces agreed to depoliticise the European issue in order not to compromise the fate of the political integration process (Marks et al., 2002). This political compromise (among mainstream parties) aimed to allow the European political elites to sustain policies in pursuit of more economic and political unification of the EEC countries, without suffering from political blame in implementing significant institutional reforms and delegating national authority to transnational institutions. However, such historical development of the European integration process allows far-right parties as European issue owners which *raison d’être* is to leave the European membership (see the consequences of the Brexit referendum

in UK) or, alternatively, change from the inside the European institutions and values (see far-right parties as Fratelli d'Italia and Rassemblement Nationale).

## Conclusion

In this article, we provide some theoretical interpretations to approach the phenomenon of sovereignism. Although, as we have been able to see, it is characterised by important elements of continuity and overlap with nationalism and populism (the latter already often overused and misused), it possesses some elements that could distinguish it as an ideology in its own right. As far as theoretical interpretations based on discourse theory are concerned, it is interesting to note how sovereignism uses both the notion of “people” and that of “nation”, but in a relatively original way, to call for a return to a lost sovereignty (it matters little if it was never really there) and which would have been misappropriated by global and transnational elites under the banners of globalisation and Europeanism. Moreover, such interpretation also appears even more evident when investigating these three far-right ideologies through the lens of the cleavage theory. As you can notice from table 1, all three ideological conflicts have in common two out of three aspects of a cleavage structure: the empirical aspects and the organisational aspect. Thus, it is not surprise noticing as the literature often confuses these terms interchangeably (which was one of the reasons that prompted us writing this paper). Nevertheless, the normative aspect differs in every ideological conflict and obliges us to distinguish these three concepts as distinctive issues with their own ideological pull. To conclude, the main implication that we want to point out with this paper is that far-right parties have the chance to employ multiple ideological levers on which to mobilize their electorate. For that reason, we recommend for further research to keep focusing on these three ideologies, but as separate issues that allow far-right parties to deliver multiple political fights and, at the same time, allowing them to never “betray” their electorates.

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# EMPATE HEGEMÓNICO Y DERROTA EN ALARGUE. SOBRE LAS RAÍCES DE LA EXTRAÑA TRANSICIÓN CORREA-MORENO EN ECUADOR<sup>1</sup>

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## HEGEMONIC TIE AND DEFEAT IN OVERTIME. ON THE ROOTS OF THE ODD CORREA- MORENO TRANSITION IN ECUADOR

### Resumen

El viraje político de Lenín Moreno, delfín del anterior presidente ecuatoriano Rafael Correa, fue un evento político inesperado. Sin embargo, este giro no se dio en el vacío. Basándose en el concepto de “empate hegemónico” de Portantiero, el texto argumenta

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<sup>1</sup> Fecha de recepción: 19 de febrero 2022; fecha de aceptación: 8 de abril 2022. Este trabajo es fruto de un proyecto de investigación desarrollado en la Università Suor Orsola Benincasa (Napoli). Este artículo es el resultado de una investigación realizada en el marco del PRIN 2017 “Las transformaciones de la democracia: actores, estrategias y resultados de la oposición al populismo en los ámbitos político, jurídico y social” (2017JEZ4NP\_003).

que, tras múltiples éxitos electorales, cierta nivelación entre el bloque correísta y sus adversarios socio-políticos actuó como telón de fondo de esta extraña transición. En particular, el impase político se produjo tanto por la incapacidad del correísmo de ejercer un papel dirigente en la sociedad, como por el recobrado activismo por parte de la derecha ecuatoriana, favorecido por sus ventajas estructurales. Finalmente, la Revolución Ciudadana se demostró incapaz de disputar una guerra de posiciones y reformar capilarmente el sentido común del país, lo cual facilitó el tramposo cambio de camiseta de Moreno, allanando así el camino de regreso al neoliberalismo.

### **Palabras clave**

Rafael Correa, Ecuador, hegemonía, guerra de posiciones, populismo.

### **Abstract**

The political turn of Lenín Moreno, heir apparent of the previous Ecuadorian president Rafael Correa, was an unexpected political event. However, this change of direction did not take place in a vacuum. Based on Portantiero's concept of "hegemonic tie", the text argues that, after multiple electoral successes, a certain levelling between the correísta bloc and its socio-political adversaries acted as a backdrop for this odd transition. In particular, the political impasse occurred thanks both to the inability of correísmo to play a leading role in society and to the recovered activism on the part of the Ecuadorian right, favoured by its structural advantages. Finally, the Citizens' Revolution proved incapable of disputing a war of positions and of a capillary reform of the country's common sense, which facilitated Moreno's tricky change of shirt, thus paving the way back to neoliberalism.

### **Keyword**

Rafael Correa, Ecuador, hegemony, war of positions, populism.

En un artículo relativo a la situación política y económica argentina entre la elección a presidente de Arturo Frondizi en 1958 y la vuelta de Juan Domingo Perón en 1973, el sociólogo Juan Carlos Portantiero (1977) acuñó la expresión “empate hegemónico”, de derivación gramsciana. Con dicho lema, el estudioso argentino quería describir una situación en la que fuerzas políticas contrapuestas no logran imponer su visión en un determinado contexto, aunque mantengan la capacidad de vetar los proyectos del contrincante. Este tipo de escenario, aun sin ser “catastrófico”, engendra una inestabilidad, un desorden social, caracterizado por continuos boicots mutuos, zigzagueos políticos y, en definitiva, la falta de una brújula capaz de orientar establemente una formación social; es decir, para seguir empleando una terminología gramsciana, una incapacidad generalizada de presentar los intereses de una parte como voluntad colectiva y así reformar el sentido común, organizando la sociedad bajo determinados principios normativos.

En este texto sostengo que el “empate” de Portantiero es una herramienta que nos proporciona pautas preciosas para entender la crisis de Rafael Correa en los años anteriores a las elecciones presidenciales ecuatorianas de 2017 y, de tal manera, las condiciones que, aun sin explicarlo directamente, hicieron posible el surgimiento de lo que ha venido a llamarse “el morenato”, es decir el cuatrienio en el poder de Lenín Moreno, el otrora delfín político del expresidente. Pues la categoría impolítica de traición, a menudo invocada para explicar el inesperado giro de Moreno hacia un neoliberalismo de corte autoritario (Ramírez Gallegos, 2020), si bien da cuenta de un viraje paradójico y sorpresivo, no agota todas sus determinaciones. Sobre todo, este tipo de explicación oculta el telón de fondo sin el cual no hubiera sido posible esta transición, que aquí, extendiendo la analogía futbolística, toma el nombre de derrota (con trampa, claro está) en alargue.

El presente artículo se concentra en particular sobre las dinámicas de los últimos cuatros años de gobierno de Rafael Correa. Desde el punto de vista de la correlación de fuerzas, lo que se presenta como un verdadero rompecabezas es el siguiente: en 2013 Correa ganó las elecciones en primera vuelta con el porcentaje más alto en la historia republicana del país (57.17%) y con una amplísima mayoría parlamentaria, consolidando su proyecto de refundación estatal que se venía gestando desde 2007. Apenas poco más de cuatro años después, y a pesar de que su sucesor designado y primer vicepresidente en el periodo 2007-2013 hubiese ganado en las presidenciales de 2017, Correa era prófugo de la justicia ecuatoriana, su otro ex vicepresidente e inicial vicepresidente del mismo Moreno, Jorge Glas, tras las rejas, y su proyecto en evidente repliegue.

En concreto, el rumbo socio-económico anterior había sido desvirtuado en apenas pocos meses, con el regreso de una economía fondomonetarista, inspirada por la lógica de la austeridad y la disminución del rol del Estado (Arias & Chiriboga Tejada, 2020). Más allá de los relatos exoticistas («ciertas cosas pasan sólo en América Latina»), el impacto de la crisis económica a partir del 2015 sobre la popularidad de Correa es una variable a tomar en cuenta, pero de por sí insuficiente para aclarar los rasgos de un revés hegemónico tan marcado. La apuesta de este texto es demostrar cómo y porqué el bloque correísta se debilitó durante el último mandato, produciendo una situación de empate y favoreciendo, en definitiva, su derrota.

### **¿Cómo se llega al 2013? Una caracterización del bloque correísta**

Un breve recorrido histórico es menester para caracterizar el bloque correísta en cuanto fenómeno político que irrumpió aparentemente *ex nihilo* en el escenario ecuatoriano y entender cómo se llega al fatídico 2013. Desde algunos sectores del marxismo, se han empleado las categorías gramscianas de revolución pasiva y bonapartismo (o cesarismo) para describir la marea rosa populista. Massimo Modonesi (2017, pp. 97-98) se ha hecho portavoz de esta interpretación a escala continental al identificar que los cambios socio-políticos de corte progresista ocurridos en América Latina a partir del fin del siglo anterior fueron conducidos desde arriba, incorporando las clases dominantes, y sobre todo fomentando o aprovechando una desmovilización de los movimientos populares, tanto mediante la cooptación (transformismo) como el control social. En el contexto ecuatoriano y ahondando en esta línea, Mario Unda (2019) ha recalcado que Correa se propuso como un árbitro sin vínculos orgánicos con la sociedad, acaparando los recursos del Estado para generar un poder personalizado, aunque, como bloque de poder, supuso una alianza entre la clase media “reflexiva” y fracciones del capital monopólico y transnacional.

Si bien esta veta analítica logra esclarecer muchas de las dificultades de los procesos populistas, resulta problemático el supuesto según el cual estos habrían impedido un desemboque socialista, o más nítidamente emancipador, adscrito a las organizaciones populares. En efecto, la categoría de bonapartismo conlleva necesariamente que, en el choque entre una fuerza A y una fuerza B que puede resultar catastrófico para ambas, surge una fuerza C liderada por una figura carismática, a menudo vinculada con el ejército, capaz de sujetar las otras dos (Gramsci, 1986, pp. 102-103). El problema de la apli-



cación de estas categorías a la marea rosa, incluso pasando por alto el elemento militar que en el caso ecuatoriano resulta del todo ausente, es que los bloques nacional-populares no son terceros con respecto a la disyuntiva entre neoliberalismo y anti-neoliberalismo, o entre élites dominantes y masas populares, ni se estrenan en el espacio público como aglutinadores oportunistas de -ismos.

Con respecto al escenario bajo la lupa, cabe señalar que hasta 2007 la larga tradición de protesta popular que antecedió la llegada del correísmo, si bien logró encaminar una distinta correlación de fuerzas y trastocar el sentido común neoliberal, nunca fue una opción real de poder, con la parcial y progresivamente menguante excepción del movimiento indígena, cuya reputación se vio quebrada por la aciaga participación de Pachakutik en el gobierno de Lucio Gutiérrez. En este sentido, el correísmo puede ser legítimamente considerado como la cristalización ambigua, espuria, paradójica, pero a fin de cuentas real de aquellas reivindicaciones. Dicho de otro modo, los bloques populares en América Latina fueron la forma concreta en que el espíritu anti-neoliberal se reverberó en un plano electoral e institucional. Esto ocurrió tanto a nivel de grupos y personajes del mundo de la protesta social como de demandas desatendidas por el Estado neoliberal, lo cual invita a una lectura distinta y más compleja de la dinámica de la incorporación de los movimientos populares, donde convivieron convergencia y cooptación<sup>2</sup>. Por lo tanto, el hecho de ser “advenedizo” con respecto a la política tanto electoral como “de movimiento” no hace de Correa un actor ajeno a la tensión anti-neoliberal que se venía gestando en el país desde dos décadas atrás. De hecho, no había en 2007 un anti-neoliberalismo más genuino y con proyección de poder por afuera del populismo progresista, pues el ciclo de la protesta estaba claramente agotado. En definitiva, se hace difícil afirmar que el correísmo constituyó una mediación bonapartista entre un actor popular progresivo A y un actor elitario regresivo B.

Esto desde luego no implica adoptar una postura condescendiente ante las actuaciones del correísmo, sino conceptualizar todo proceso concreto como una encarnación que siempre excede el meollo de sus intenciones y de sus impulsores iniciales. Por eso, vale recalcar que cierto nivel de incorporación de segmentos sociales heterogéneos, y, por ende, de demandas y de visiones del mundo distintas, es connatural a la propia idea de hegemonía de Gramsci, la cual presupone la edificación de un bloque histórico que trascienda el espíritu corporativo del sector que lo encabeza<sup>3</sup>. Además, si de síntesis se

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2. Sin embargo, hay que reconocer que el caso ecuatoriano fue diferente de otras experiencias latinoamericanas en las cuales los movimientos populistas que llegaron al poder mantuvieron un pie en el gobierno y otro en la sociedad, preservando y a veces robusteciendo el vínculo con las organizaciones populares.

3. Aquí la caracterización de clase del correísmo propuesta por Unda está fuera de foco al sostener la ausencia del elemento

puede hablar, habrá que hacerlo a partir de la intemperie económica, política y mediática a la cual cada experimento de cambio político es sometido y que lo obliga a recorrer caminos imprevistos, hechos de concesiones y vaivenes. La tesis del bonapartismo se podría sostener ante una fuerza que efectivamente carece de una línea política definida, y que hace del equilibrismo político y de la restauración su único sello distintivo. Finalmente, dicha tesis es deudora de un inmediatismo clasista que adolece de no concebir la necesidad de la representación en todo proceso de construcción política, y de soslayar intentos democratizadores más que no sean la instauración directa del socialismo.

Más útil será en cambio conceptualizar el campo nacional-popular a partir de la articulación de aquellas inquietudes y reivindicaciones que, por medio de las movilizaciones populares de los años 90 y 2000 y representadas por un abanico de actores sociales distintos, se fueron incubando en la sociedad ecuatoriana a raíz de la profundización de las políticas de corte neoliberal. Podemos definir la fase anterior a la entrada en escena de Correa en términos de expansión de la fase horizontal de la política (Laclau, 2014, pp. 19-20), es decir, una multiplicación de quejas y de fuerzas cuestionadoras del *status quo*, que se presentaban aún de una forma desparramada, inorgánica y esporádica, y cuyos planteamientos privilegiaban la dimensión destituyente, sin que se avizorara aún un proyecto unitario y coherente. En este esquema, la apuesta de Correa representaría en cambio la dimensión vertical de la política, o sea el momento de condensación de las demandas en un proyecto de “asalto” al Estado alrededor de una figura o de un significativo que ejerce una fuerza de atracción irresistible sobre las mismas. Ernesto Laclau (2005) captura este proceso con las nociones de “cadena equivalencial” y “significante vacío”, según las cuales se determina una analogía, una correspondencia entre demandas heterogéneas con respecto a un adversario común y cuya articulación pasa por un punto de anclaje, a menudo representado por un líder, que atenúa sus diferencias.

Sin embargo, al enfocarse en el populismo como práctica meramente opositora, la teoría de Laclau pierde capacidad explicativa en el momento en que el campo nacional-popular se convierte en Estado. En el caso ecuatoriano, el populismo progresista ecuatoriano casi ni transitó por la oposición, pasando de la formación del movimiento Alianza País al control del ejecutivo en el breve lapso de la campaña electoral de

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subalterno, cuya presencia se ha hecho en cambio manifiesta en el simbolismo político adoptado por Alianza País (el partido de Correa) y sus líderes, en las políticas públicas de atención prioritaria a las capas más vulnerables, en la incorporación en el sector público de grupos desfavorecidos y en la composición del voto correísta. Si bien es cierto que éste ha sido históricamente más transversal que el de otros populismos de izquierda de la región (Moncagatta & Safranoff, 2013), no se puede subestimar el peso de las clases populares. Según datos elaborados por Javier Rodríguez (2020), en el año 2019 el ingreso mensual del hogar del 55% de los votantes correístas no rebasaba los 350 dólares.

2006, lo cual produjo consecuencias no menores en términos organizativos y de maduración ideológica. Además, terminada la fase de contestación y ya en el poder, la dimensión de equivalencia se erosionó rápidamente. La presión por atender las demandas, aun siendo el contexto inicialmente bastante holgado gracias a la bonanza petrolera, impuso al ejecutivo una mayor dosis de pragmatismo para sostener el campo social construido. Mientras las demandas articuladas no confligían en el discurso, la economía política y las naturales dificultades asociadas a la gestión de gobierno evidenciaban que en su concreción existe efectivamente una tensión, y el ejecutivo tuvo que privilegiar aquellas demandas de alcance mayoritario (como en el caso de las políticas sociales y de renovación infraestructural del país), sacrificando en cambio las que eran percibidas como de menor proyección (como en el caso de las cuestiones ambientales, ligadas también a varias reivindicaciones indígenas) (Mazzolini, 2021, pp. 101-102). La jerarquización de las demandas fue el preludio al resquebrajamiento de la cadena. Es justamente en el conflicto entre Correa y los sectores ambientalistas e indigenistas culminado con la constitución de una alternativa de izquierda de cara a las elecciones de 2013 que se puede identificar el primer caso de desarticulación. Este, sin embargo, no tuvo mayores consecuencias, ya que la oposición de la Unidad Plurinacional de las Izquierdas al “neo-desarrolismo” de Correa no logró consolidar una alternativa capaz de arrebatar demandas de mayor importancia al bloque correísta. Sumado al desbarajuste de las otras fuerzas políticas, eso hizo posible que en 2013 Correa se impusiera abrumadoramente en los comicios de febrero: gracias a sus políticas de redistribución, de modernización infraestructural, de renovación estatal y las osadías en política exterior, su llamado a la recuperación de la Patria, otro significativo central de alta porosidad discursiva de la Revolución Ciudadana<sup>4</sup>, encontraba aún plena justificación ante los ojos de los ecuatorianos.

Pero no es oro todo lo que reluce. En paralelo a la ruptura con las vertientes ambientalistas e indigenistas, durante este periodo también cobraron fuerza unas dinámicas que ya preludivan lo que habría sucedido en el mandato sucesivo. Podemos identificar cuatro de ellas: un proceso de enfriamiento de las relaciones con otros actores sociales

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4. El significante Patria fue uno de los puntos nodales más polisémicos y ricos de distintas implicaciones dentro de la cadena populista articulada por Correa. Hablar de Patria permitió hacer referencia a la redención de las capas más rezagadas del país, al degrado moral de las instituciones públicas, a la soberanía nacional cedida por los sectores “entreguistas”, a los antecedentes históricos de liberación (Manuela Sáenz por un lado, y Eloy Alfaro y la Revolución Liberal por otro), al dramático éxodo migratorio de los ecuatorianos tras la crisis económica de 1998-99, a la necesidad de reavivar un mercado interno deprimido. En este sentido, fue un significante que, al seducir públicos distintos por distintas razones, logró cementar una alianza transversal, desde los sectores más pobres de la sociedad hasta la clase media y los intelectuales preocupados por el lamentable estado en que yacía el país.

que, aun sin apartarse de la esfera del oficialismo, empezaron a expresar insatisfacción por el rumbo del gobierno; como corolario de la anterior, la progresiva negligencia por parte del ejecutivo hacia algunas de las demandas sociales que tuvieron gran importancia en la forjadura del relato correísta inicial; el cese de la deliberación colegiada dentro del propio ejecutivo, lo cual tuvo como manifestaciones más evidentes el protagonismo sin frenos de Correa y su tendencia a relevar frecuentemente los ministros; y finalmente la consolidación de Alianza País como puro instrumento electoral sin capacidad de inserción en la sociedad.

### **El capitán fuerte de un equipo débil. Hiper-liderazgo y falta de contra-hegemonía**

La imagen exitosa del correísmo comenzó a verse mermada desde las elecciones seccionales de 2014. Hasta ese momento, Correa se había hecho con toda contienda electoral, entre comicios presidenciales, legislativos, seccionales y aquellos relativos al proceso constituyente. El revés de 2014, ocurrido apenas un año después de la contundente victoria mentada anteriormente, era limitado, ya que Alianza País seguía siendo con creces la mayor tienda política del país, pero la pérdida de dos alcaldías tan importantes como la de Quito y Cuenca, entre otras señales, indicaba nítidamente un creciente desafecto. Las palabras en caliente de Correa señalaban que sí había conciencia de las dificultades relativas al movimiento de gobierno: «Creo que estamos cayendo en el sectarismo. No me puedo ocupar del día a día del movimiento, pero creo que ese sectarismo nos está pasando factura» (El País, 2014).

En cierta medida, el análisis daba en el blanco. El ensimismamiento de Alianza País resultaba pernicioso a nivel local, aunque pronto esta dinámica se demostraría nociva también en el plano nacional. Pero la lectura era también incompleta y, en cierto modo, problemática: por un lado, el hecho de que el presidente pensase que para el buen funcionamiento del movimiento hubiera tenido que ocuparse él en el día a día revelaba no solo la endebles constitutiva de esa organización política, sino una concepción patrimonial de la misma; por otro, no se leía entre las líneas que Alianza País no se había atascado solamente por la incapacidad de fichar unos cuantos caciques locales de cara a las elecciones seccionales (quienes ya reivindicaban el reconocimiento de su peso político por lo menos en las disputas territoriales), sino por la dificultad de apuntalar la Revolución Ciudadana en un plano que trascendiese lo electoral.

La cuestión estriba en que Alianza País siempre funcionó como una junta electoral interna que, de la mano con el eficaz aparataje mediático del gobierno situado en la Secretaría de Comunicación, se congregaba para seleccionar candidatos y “dictar línea”, en un plano meramente comunicacional, frente a los procesos electorales. Sin embargo, el frenesí de la acción de gobierno y el enfoque electoralista no fueron de la mano con una acción contra-hegemónica capaz de conducir una pedagogía capilar en todo el territorio. Sin un trabajo más articulado y sutil, los éxitos electorales corren el riesgo de resultar efímeros en el mediano plazo. Tanto por la falta de un periodo de gestación en la oposición como por la escasa conciencia que había de la importancia de estas tareas, no se llevó a cabo un proceso de politización profundo en la sociedad, no se promovió un debate intelectual que incorporase nuevas capas a la vida pública nacional, no se fomentaron en paralelo tendencias culturales y artísticas que acompañasen el proceso de cambio. El movimiento siguió siendo un movimiento líquido, una plataforma electoral, sin convertirse jamás en un partido, con sus conferencias, sus debates internos, su selección paulatina de una clase dirigente de calidad e ideológicamente sólida, sus organizaciones satélites, su modelo de sociedad alternativo. La elección después de diez años de gobierno de un sucesor a la presidencia que luego se reveló del todo ajeno a los ideales de la Revolución Ciudadana representa el cenit de estas falencias. Sin un trabajo pedagógico y difuso, se imposibilitó que entre líderes y liderados se construyese una relación hegemónica, de retroalimentación constante y con repercusiones de largo alcance. En términos de espacialidad, faltó una estrategia que fuese más allá de lo electoral, dando la pelea a la hegemonía neoliberal en todas las “trincheras” de la sociedad civil, y en todas las aristas más recónditas que estructuran y orientan las decisiones, las costumbres, el deseo: en una palabra, la *hexis* de los sujetos.

La carencia de un trabajo contra-hegemónico se vio plenamente revelada en 2015, en ocasión del debate sobre la Ley de Herencias y Plusvalía impulsada por el gobierno. Las masivas protestas organizadas por la derecha lograron convocar también sectores medios que paradójicamente se habían beneficiado de las políticas del ejecutivo y que no habrían sido ni afectados por las medidas previstas. El dato analítico más relevante acá es la incapacidad de incidir desde el poder en el plano de la subjetividad: «más allá de la bajísima probabilidad de que este sector logre pertenecer a la selecta minoría de los más ricos, en su movilización contra la “medida marxista” dejó ver su enorme expectativa de llegar algún día a integrarla, cual zanahoria en una carrera de conejos» (Ramírez & Minteguiaga, 2019, p. 370). El nivel de la movilización fue tal que el proyecto tuvo que ser desechado (solo una mínima parte se aprobó el año siguiente). Es justamente

aquí donde la noción de empate hegemónico cobra sentido: el correísmo seguía en el poder, controlaba el Estado y tenía aún un fuerte séquito electoral, pero el adversario ya demostraba la capacidad de boicotear uno de sus proyectos más emblemáticos y azuzar uno de sus bastiones sociológicos.

Sin embargo, el empate no solo consistió en el boicot abierto, sino en mecanismos colaborativos que se fueron afianzando a raíz de la debilidad del gobierno, conduciendo a un descarrilamiento de su orientación política inicial. Un ejemplo relevante en este sentido es la forma en que la política económica fue progresivamente apartándose de los preceptos iniciales. A partir de 2015, la crisis económica puso el gobierno en aprietos. Terminada la bonanza económica de la primera etapa y con el dólar en alza, Correa se vio enfrentado a disyuntivas más dilemáticas que en el pasado. Mantener un curso heterodoxo hubiera implicado una profundización del proceso; más claro: la implementación de medidas más drásticas que habrían afectado las élites económicas. No solamente una reforma tributaria más profunda que la del 2010 (y mucho más abarcadora de la que se propuso en la Ley de Herencia y Plusvalía), sino un dirigismo estatal-popular mucho más marcado capaz de encauzar una diversificación sustancial de la matriz productiva. Pero este tipo de maniobra política hubiera necesitado de un músculo político en la sociedad del cual el gobierno estaba desprovisto. Más bien se consolidó la tendencia opuesta. En realidad, las relaciones entre gobierno y sector empresarial, si bien atravesaron momentos de honda tensión, siempre fueron más colaborativas de lo que dejaban entrever las proclamas públicas de ambos lados. De hecho, la colaboración entre el gobierno y varios segmentos del sector empresarial nacional se dio a puertas cerradas desde el principio debido a la relativa debilidad de los dos actores (Bowen, 2014, p. 108). En particular, el sector empresarial, aun manteniendo un fuerte poder estructural, o sea un impacto decisivo sobre los índices económicos generales, fue despojado de su poder instrumental, es decir, de su capacidad para influir directamente en la formulación de políticas, viéndose por ende obligado a buscar acercamientos (Fairfield, 2015, pp. 28-42). Pero si en un primer momento esta dinámica se debía y estaba encaminada hacia una consolidación del campo nacional-popular convertido en Estado, después de 2013 la colaboración con las élites económicas se intensificó significativamente por la creciente vulnerabilidad del gobierno ante los choques externos, incluido un preocupante déficit comercial (Wolff, 2018, pp. 133, 138). Esto se tradujo en una progresiva normalización del proceso y en una retractación en muchos frentes, desde el TLC primero adversado y luego aprobado, pasando por un redimensionamiento de la intervención estatal, hasta el reaceramiento de Correa al FMI.

La crisis económica hizo además el paraguas más estrecho, lo cual supuso —razonando en términos de clase— el quiebre de la alianza transversal, donde el punto débil fue justamente la clase media, puesto que las élites, más allá de la colaboración puntual, jamás apostaron por Correa, con la excepción de algunos grupos volcados al mercado interno que fueron beneficiados por las compras públicas. Transformando el razonamiento en términos de demandas, se hace posible un desglose. Por un lado, aparecieron nuevas demandas que el discurso de la Revolución Ciudadana ya no lograba interceptar: el empoderamiento económico de la clase media, sin una adecuada mediación cultural, hizo que se acrecentara su deseo de consumo en un momento de crisis<sup>5</sup>, viéndose atraída por otros idearios políticos y colocando sus aspiraciones por afuera del campo nacional-popular. Por otro lado, algunas de las demandas históricas del discurso correísta ya no tenían una satisfacción adecuada, lo cual las convertía en puntos débiles aprovechables por otras fuerzas políticas. La promesa de despolitizar el Estado, por ejemplo, fue ampliamente desatendida, mientras se fue bajando la guardia sobre los casos de corrupción, relegando las denuncias de la prensa (ciertas o falsas que fuesen) a mera propaganda. El tema de la politización del Estado es de particular interés puesto que tuvo repercusiones particularmente nefastas para el ejecutivo. Además del control de funciones ajenas al ejecutivo que, según la Constitución aprobada por la misma Revolución Ciudadana, eran nominalmente independientes, Correa llenó el Estado de tecnócratas provistos de PhDs o maestrías, provenientes del sector académico u otras profesiones. Según algunos comentaristas, este “tecno-populismo” —una novedad a su decir para gobiernos de esta índole— hizo que «con Correa, el populismo se convirtiese en elitismo» (de la Torre, 2013, p. 39). Si bien desde una óptica contra-hegemónica presidir el campo del discurso técnico juega un papel importante, también es cierto que casi ninguno de estos expertos tenía vínculos políticos con las comunidades locales o representaba demandas sociales reales. He aquí una profunda paradoja: la “politización” del Estado llevada a cabo por Correa fue posiblemente un acto “anti-político”, ya que fue percibido por muchos sectores como la otra cara de la moneda del proceso de distanciamiento de los actores vivos de la sociedad.

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5. El deseo de consumo también se veía restringido por algunas medidas proteccionistas del gobierno que encarecían los productos de importación. Éstos adquirirían, ante los ojos de estos sectores, un significado de altísimo valor simbólico: el acceso a la clase social inmediatamente superior. En relación al ejemplo de la Nutella que tuvo eco en un periódico nacional, según Correa (2019, p. 273) la aspiración de consumirla atañía exclusivamente a la clase más alta. Quedan patentes dos elementos: su incomprensión del problema de la clase media y, por implicación, la desestimación de la necesidad de un trabajo cultural que mediase su ascenso social (propiciado por las propias políticas del gobierno).

Así fue emergiendo una creciente asimetría entre las demandas reales y el discurso oficial, haciendo de la identidad popular forjada «una *langue de bois* inoperante que gobierna cada vez menos el funcionamiento efectivo de la política» (Laclau, 2009, p. 68). Esta distancia era corroborada por el papel jugado por el propio Correa. El tipo de liderazgo ejercido se modificó sensiblemente a lo largo de los años, pasando de una función aglutinante y con capacidad de atracción sobre frustraciones heterogéneas —muchas de ellas probablemente inalcanzables por un discurso de izquierda clásico— a una imagen en buena medida enajenante. La presencia y la ambición de un jefe no son necesariamente antitéticas a la posibilidad de una construcción política hegemónica y duradera; sin embargo, todo depende de cómo se interprete ese rol. En un pasaje que parecería no haber sido leído por Correa, Gramsci afirma que:

El “demagogo” de tipo negativo se presenta a sí mismo como insustituible, crea el desierto en torno suyo, sistemáticamente destruye y elimina a sus posibles competidores, quiere entrar en relación con las masas directamente (plebiscito, etcétera, gran oratoria, golpes de escena, aparato coreográfico fantasmagórico: se trata de lo que Michels ha llamado “jefe carismático”). El jefe político de gran ambición, por el contrario, tiende a suscitar un estrato intermedio entre él y las masas, a suscitar posibles “competidores” e iguales, a elevar el nivel de capacidad de las masas, a crear elementos que puedan sustituirlo en la función de jefe. Piensa según los intereses de las masas y estos exigen que un aparato de conquista [o de dominio] no se arruine por la muerte o incapacidad del jefe único, volviendo a caer las masas en el caos y la impotencia primitiva. [...] si el jefe es de origen “carismático”, debe renegar de su origen y trabajar para hacer orgánica la función de la dirección, orgánica y con las características de la permanencia y continuidad (1984, pp. 82-83).

Merece una particular mención la actitud polarizadora que fue desplegada por Correa de manera creciente en su último mandato. Por la crisis económica y su impacto sobre las arcas fiscales, la lucha por los recursos se tradujo en una multiplicación de pleitos entre el gobierno y varios actores: fuerzas armadas, universidades, estructuras privadas asociadas al Estado, contratistas estatales. Pero fueron el despliegue arbitrario de la justicia y el ímpetu retórico zaheridor empleado en contra de quienes discrepaban con él incluso solo mordazmente los factores que hicieron que su antagonismo resultase contraproducente. Las enfurecidas arremetidas de Correa ante las viñetas irrisorias de



Boníl en el periódico El Universo, los memes satíricos del perfil de redes sociales “Crudo Ecuador” y las mofas del cómico inglés John Oliver en sus programas “Last Week Tonight” hicieron que la polarización del presidente fuera percibida como persecución. Esta intolerancia delataba una susceptibilidad a la crítica irónica, en una política de la literalidad que no admite la representación ficticia e hilarante. Más en general, si la polarización, es decir, la erección de una frontera amigo/enemigo, va de la mano con la articulación de demandas, su efecto es performativo, posibilitando la creación de identidades políticas con efectos concretos sobre el reparto de lealtades. Cuando, en cambio, el antagonismo es percibido como excesivo, arbitrario, punitivo y ajeno a las demandas existentes puede en cambio generar desidentificación. El continuo uso de contumelias y la propensión a soliviantar sus secuaces en Twitter en contra de un número creciente de enemigos agravó la incomodidad generalizada con respecto al clima polarizado que se respiraba en el país, abriendo la posibilidad de que la franja polarizadores/anti-polarizadores desplazase las antiguas líneas de división. No es una casualidad que la opción de Moreno, visto como un candidato conciliador e incluso algo alejado de Correa, resultase ingenuamente la mejor apuesta para la continuación de la Revolución Ciudadana, y que su popularidad inicial tras la elección se basase justamente en el lanzamiento del así llamado “diálogo nacional”.

La excesiva personalización del proceso tuvo otro cariz que mermó las pretensiones democratizadoras de la Revolución Ciudadana, contribuyendo a la mengua de su agarre hegemónico. Incluso en la interna, el liderazgo de Correa cambió de impronta. Si hasta el 2013 hubo cierto grado de incidencia por parte de los distintos sectores que se congregaron en Alianza País o que mantuvieron cierta cercanía al oficialismo, en el último mandato estos dejaron de tener cualquier tipo de influencia. Los tonos críticos empezaron a ser tratados como inútiles monsergas y cualquier intento de emprender otro camino tratado como un gesto de deslealtad. La preferencia del líder era por antonomasia la preferencia del bloque. En este sentido, fue muy significativa la reacción de Correa ante la moción impulsada en 2013 por tres asambleístas de Alianza País de despenalizar el aborto por violación en la reforma del Código Penal. Correa amenazó con dimitir y, tras el retiro de la propuesta, consiguió que las asambleístas involucradas fueran sancionadas por el propio movimiento. La participación, otra demanda inicialmente articulada por el discurso correísta, empezó a verse así no solo limitada a nivel institucional, pues los mecanismos instituidos por la misma Constitución se convirtieron en un adorno hacia el cual ya ni se ocultaba cierta irritación, sino también en un plano más informal, ya que el proceso de deliberación y de debate interno dejó de tener cualquier tipo de

relevancia. En cuanto a sus colaboradores, Correa desatendió la máxima maquiavélica según la cual es preferible «defenderse de las adulaciones» (Maquiavelo, 1993, p. 98), prefiriendo rodearse cada vez más de colaboradores acríticos, muchos de los cuales eran escogidos de redes clientelares costeñas (Ortiz Crespo, 2016) y cuyos nombramientos se apartaban visiblemente de lógicas progresistas. Todos estos fenómenos contribuyeron a reducir sensiblemente el potencial seductor de la Revolución Ciudadana: el plantel correísta era percibido como un equipo estático, débil y ensimismado en el cual solo había espacio para su capitán.

## **El activismo de la derecha y la “cancha inclinada”**

Va cobrando cada vez más validez la tesis según la cual la derecha, en distintas partes del mundo, se habría vuelto más gramsciana que la propia izquierda. Con eso, se alude a su activismo en el plano de la guerra cultural, a menudo asociada con las prácticas de la derecha alternativa estadounidense (*alt-right*). Ecuador no ha sido una excepción en este sentido, aunque con distintos matices. En efecto, el empate no se produjo sólo por los deméritos del plantel correísta, sino también gracias al recobrado activismo de la derecha ecuatoriana en el campo de la sociedad civil. Al contrario del plano netamente político en el cual la derecha se demostró incapaz de superar sus divisiones y alegatos, la esfera cultural fue directamente impactada por diferentes intervenciones conducidas por distintos actores. No se trataría entonces de una operación coordinada, con un centro impulsor único, sino de una constelación de actores sociales heterogéneos. Su ahínco polémico se volcó principalmente en atacar algunas de las ideas rectoras de la Revolución Ciudadana, como la justicia social y el papel del Estado en la economía, y en defender la sociedad de sus presuntas amenazas, como la corrupción y el asalto a la democracia, amparándose en un discurso basado en los valores tradicionales y en las libertades fundamentales. Podría decirse que la derecha condujo una guerra de posiciones capaz de contrarrestar la ola de éxitos electorales de la izquierda, poniendo freno a la pérdida de consenso que el ideario conservador y neoliberal, en sus distintas vertientes, venía acumulando desde hace años.

La capacidad de persuadir e incluso movilizar activamente los sectores medios en ocasión del debate sobre la Ley de Herencias y Plusvalía demostró claramente el alcance exitoso de este activismo cultural. Otro ejemplo es la facilidad con la cual cundió el discurso anti-estatal tras el terremoto en Manabí de abril 2016, cuando la

reacción tardía del gobierno junto a una falta inicial de información prestó el flanco a una narrativa que ponía en evidencia las supuestas falencias de lo público (Ortiz Crespo, 2016). La rápida activación de redes solidarias por parte de la ciudadanía posibilitó en paralelo el despliegue de argumentos en favor de la auto-organización privada. Finalmente, el hecho mismo de que Moreno, algunos años más tarde, haya podido emprender su viraje sin mayores ataduras, desvirtuando así el resultado electoral, da cuenta no solamente del mediocre trabajo de construcción de una clase dirigente por parte del correísmo, sino también de cierto grado de legitimación de la agenda política que empezó a impulsar.

¿Pero cuáles son los actores específicos, quiénes son los intelectuales orgánicos que llevaron adelante este tipo de trabajo? En primer lugar, los medios de comunicación surgidos durante los años del correísmo. Mediante un periodismo de investigación no exento de tergiversaciones y de un opinionismo agresivo, se encargaron de fustigar cualquier actuación del gobierno de Correa, creando claves de lectura que entroncaban con el creciente desafecho hacia el presidente, y por ello capaces de moldear esta inconformidad. Es en este marco que se insertan portales como 4Pelagatos, Plan V y La Posta, los cuales, haciendo más hincapié en temáticas cotidianas como la corrupción, la seguridad ciudadana y el autoritarismo que en el fervor librecambista, supieron presentarse de manera novedosa y menos dogmática. Colindantes con estos nuevos medios, aunque de carácter menos reactivo y con mayor apego doctrinario, encontramos los think-tank, las ONG y las fundaciones de carácter liberal. Aquí destaca sin lugar a dudas Ecuador Libre, el think-tank presidido por el actual presidente ecuatoriano Guillermo Lasso y dirigido por Aparicio Caicedo, que cuenta con lazos internacionales de cierta importancia (como con el Instituto Cato y la Red Atlas), y cuya labor se centra en la elaboración de análisis socio-económicos y la organización de actos públicos (a menudo con huéspedes de fama mundial), de cursos de formación y de eventos divulgativos del ideario (neo)liberal. Trátase de una intervención más ilustrada y dirigida hacia un público ligeramente distinto, pero que fue igualmente eficaz para sentar una pauta ética y otorgar sentidos apropiables por una ciudadanía en busca de nuevas narrativas. En un plano no disímil, algunas universidades privadas, como la Universidad de las Américas y la Universidad San Francisco de Quito en la Capital, y la Universidad de Especialidades Espíritu Santo en Guayaquil, funcionaron como focos culturales muy activos en difundir y consolidar un mensaje liberal, a menudo jugando con la contraposición a las universidades públicas, concebidas como centros de inculcación “marxistoides”, y sirviendo también como canteras de la clase dirigente de orientación liberal. Finalmente,

a pesar del catolicismo de Correa, cabe señalar el activismo religioso de algunos sectores de la Iglesia católica, cuyo epicentro puede ser ubicado en la arquidiócesis de Guayaquil, así como de distintas iglesias evangélicas.

En paralelo, es menester enmarcar de mejor manera el trasfondo desigual en que se dio, facilitándola, esta arremetida cultural. Según algunos autores, la erosión de las instituciones democráticas por parte del populismo habría engendrado un fenómeno llamado “autoritarismo competitivo”, también conocido como efecto de la “cancha inclinada”, según el cual se crearía un campo de juego sesgado a favor de quienes ocupan el poder y en desmedro de la oposición, en un contexto de elecciones relativamente libres y de niveles de violencia en aumento, aun sin alcanzar los picos de las dictaduras militares (Levitsky & Loxton, 2013, p. 108). Es preciso dar un vuelco a esta interpretación: si bien numerosas medidas del gobierno de Correa demostraron cierta alergia al pluralismo, este se ve disminuido de manera más considerable por otros factores, y si de cancha inclinada se puede hablar, habrá que hacerlo a partir de las asimetrías existentes entre los distintos actores políticos. En primer lugar, la derecha cuenta en su conjunto con recursos y conexiones mucho mayores, que conforman un poder estructural que le permite viabilizar sus proyectos con mayor eficacia y holgura a través de distintas herramientas. Prueba fehaciente de esto es el control abrumador de los medios de comunicación tradicionales y de masas, con sus reverberaciones sobre el control del debate y de la agenda pública. Sin embargo, la cuestión trasciende el ámbito nacional y la persuasión simple y llana, configurando una cancha inclinada donde las disposiciones individuales (que no hay que confundir con las adhesiones políticas más explícitas y coyunturales) ya están, a través de técnicas tanto imperceptibles cuanto penetrantes, ahormadas según un claro proyecto político:

Se podría ceder pues a la tentación —cayendo en la trampa de una analogía engañosa— de esperar que un cambio de política, consecutivo a un cambio de gobierno, cree las condiciones de la construcción de este otro sujeto. Esto sería obviar que la reorientación producida por el neoliberalismo, aunque fuese voluntarista, no tuvo nada de una creación *ex-nihilo*. Se apoyó, sobre todo, en un movimiento de la economía mundial articulado con la nueva norma de la competencia, de tal manera que los sujetos quedaron como interiormente «sometidos» a dicha norma mediante múltiples técnicas de poder. Sería olvidar, además, que no se sale de una racionalidad o de un dispositivo mediante un simple cambio de política, al igual que no se inventa otra forma de gobernar a los hombres cambiando de gobierno (Laval & Dardot, 2013, p. 403).

El empate (preámbulo de la derrota en alargue) no se dio entonces solamente porque izquierda y derecha se dedicaron con distintos niveles de empeño y de éxito a la guerra de posiciones, sino también porque los esfuerzos de la derecha —y finalmente su capacidad de seguir influenciando la política— están agilizados por el hecho de que «el neoliberalismo puede volverse dominante como gubernamentalidad sin ser dominante como ideología» (Brown, 2005, p. 49).

## Conclusión

Según Gramsci, «[u]n grupo social puede e incluso debe ser dirigente aun antes de conquistar el poder gubernamental...; después, cuando ejerce el poder y aunque lo tenga fuertemente en el puño, se vuelve dominante, pero debe seguir siendo también “dirigente”» (1999, p. 387). Con dirección, Gramsci se refiere a ese aspecto de la dominación que abarca la esfera del consenso, de la cultura y de la subjetividad, y que representa la faceta más novedosa de su aporte al concepto de hegemonía. Las movilizaciones anteriores al correísmo lograron poner en entredicho los dogmas del neoliberalismo, pero por su carácter aún inorgánico y particularista no plasmaron una opción política capaz de verticalizar dicho espíritu, ni postularon un grupo social como dirigente en el sentido gramsciano del término. La primera tarea fue asumida por Rafael Correa, quien supo recoger la heterogeneidad de inquietudes que albergaban en la sociedad ecuatoriana, dándoles un vector político y ofreciendo unos simbolismos capaces de coagularlas. Es por eso que cualquier lectura que pone el acento sobre la supuesta ajenidad de la Revolución Ciudadana con respecto al ethos anti-neoliberal, tratándola como tercera entre organizaciones populares y élites, soslaya su génesis, sus políticas y la conformación inicial de su grupo dirigencial. Ahora bien, la segunda tarea quedó incumplida. Aun llegando al poder, la Revolución Ciudadana nunca se preocupó por encauzar la sociedad hacia una reforma moral de profunda envergadura que revirtiese la gubernamentalidad imperante. Es más, en ciertos aspectos la agilizó, ya que «la excesiva atención a infraestructura y evolución de indicadores ha dejado un saldo negativo en la reversión del sentido común neoliberal antiestatal y antipúblico» (Minteguiaga & Carmel, 2016, p. 253). El grupo social congregado alrededor de la figura de Correa por tanto nunca llegó a ser realmente dirigente.

En efecto, la hegemonía de la Revolución Ciudadana no supo ir más allá de un prolongado agarre electoral, demostrando así su incapacidad de conducir una lucha amplia

y diferenciada en la sociedad civil, cultivar una base política genuina y, en definitiva, dar a luz a una hegemonía más capilar y sustentable. Esta deficiencia junto a un desgaste en parte fisiológico, en parte ligado a la figura polarizadora de Correa, hicieron posible que la derecha, recobrado su activismo en el plano socio-cultural, empatara la cuenta con el populismo progresista y se crease una situación de impasse. Es este el contexto que preludivió y posibilitó el viraje de Moreno y la derrota tramposa en alargue mediante el cambio de camiseta del nuevo capitán y buena parte de su equipo. Por supuesto, el hecho de que el candidato correísta Andrés Arauz aún saliera adelante en la primera vuelta de las elecciones de 2021 (siendo derrotado en la segunda vuelta por el contrincante de derecha Guillermo Lasso) no es insignificante, lo que demuestra la persistencia de esta identidad política. Sin embargo, el anti-correísmo, ideológicamente transversal, parece haber echado raíces también muy profundas, lo cual hace el regreso de la Revolución Ciudadana bastante improbable, invitando la izquierda ecuatoriana a una reconfiguración que trascienda la figura de Correa y su decenio en el poder. Si se quiere volver a abrir el partido, esta perspectiva, desaprovechada tras las intensas protestas de octubre 2019, se presenta como más actual que nunca.

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# THE ANTIPOLITICS' DOUBLE SIEGE. NEOLIBERAL TECHNOCRACY AND POPULIST ILLUSION AS A TEST FOR DEMOCRACY<sup>1</sup>

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## Abstract

The forms of the representative politics are in crisis. Besieging them are two diametrically opposed yet deeply anti-political approaches. On the one hand, the neoliberal technocracy, which grounds the government of the population on knowledge in terms of maximisation of economic value; on the other hand, the populist molarity, which assigns to the fictitious unity of a people - as mythologized in its purity - the seat of an incomprehensible decision. Still, it might be inferred that one very way to revitalize the democratic eidos lies precisely in the power to enhance the complexity and plurality of the social organizations, in the sole attempt to pattern a constant and never definitive composition of diversity.

## Keywords

Democracy, Neoliberalism, Populism, Technocracy.

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1. Reception date: 20<sup>th</sup> March 2022; acceptance date: 25<sup>th</sup> April 2022. The essay is the issue of a research project carried out within the Dipartimento di Scienze Giuridiche of the Università degli Studi di Salerno.

## **Resumen**

Las formas de la política representativa están en crisis. Les asedian dos enfoques diametralmente opuestos pero profundamente antipolíticos. Por un lado, la tecnocracia neoliberal, que basa el gobierno de la población en el conocimiento dirigido a la maximización del valor económico; por otro lado, la molaridad populista, que asigna a la unidad ficticia de un pueblo mitificado en su pureza la sede de una decisión incomprensible. Pero quizás la forma de revitalizar el eidos democrático radique precisamente en potenciar la complejidad y pluralidad de las organizaciones sociales, en un intento de composición constante y nunca definitiva de la diversidad.

## **Palabras clave**

Democracia, Neoliberalismo, Populismo, Tecnocracia.

## The double mask of antipolitics

According to the Non-governmental organization (NGO) Freedom House's report, the last ten years have witnessed a steady decline of the number of democratic countries, as well as of the very quality of national democracies. As a matter of fact, a grounding proof to this situation includes the success gained by the numerous populist movements in the heart of the West, and the emergence of national leaderships which have demonstrated themselves refractory to the typical forms of parliamentary democracies (Freedomhouse, 2019).

Having emerged victorious from the ideological clashes of the 20th century, the grand liberal narrative is now being called into question by the wavering evolution of an international community torn apart by inequalities and political, social and economic crises. The modern dream of democratisation appears to be withdrawing in the face of those specters which bear at once a past very well present, and a future deeply threatening. The global scene shows a substantial ambivalence: the freedom of capital is overflowing, insofar as it is redrawing the boundaries of the legal terms by its own image, exactly while the "populist moment" is reaping its own successes by re-proposing the image of a strongly identitarian *Gemeinschaft*, which is attempting to seize all the political energies at stake, all the complex needs of plural coexistence, in order to reshape them once again into a molarity as easily manipulated by the means of rhetoric. In an attempt to get a first insight into one general framework, we might infer that the reticular and fluid image of governance (Rosenau & Czempiel, 1992) is flanked by that of the *wall* (Brown, 2013), an almost dystopian structure in the age of information technology and low-cost flights: the boundless openness of global capital and the omnipresent neo-liberal ethos are expected to be getting along with a tightening of borders and barriers of entry, resulting in violent acts of exclusion as well as insistent demands for security and expulsion against a stranger whose presence gets to be held according to time and events as an absolute enemy.

It will be useful right now to recall precisely the well-known definition of governance provided by Rosenau thirty years ago:

[...] governance is not synonymous with government. Both refer to purposive behavior, to goal-oriented activities, to systems of rule; but government suggests activities that are backed by formal authority, by police powers to insure the implementation of duly constituted policies, whereas governance refers to activi-

ties backed by shared goals that may or may not derive from legal and formally prescribed responsibilities and that do not necessarily rely on police powers to overcome defiance and attain compliance. Governance, in other words, is a more encompassing phenomenon than government. It embraces governmental institutions, but it also subsumes informal, non-governmental mechanisms whereby those persons and organizations within its purview move ahead, satisfy their needs, and fulfill their wants (Rosenau, 1992, pp. 4-5).

By disentangling the spaces, times and status of the forms as constituting the modern molar representation, the escape lines of neoliberal governance neutralize the mechanism of democratic decision-making legitimacy in as different ways as they are co-acting. Along a similar rationale, the insecurity generated by this openness engenders a response which translates itself in a demand for security; which turns to nothing short than secured identity watchwords, as well as to the often dramatic re-presentation of the friend/foe dichotomous dynamic.

All at once this situation urges to re-imagine the democratic institutions: on the one hand they are expected to claim the autonomy of political decision-making as discharged from the economic logic of pure competition; on the other hand, democratic institutions bear upon themselves the call to recover that flexibility of forms capable of guaranteeing effective participation in an increasingly plural world.

In short, in the contemporary mingled context, the fragile and perfectible forms of representative democracy seem to hold a growing resemblance with a fragile earthenware vase, which is all at once separate from the classical epitaph; that which is doomed to disappoint whomever fancies itself with the illusion of having carved on the granite of History, whether past (as the theorists of the end of history would have it) or future (as those who take progress as an inevitable action forward. A vessel particularly in danger now, wavering as it is within the flows of time, between two containers whose withstanding qualities have turned hard to defeat: neoliberal hyper-individualism and populist communitarianism.

Addressing the question of democracy today means, therefore, being aware of the (apparent) paradox of contemporary society, as characterized by the coexistence of a capitalist schizophrenia and a paranoid communitarianism. The openness towards a boundless exterior seems to be going along with the proliferation of identity closures, sectarian and armed localisms, in a device that does not show any signals of a coming explosion/eruption as a consequence of its contradictions; on the contrary it is rather

thriving on them, and in such a way that demands to call into question those assumptions on which the democratic project was borne.

The therein dissertation stands as a chance to supply a response on the matter, as grounded on my exploration of what these two words, populism and neoliberalism, contain and the risks which they carry.

## Neoliberalism as technocracy

Neoliberalism's lexicon of interests transforms the subject both collectively and individually. The people – as the political actor – is replaced by the population as the object of government, while the figure of the rights-holding citizen is overwritten by that of the homo economicus, called upon to compete in the free market.

It becomes relevant at this point to note that, as suggested by Provasi, the neoliberal competition is nothing short than *a proactive* — and not merely adaptive — competition between a multiplicity of enterprises that are different from each other, and it is this competition that fuels the process of discovery and thus ensures innovation, economic growth and social development, even under the occurrence of the ruptures of the market equilibrium and *creative destruction* (Provasi, 2019).

As a point of fact, it is the competition that supplies the grounds whereon the eventual framework for evaluation and legitimation is soundly set, and in so doing it constitutes the ideology that informs society. This model holds little or no concern in synthesizing eventual differences; on the contrary, it casts its power to multiply them, in that it selects them by using a knowledge/power scheme that promises the economic optimum (Davies, 2014).

Within this framework, the boundary between public and private blows itself up, in an illusion of freedom that risks masking conflicts, inequalities, and above all unequal power dynamics. Subjectivities become then, “fractal”: by way of multiplying in their differences, they endlessly repeat the general design, as they are in-formed by the same device of which they constitute a part. Each actor reproduces in his own individual way the mandala of competition. Each one, from the macro collective subject (multinational, NGO, State) to the embodied individual, is urged to make of its own specific quality a most effective weapon to compete with each and every other. As a consequence, it is now explainable why the governance model only creates surpluses, rejects, deviances: the centripetal drive towards normalization marginalizes those who are unable to adapt,

or do not change their survival strategy as quickly as it was originally required. Thus, it is that, aback to the inclusion/exclusion pair, — as typical of the modern narrative — governmentality turns to a by far more mobile and nuanced dynamic. Inclusion is defined as never definitive, but always conditionally submitted to the individual's capability to invest in itself, in the constant increase of one's human capital. What disappears/fades out in neoliberal capitalism is the very distinction between working time and leisure time, with a progressive valorisation and extraction of surplus value out of every instant of human life (Fumagalli, 2017).

The homo economicus is granted no definite position, whereas he is forced into perpetual incremental movement. As a subject of the Queen of Hearts, he cannot slow down even when it would mean holding his site. Provided that, it is a fact that exclusion is never total, as it rarely projects itself into the pure negative of indistinction. As a matter of fact, the techniques of governmentality are likely to include, even if it'd result in a differential, strategic, graduated manner. They do not exclude anyone in principle, but rather they selectively include everyone on the basis of a shifting compatibility, according to the objectives for which the governance's exercise is implemented (Tucci, 2018).

Unleashed to coordinate themselves, opposing agencies are able to set up the order of the norm/normality on the basis of the immanent chaos of their actions. Alongside the permanence of modern transcendence and the constraints of a superordinate decision, governmentality imposes a direction by inscribing it in the very immanence of events.

As a complex and multiform power device, governmentality distances itself from sovereign power in terms of its productive and incremental character. Yet, it also differs from disciplinary power on this regard, for it acts on the species body rather than on the machine body, on the population rather than on the individual, it is compelled to produce the freedom on which it feeds. By way of adopting the tradition of the medieval pastorate, the governmental device is ultimately engendered to take care, *omnes et singulatim*. It becomes able to act out not through the sharp distinctions of sovereign power, the right of the sword, but through the persuasion of a pervasive and incremental power/knowledge (Foucault, 2004).

Governmentality is thus inherently liberogenic: it imposes a freedom that coincides with the responsibility to conform in the best way to the winning model. But the latter, in turn, emerges directly from the practices of competitive adaptation that the free market space constantly imposes. The optimum required in order not to be marginalized is never the same, it is always something different from itself, as the very effort to



constantly adapt itself generates a different equilibrium, or rather a different normality from that which originally stirred the effort; henceforth stems the constant need to adapt one's own personal strategies. The *mise en forme* proposed (and imposed) by the neo-liberal *ethos* is therefore always momentary, transitory, uncertain.

In the wake of the above discussion, Aiwha Ong's anthropological reconstruction becomes particularly interesting. By navigating the constellations of the social, economic and ethical milieux of South-East Asia, the author has been able to identify the characteristics of neoliberalism in all their ambivalence. First step goes along the line of understanding the role of the exception within the governmental paradigm, which in the author's original application, liberates itself from its traditional reading by rigidly dichotomous terms, in order that it becomes able to reveal itself as the fulcrum of a complex and ambivalent power device. Rather than a clear-cut distinction, the exception must herein be read as an extraordinary political device developed as much to include as to exclude (Ong, 2006).

Along the conventional reading of the sovereign exception as that which indicates excludable subjects — i.e., those who are denied legal guarantees — Ong places a “positive” aspect: a decision to include specific populations and spaces as targets of value-oriented programmatic choices associated with neoliberal reforms (Ong, 2006). Rather than producing a sharp distinction between citizens endowed with rights and bare life, the exception multiplies social, economic and political statuses, by way of insisting on ethnic, racial and cultural fault lines that ultimately cross national and regional realities, to reach a point where the production of localized and renegotiable realities becomes effectual. Realities that struggle to fit into the rigidity of categories inherited from the forms of the modern. In this sense, the exception takes on the dual role of *neoliberal exception* and *neoliberalism as exception*. The two aspects do coexist, giving rise to an overall technique of biopolitical governmental power, acting on and through the multiple but opening and preserving glimpses of sovereignty and disciplinary power.

Within this framework, then, endures the sovereignty, often revealing itself in all its normative and repressive power, but renouncing — at least in part — to its role as a transcendent third party. Sovereignty becomes “graduated” in this sense, according to the author's felicitous expression.

Taken as examples on this regard are the technologies of zoning, analysed above all in the Chinese landscape. They are the result of “techniques of programmatic choice” (Ong, 2006) by public power, functionalized according to the needs of global capital, within the normalising logic of competition. In China, zoning has reached some of its

most refined results: Special Economic Zones (SEZs) and Special Administrative Regions (SARs, such as Hong Kong and Macao) interrupt the normal centralised management of the Chinese state, carrying out the “one China two systems” project coined by Deng Xiaoping in 1998. As Ong writes:

In Asian milieus, the option of exception has allowed states to carve up their own territory so they can better engage and compete in global markets. Neoliberal calculations are applied to practice of human territoriality, or to the control of population through the re-inscription of geographical space. As the case of China illustrates, zoning technologies encode alternative territorialities for experiments in economic freedom and entrepreneurial activity (Ong, 2006, p. 19).

Instead of a hierarchy which is devised on those levels fitting the global, the national, the metropolitan and the local or, of a completely fluctuating and denationalized relocation of labour, we are witnessing a complex coexistence of sovereign, disciplinary and securitarian power techniques, produced by the intersection of actors whose legitimacy is granted by different levels of legal formality. As Ong's reconstructions show, methods of prison control continue to be used by transnational production systems. Whereas state measures are upheld by the administrative action of private actors, interested in exploiting the subjectivities as produced by the prison institution, such are the cheap workers for global capital (Ong & Collier, 2005; see also Mezzadra & Neilson, 2013).

To describe this, Ong uses the effective expression *graduated sovereignty*, referring to

[...] the effects of a flexible management of sovereignty, as government adjust political space to the dictates of global capital, giving corporations an indirect power over the political condition of citizens in zone that are differently articulated to global production and financial circuits. [...] In short, “graduated sovereignty” is an effect of states moving from being administrators of a watertight national entity to regulators of diverse spaces and populations that link with global markets (2006, p. 78).

Inhabited and produced by divergent agencies, through specific, changing and localized strategies, this constellation of spaces brings out its quality of a product of an immanence whose efficacy comes to be its only element of evaluation and legitimisation. That which is able to endure, that which proves itself useful in avoiding marginalisa-

tion, or at least allows for possible resistance, can ultimately endure. Following this lead, NGOs, might very well be regarded as a “form of social technology”, which in concert with other governing entities, defines objects, rules of action and strategic games of freedom. Normative transcendence does not disappear all at once, but is absorbed by such logic, becoming eventually a fundamental node within it.

A paradigmatic case is offered precisely by the Chinese context. What here lies manifest as my object of reference is the legal and social condition of the Uyghur minority. An outcasted ethnic group which has been forced by Chinese sovereign action into re-educational camps, located mainly within the Xianjiang region. Under the initiative of private companies, unprotected prisoners have been transformed into a reservoir of cheap labour for numerous multinationals. A resource as crucial for the Western production chain as it has involved those multinationals which are lobbying the United States parliament to prevent or at least delay any legislation that could possibly disrupt the production chain by implementing human rights checks (Xiuzhong, Cave, Leibold, Munro, Ruser, 2020).

Rather than a situated and definable entity, governmentality appears in its very making, as a force of constant actions and reactions distributed in a mobile constellation of agencies under continuous adaptation: from states, interested in acting as best they can within the framework of capitalist competition, to NGOs that are instead exploiting situated ethics of religious, traditional and cultural matrixes to provide specific protections to workers and refugees otherwise deprived of legal and political recognition.

As a point of fact, in certain realities such are those in South East Asia, rather than invoking human rights, NGOs appeal to religious, ethical or caring principles to provide migrant workers — too often victims of violence and exploitation — with bio-welfare that guarantees them the right to life and physical integrity, rather than those rights recognized by a universal legal status. These stem from a form of bio-legitimacy, understood as a new legal claim whereby health and illness become the legitimate basis for granting citizenship to asylum seekers. Such claims, crucial for domestic workers subjected to violence by their employers in countries such as Malaysia, are in Ong’s words: something that can solicit more moral sympathy from Asian society than demanding gender and migrant rights. (Ong, 2006). As it is then, the fight for the protection and recognition of rights by the social agencies in defence of workers moves strategically, by applying the tools of communication and conviction rather than acting on a strictly legal level: that is, the strategy is to literally arouse sympathy, the moral sharing of the suffering of female migrant workers, in the population.

However, as the NGO itself admits, these claims remain on a purely moral level, precisely because it would be much more complex to get a more general and abstract type of claim accepted. The problem, therefore, remains that of a lack of formalization of the activities and political energies at stake, despite their ability to achieve concrete results in realities where the struggle for recognition is fairly far from turning easy. Broadly speaking, the Sovereign molds upon itself the face of an (economic) actor among others, evoked to defend and protect its economic interests and power in the best possible way. But assuming that this is true, then the question of technocracy resurges once again. The source of the legitimacy of decisions no longer becomes the plural set of values that the discursive and decision-making process of democracy is expected to enshrine and guarantee, rather the guarantee of optimization (economic growth, productivity, bio-welfare, progress), stained by the seal of expert knowledge. The decision passes on the technicians, who act as guarantors of the rationality of the choices, and thus of their objective, and unquestionable rightness. Albeit under very specific and defined conditions.

What emerges is a substantial instrumentalization of the concept and practice of freedom. In the neo-liberal regime, the latter is indeed stimulated, rather as a function of capital. As a means of extracting surplus value, rather than being a meaning in itself, it can also have an end. That is, it can be limited when the ends of the market require it. Tracing this limitation is precisely the role of what Ong calls exceptions to neo-liberalism: a series of decisions that, by graduating sovereignty, regulate the level of freedom of different segments of the population, producing docile subjects, functionalized within the chain of production. Yet, reacting to market organization, emerging subjectivities shape alternative social models and lifestyles. The struggle thus generates an informal and decentralized adaptation, in which inequality not only does not stop growing, but shows to be the engine of an increasingly unequal and repressive dynamic of subjectivation and subjugation.

The result is a plurality that overflows from the forms of modern democracy, which are linked to a clear distinction between citizens — endowed among others with political rights — and subjects excluded from citizenship, and an increase in uncertainty and insecurity. In many respects, neoliberal governance constitutes the most up-to-date face of the old technocratic utopia.

In a space of freedom, governance promises to guide the lives and choices of individuals and societies on the basis of the indisputable objectivity of expert knowledge, nevertheless It promises efficiency and effectiveness at the aggregate level (the market) and at the individual level (the individual as the bearer of interests). On these criteria rest

the legitimacy of decisions, which are therefore moved out from public debate, since it becomes a scientific discourse that guarantees their justness, as well as their conformity to the common good.

In this logic then, the clash between decision-making efficiency and representative guarantees turns all in favour of the former. There is no need for a composition between authentically different and plural entities, which legitimize the final decision, as long as the legitimacy of the latter rests on the unequivocal guarantee of the best result, nourished with technical-scientific knowledge.

Such an approach, on the other hand, is not something which belongs to our times. Without seeking the occurrence of the Platonic conception of the philosopher-king but looking shortly backward in time, the 1940s authors — one among others was Thomas Harding — considered the claim of parties to run the government to be unfashionable, since decisions had to be made on the basis of scientifically established facts interpreted by specialists. It was precisely Harding who assessed that the role of experts should have been binding, not merely advisory. (Meynaud, 1960; Escobar, 2017). For Meynaud, that of the American chemist would be an apologia, which implies the prejudice according to which the technocrat would have such qualities as to remove him from the politician's tendency to "amicably overcome human resistance" with accommodations and transactions. Strengthened in its superiority, which derives from both a scientific and a moral quality, the technocrat would instead remain faithful to administrative rationality (Escobar, 2017).

Escobar rightly highlights how the assertion that within politics compromise is a deficiency instead of a virtue, seems an ideological prejudice.

But even if we agreed with this assertion, the self-portrait of the technocrat would still remain idealised and, as Meynaud warns again, often belied by experience. Indeed, in addition to the morality and consistency of technocrats, the *technocratic self-apology* overestimates their talent and the extent of their knowledge, producing a *technocratic temptation*. The technocratic temptation characterizes who is driven and urge others to assess the appropriateness of a form of government with the criterion of their own knowledge. This temptation, therefore, starts from the unprovable assumption that the rationality of the expert is not limited, as it is that of ordinary individuals (Escobar, 2017; Meynaud, 1960).

The problem is not only that this assumption does not stand the test of facts. The real question lies on the reason why it does not hold up to the test of facts, and that is because, like any other individual, the expert is precisely no more than an individual. He is undoubtedly in possession of a greater awareness in his own field of knowledge,

but the error lies in mistaking this knowledge for the ultimate truth, capable of ultimately legitimizing the government of all. Scientific knowledge in other words is but one perspective, which, carried onto the political level, must be synthesized in the light of the plurality of interests, values and collective positions. Technocratic utopia, on the contrary, pursues a homogeneity and synthesis guaranteed by a perspective in which the competent decision would be able to identify the best solution.

Although under the intention of avoiding a rigid and authoritarian — at least in appearance — state, yet the neoliberal *eidós* embraces exactly this perspective. In it, the best solution, although constantly changing, can only coincide with the good of the market, economic growth. Blatant echoes of this approach are clearly readable in the positions manifested by various expertise. In this sense, the well-known report by JPMorgan, which in 2013 blamed the 2008 financial crisis on the socialist influence of the constitutional charters of European countries, gets to be paradigmatic. According to the authors of the report:

The political systems in the periphery were established in the aftermath of dictatorship, and were defined by that experience. Constitutions tend to show a strong socialist influence, reflecting the political strength that left wing parties gained after the defeat of fascism. Political systems around the periphery typically display several of the following features: weak executives; weak central states relative to regions; constitutional protection of labor rights; consensus building systems which foster political clientelism; and the right to protest if unwelcome changes are made to the political status quo. The shortcomings of this political legacy have been revealed by the crisis. Countries around the periphery have only been partially successful in producing fiscal and economic reform agendas, with governments constrained by constitutions (Portugal), powerful regions (Spain), and the rise of populist parties (Italy and Greece).

There is a growing recognition of the extent of this problem, both in the core and in the periphery. Change is beginning to take place. Spain took steps to address some of the contradictions of the post-Franco settlement with last year's legislation enabling closer fiscal oversight of the regions. But, outside Spain little has happened thus far. The key test in the coming year will be in Italy, where the new government clearly has an opportunity to engage in meaningful political reform. But, in terms of the idea of a journey, the process of political reform has barely begun» (Mackie & Barr, 2013, pp. 12-13).

In wake of this approach, the set of political and social guarantees enshrined in post-war democratic constitutions would be nothing short than a brake on the ability of the executives to implement those reforms as urged by the market. Within this framework, the executives themselves appear as a transmission belt between the *efficientist* logic of the market imagined by the experts and the legal-regulatory dimension of the reforms necessary to booster this logic.

The outcome of this tandem may not have had much direct impact on the constitutional texts, but in recent years it has undoubtedly influenced their interpretation and application, which is blatantly showed with the several reforms that have succeeded in weakening, in legislative and regulative terms, labour protection, welfare and even certain aspects of the political life and organization.

## The populist illusion

Those who take populism as an answer to neoliberalism, its other face, might be right (Villacañas, 2015). In wake of our late discussion, the neo-liberal ethos attacks social bonds: «There is no such things as society, there are only individual men, women and families» (Thatcher, 1987), to borrow Margaret Thatcher's well-known quote. It weakens the sense of belonging and solidarity, that *munus* that runs through the community binding it in mutual debt (Esposito, 2020), diluting identity and belonging, social responsibility and solidarity. The homo economicus that emerges from neo-liberal ethics arises thus as an isolated individual, constantly called to bear upon himself the individual responsibility of his choices. He is compelled, by his own freedom, to decide for the best, where the best signifies solely the enhancement of his own *fitness*, his own chances of success. The subject of interests is expected to be liable exclusively for himself; whose fact means that as long as he pursues the objective to save himself, he must understand and seek his own ends.

Within such a changing and unpredictable social framework, the coils of the snake, in Deleuze's (1990) well-known zoological metaphor, continually threaten to crush those who are left behind, who are guilty of not adapting to the new normality. This boundless and continuous openness does nothing short than generate a sense of economic and existential insecurity.

There lies no surprise in the fact that the response to such widespread uncertainty is a demand for security, which also passes through the recovery of substantial identities

and rigid boundaries. This comes to be spatially witnessed as mentioned above, by the apparently paradoxical phenomenon of the new walls. As a point of fact these last may in fact represent a *theatricalisation* of conflict and the classic friend/foe dynamic, which seems even more tragic today, after February 24, 2022.

Back to 2008, for instance, Wendy Brown emphasised the relationship of identity between the macro-subject state and the micro-subject individual, showing how the weakening of national borders, and the progressive decrease in the capacity of state decisions to affect national life independently of global pressures, reverberate negatively in citizens' sense of security and identity. It is precisely insecurity that is likely to lead to citizens' demands for greater certainty on the one hand, and governments' nationalist responses on the other (Brown, 2010).

If the lexicon of interests unites everyone in a pulverized and generalized clash, the lexicon of identity unites fragmented and insecure individuals under a single banner, endowing them with the unifying sense of one great enemy and a noble mission, as tentative as it is hard to reject.

Now, on a closer look, within its various incarnations, populism acts precisely in this way: it provides a community and an otherness, both gigantic, definitive molars, capable of giving meaning to the pulverised existences of those who are, or feel, marginalised.

On regard to populism, it has been emphasised the enormous polysemy and uncertainty of meaning. They derive from the fact that the term has a history of usage dated back to the mid-19<sup>th</sup> century as applied for very different social and political phenomena: from Russian *narodničestvo* to 19<sup>th</sup> century American populism, to the so-called neo-populism, passing through Latin American experiences. The word has come across such a wide range of applications that it is difficult to provide a final definition; and those attempts to define it have extended from ideology to mentality, to a political style to a type of discourse (Palano, 2017).

Without doubt, one of the most effective and successful readings on the subject are that of Ernesto Laclau and Chantal Mouffe. The two authors understand populism as a rhetorical device that aggregates heterogeneous democratic demands, linking them through a chain of equivalences, to an empty signifier and a "first-tier" leader, who is in turn able to embody the unity of the people. The entire process thus represents the performative construction of the people itself, which does not pre-exist the chain of signifiers, but is only constituted at the moment when the plurality (of questions) merges into a single image, finding expression in it.



It is precisely within this image that a particular conflictual model of politics holds its place of birth. A model wherein the construction of the people is embedded in an affective, libidinal, emotional involvement: the “*We*” is constitutively in conflict with a they, with an otherness, for the conquest of hegemony. In many respects this conflict recalls — by bringing it back to the discursive level and thus renouncing the link with the element of objectivity provided by Hobbesian negative anthropology — the great optical illusion of Leviathan. Even in that representation, the Sovereign appears as a molar subject, whose existence is indistinguishable from the unity of his subjects, which he himself ensures through the immunization of the principle of violence and uncertainty that runs through the multitude. The Sovereign himself does not exist without the people over whom he exercises his power, yet without the Sovereign the people who provide him with that power, and with it his own consistency, would reduce themselves to nothing short than a multitude in eternal conflict.

Exactly as in the image of Leviathan, the people of populism can thus be represented as a kind of optical illusion. Only in this case, unity is conferred by a name, that is, by what Laclau calls along the lead of Lacanian psychoanalytic studies, an *empty signifier*: something that embodies in its particularity an unrealizable fullness, since «the category of totality can never be eradicated, but it remains, as a failed totality, a horizon and not a foundation» (Laclau 2005, p. 64).

The fact is that all of populism’s responses in this way risk proving themselves illusory, for the people — the sole and ultimate repository of upon which these responses’ legitimacy stand — coincide with the illusion of totality. If the totality subsists given that the aggregate of questions subsists, the answer to the aggregate questions must never be reached. If the populist questions were to be satisfied, the people would disintegrate in conjunction with them, returning to the complexity and plurality of the institution. In this sense, populism is fully traceable to a vision or project of *reductio ad unum* that holds more than one link to the modern narrative. It is no coincidence that Laclau and Mouffe precisely recover the dichotomous category friend/enemy, of Schmittian derivation, to explain its dynamics (Schmitt, 1922). It should be borne in mind that the enemy, in this theoretical context, is the one who endangers the very existence of the community. As it is, this opposition, as placed under Schmitt’s claim at the origin of the *political*, is radical, existential and therefore non-composable. The political order of Schmitt’s exception begins with a mortal danger that can only unite the people in the total exclusion of what is designated as other than itself.

The full extent of this unbridgeable fracture is present in the phenomena of neo-populism and is what generates a widespread distrust of both political institutions and official expertise. This also explains the obvious link that unites these phenomena to the so-called conspiracy: what unites them is the fear of one great enemy of all the “good people”, the victims of a total conspiracy against them.

Rather than a precise definition of the concept — a long-standing issue that is herein impossible to address fully — it becomes interesting to dwell on some common characteristics that different authors, from different perspectives, have emphasized on regard to populist phenomena. These seem to be linked to the idea of purity: a “pure people” is the fundamental object of populism, and it is opposed to an equally unified enemy, the incarnation of absolute evil.

Whether this enemy is internal to society (a corrupt institutional and bureaucratic system, corrupt elites) or external to it (the xenophobic fear of an ethnic invasion), it does not matter much, as it is only the signifiers that change. The underlying dynamic remains the same: that of an unbridgeable and non-synthesizing fracture between a we who are the depository of an uncompromising truth and justice, and a corrupt and chaotic otherness.

In this sense, the innermost core of populism can be said to be formed by a *unanimist nostalgia* (Escobar 2017). Such is the dream that feeds the populist imaginary: that of regenerating a primal unity, a natural harmony, a shared identity, a lost community. At the expenses of an oppressive molarity, all-inclusive and exclusionary at once, which sacrifices as much the positions of excluded enemies as the real interests of the parts that make up the “body” of the people. This organic conception of the people does ultimately refer to a conception of politics that adopts the lexicon, the watchwords and the myths of democracy. In other words, populism is based on democracy’s principle of legitimization, i.e., popular sovereignty. But it takes it to extremes, interpreting it in a fundamentalist key. Therefore, Meny and Surel claim populism is a sort of fever, resulting from an excess, not a defect of democracy. And more to this they consider populism to ultimately be identified with the properly democratic component of that composite regime that is constitutional democracy: the principle of the rule of the people. But this principle, if not contained and curbed by the rule of law, runs the risk of deploying perverse effects. If the people claim to sovereignly dispose even of those rights and freedoms that represent the conditions and preconditions of democracy, populism turns from being a useful “corrective” into a serious “threat” to the democratic institutions themselves. (Escobar, 2017; Meny & Surel, 2002).

As a matter of fact, populism has also been regarded as a kind of shadow of democracy, which is inevitably bound to cast out (Canovan, 2002). For Urbinati (2013), it even takes on the connotation of a parasite capable of developing within the democratic organism.

Have we been allowed few words only, we might very well state, that the organic concept of the majority invoked by populism constitutes the dark face of the democratic principle. It is an extremization of its principles, which paradoxically is capable of reversing its logic. This is because the organic molarity of the people is based on an unbridgeable divide that, by entrusting all legitimacy to a party that presents itself as the whole, eliminates dissent.

Yet, as Norberto Bobbio pointed out, as long as democracy bases the legitimacy of its decisions on consensus, then it cannot possibly do so without dissent. If the majority decision had the power to conceal differences indefinitely, the democratic mechanism itself would be overwhelmed. The majority cannot be exchanged for the totality. The price would be that dictatorship of the majority feared by Tocqueville (2003). Worse still, the phantasmal molarity of the people incurs in the risk of hiding the diversity of the instances that constitute it, and thus alluring the majority against itself. Different problems require, after all, different solutions, and the task of political confrontation must be the search for concrete and specific answers, the decision among ways, priorities and the actual distribution of resources.

We therefore find ourselves in the position to still bear upon us the following question: how to deal with dissenters, once we admit unanimous consent is impossible and that where someone claims it exist, it cannot be other than organised, manipulated, manoeuvred, and therefore fictitious? Is it still consenting the one of those who, according to Rousseau, are obliged to be free? In other words, what value bears consent where dissent must be forbidden? (Bobbio, 1995). We could go on to ask, as long as it has been decided that the majority counts as the totality and that it cannot but be right, what is the point of dissent, and thus the existence of dissenters? What, in other words, do we make of the spurious element constituted by minorities who do not recognize themselves in the (mythical) representation of a pure people?

### **Against purity: democracy as composition**

The people evoked by populism resembles a destructive and deconstructive force, incapable by its very nature of producing effective and concrete answers for the dem-

ocratic questions from which it springs. The construction of the People depends on the non-satisfaction of the questions and the rhetorical illusion of their equivalence. It follows then, that the political subject evoked by it also takes on a phantasmal and contradictory character. Born out of the dissatisfaction of unanswered social questions, it remains tied to the persistence and possible expansion of those dissatisfactions; the mythical people of populism deconstruct without ordering.

On the contrary, democracy is something as complex as it is fragile. It relies as much on institutions as on the possibility of questioning them. If democratic action is a source of legitimation of real, concrete choices, the discourse that precedes and produces the decision must be based on the existence and recognition of different, non-unique actors. The legitimacy of such decisions, if it is to be an effective response to real demands, cannot disregard their heterogeneity.

This is why institutional complexity is incompatible with both the neoliberal lexicon of interests, steeped in technocratic governmentality, and the rigid identity dichotomy of populism. Both solutions — neoliberalism and populism — imply an anti-political twist. The former, just like the technocratic ideology, of which it constitutes one face (the seemingly kinder one) subordinates every possible value to the economic one, causing a centrifugal acceleration towards an ultra-individualist logic, which disintegrates the very possibility of political dialogue. The power-knowledge that guides individual subjects through conviction towards their own salvation can only negate any political discussion. It is expert knowledge that legitimizes choices, starting from an objective optimization that assumes a normality whose nature is by no means neutral.

In contrast, the populist solution denies political conflict through its very radicalization. The construction of the people reduces the conflict to an irreducible head-on clash with no possibility of synthesis between a part that presents itself as the whole — the repository of truth and justice by definition (the mythical people) — and an inexorably negative part (the enemy), whose purpose is to threaten the very existence and freedom of the former. Since dealing with those who represent the absolute threat is impossible, the idea of compromise, inherently central to the complex functioning of the forms of institutional democracy, takes on an irredeemably sinister value.

Thus, it has been hitherto analysed how no democratic question can really be answered, and whose implication might be advanced to consist of two intertwined/intersecting reasons. Firstly, the existence of the chain of aggregate questions stems the very construction of the people, which would weaken to the point of disintegration, leaving

room for the forms of the institution, if those questions were to be answered. Secondly, at a more pragmatic level, the very concordance on which the chain of signifiers is based is illusory: the questions that form the popular identity are not necessarily compatible with each other, indeed they are much more often contradictory and competing. A resolution of the needs and demands underlying them would imply complex reasoning on the division of available resources, the priority to be accorded to each demand, and the need to sacrifice at least some of the different interests at stake. Here it raises once again how concrete answers, require a compromising discourse, in the noblest (and most authentically political) sense of the term: an agreement downstream — and not upstream — between bearers of divergent visions and interests, which strives to understand the complexity of reality, without sublimating it into an illusorily simplified unity.

Such a discourse can only be addressed through an institutional structure that allows for the expression and representation of diversity, complexity and the multiple. What is needed, in other words, is an institutional structure that allows for both authentic conflict as well as the resolution of that conflict into authentic decisions.

As Mény and Surel write, unlike technocracy, democracy knows no certainties or promised lands, (2004). This point of difference further distances democracy from populism. An authentically democratic discourse cannot know the fullness of a single and definitive locus of great legitimation, whether it is represented by the techno-scientific (and economic) elite or by the overall body of a people organically unified to its leader. In Claude Lefort's terms, borrowed from Merleau-Ponty, democracy is that political regime that ontologically dispenses with a point of *surplomb*, of overflight, relying by definition on the uncertainty of a place of power - and of decision - that remains empty. But it is precisely this emptiness that allows, and at the same time demands, participation and complexity (Lefort, 1986).

Rethinking democracy in this framework, then, means first and foremost to closely analyse the localized practices and solutions that innervate global reality. To reactivate the democratic eidon in this framework, it is therefore necessary to look closely at the practices of power and resistance that innervate global reality.

The dissatisfaction that undermines the current institutional order, cannot be addressed either by a return to the molarity of a mythologized people or by recourse to technocratic knowledge that claims to have got already all the necessary answers. Populism and neo-liberal technocracy represent a double challenge to democracy, the challenge being understood as something that aims to weaken, but also to test someone or something that one cares about, to spur one to give one's best: challenge as a threat,

therefore, but also as opportunity (Caramani 2022). The double challenge is thus to reactivate the project of constant *autonomization* of political freedom, proper to the democratic eidos, respecting and with the help of the heterogeneous political energies that in the practices of resistance and subjectivation animate the constellation of contemporary milieux. The willingness to rethink the democratic eidos must, then, lead to a resolution which looks forward to coming to terms with the multiplicity of the network, avoiding to neglect the unequal dynamics of power. This would mean the simple neutralization of the conflicts and political energies running throughout society, animating forms of subjectivity in ferment. A possible answer may come from the practices of direct democracy. As early as the 1980s, Bobbio recalled that, when political democracy was achieved, it became clear how the political is ultimately one part of a much wider sphere: the sphere of society as a whole; and that there is no political decision which is not conditioned by what happens in civil society (Bobbio, 1984).

Therefore, the very assessment of the degree of democratic development of a country, according to the author, should change. Rather than referring to the number of people with the right to vote, it should consist of the number of seats other than political ones in which this right is exercised. In short, democracy as seriously taken, demands a topological expansion and a qualitative and quantitative increase in participation. In this sense, all those experiences of participation such as social forums etc. becomes interesting subject matters. After all, it is precisely the participation of different subjectivities and the valorisation of differences that soundly constitute the basic values reclaimed by the activists. As a matter of fact, they define their own individual participation, building a conception of militancy within which, in contrast to the past totalising models, individual experiences and capabilities are positively valued. Traditionally, the individualisation of “postmodern” cultures has been seen as an obstacle to collective action, isolating individuals from the sources of collective solidarity and accentuating selfishness and egocentrism. Instead, globalization movements seem to develop a type of militancy able to take subjectivity in consideration (Della Porta, 2005).

Of course, such forms of mediation and settlement cannot find themselves unburdened of any issues and risks. The activists often point out how the discussion can be monopolized by better organized groups. The fear of many participants, as Della Porta reconstructs, is that someone might “put the cap” on collective activities. The disparity in discursive abilities and differences in the possibility of participation mean that decisions are often taken not only informally but also *elitistically*. Participatory democracy basically poses a number of other “paradoxical” questions. As Luigi Bobbio points out,

does everyone should participate in participatory democracy? Or just someone? Here lies its main paradox: participatory democracy aspires to include everyone, but actually it only succeeds in involving a small fraction of concerned population. How can this contradiction be resolved, avoiding the distortions that it may ensue? (Bobbio, 2006).

The practice of democratic organizations has devised various ways to address these issues, fostering inclusive participation that ensures undistorted inclusion in debate and decision-making. But what is useful to emphasize here is the role that such an organizational force can assume within the current framework, which is crushed between technocratic neutralization and populist molarities. As Alberto Magnaghi writes, participatory democracy can be a tool for the *liberation* of individual and collective daily life from the overdeterminations and compulsions of the market and an important antidote to the imperial-military models of economic globalisation (Magnaghi, 2006). In this liberating role, the option between immanence and transcendence in the organizational practices of democratic participation returns central. Should democracy be something that arises exclusively from below, dealing with specific and perhaps local issues? Or should it retain a hierarchical and pyramidal dimension, capable of defining decisions? In other words, before asking what the organization should be, one is required to find out what the organization truly is. Compelling in this sense is the perspective proposed by Rodrigo Nunes. For Nunes, the very contraposition between organizational verticality and horizontality must be overcome, in favour of a point of view “internal” to the organization that advocates for the participatory, and therefore political, dimension of the participating subject, to the detriment of any mechanical reading of the social:

In a nutshell, this gesture consists in resituating the observer in the world regarding which an observation is made, exposing the falsehood of assuming a contemplative stance. If we are not outside the world that we describe, but inside or alongside it, not only are the descriptions we make themselves actions within that world, our actions in general have effects on what is described. In second-order cybernetics, this amounted to making the observer who describes a system into the object of a description by another observer, thus showing that all descriptions are partial perspectives within a shared world (Nunes, 2022, p. 11).

The parallel-set double challenge represented by the technocratic face of governmentality and the populist molarities can be summed up in the need to reject any temptation of an “Archimedean lever”, capable of relieving “humanity” once and for all of

its laborious and constant confrontation with reality. By this I intend to mean not only — and not so much — a material reality which seriously retains its concrete weight as geopolitical discourse and recent events have revealed — but above all the friction that otherness itself generates within any social organization. Especially in a complex framework, characterized by a growing polytheism of values and forms of life, imagining a complex participation, which avoids thinking of reality as univocal and making legitimacy rest on a single principle — elitist/sapiential or populist — becomes all the more important the more difficult it gets. This does not imply that top-down and transcendent forms of organization would be opted out in favour of an impossible total spontaneism. Rather, it means recognizing the plurality of forms that the concept of organization itself contains, and at the same time the dynamic role that subjectivities assume in it. As Nunes writes again:

The point is not, however, to dismiss the notion of social self-organisation, but to reframe it in the only way in which we can experience it: from the inside. From this perspective, it cannot be separated from what we and others do, and therefore does not exclude but rather demands a politics that implicates itself subjectively; a politics in the first-person plural or a politics with the subject in (2022, p. 14).

Recognizing the authentically plural dimension of society, inherent in the democratic eidos, does not lead to the removal of the necessary transcendence which the forms must assume at some point, in order to save themselves from the destructive impulse that generated them. On the contrary, it must promise the acceptance of the immanent, uncertain and historical feature of every form of organization. Ultimately, society's plural dimension is set to escape the machinic logic of technocratic objectivity, and the irredeemable conflicting character inherent to the populist *identitarianism* by widening the eyes to behold the land of the possible.

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# ARTÍCULOS

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# BIOPOLITICS BEYOND FOUCAULT. A CRITIQUE OF AGAMBEN'S ANALYSIS OF THE PANDEMIC<sup>1</sup>

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## Introduction: positionings, differences, actualité<sup>2</sup>

The outbreak of the Covid-19 pandemic has profoundly changed our image of the world and it is precisely with this new image that — regardless of our different political, legal, economic, social and, not least, health status or condition — we are all called to grapple. In other words, we cannot avoid to measure ourselves against this unprecedented event that has forced a radical reorganization of our lives. Yet, if it is true that such a condition leads us directly to experience the dramatic character of the present situation, it is equally certain that each of us — precisely in relation to its specificity — lives a particular drama in an absolutely unique way. Taking up — *mutatis mutandis* — a famous passage from Marx's *Introduction* to the *Grundrisse*, we could say that: «Hunger is hunger, but the hunger gratified by cooked meat eaten with

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1. Reception date: 20th March 2022; acceptance date: 25th April 2022. The essay is the issue of a research project carried out within the Università di Bologna.

2. An early version of the contents of this essay appeared in Italian in S. Marino (ed.) *Estetica, tecnica, politica. Immagini critiche del contemporaneo*, Mimesis, Sesto San Giovanni (Mi), 2022, pp. 25-46 (*Biopolitica e tanatopolitica nella pandemia: Agamben alla prova di Foucault*).

a knife and fork is a different hunger from that which bolts down raw meat with the aid of hand, nail and tooth» (Marx, 1993, p. 92)<sup>3</sup>.

Hence, well before and well beyond the assumption of reflections — such as those of Jean-Luc Nancy — that, although presenting very interesting arguments, propose a universalizing reading of the pandemic effects<sup>4</sup> — emphasizing how the virus «essentially puts us on a basis of equality» (Nancy 2020), it is necessary instead *to grasp the importance of differences*. It is a matter of recognizing the presence of lines of exclusion and marginalization, as well as measures of «differential inclusion» (Mezzadra and Neilson, 2014, p. 159) internal to society, which give rise «to varying degrees of subordination, rule, discrimination, and segmentation» (*ibidem*). In short, the aim here is to emphasize how such a diversification — linked to distinctions of class, gender, race, health status, and geographic origin — implies different social positions in relation to the pandemic experience and, consequently, can give rise to political *positionings* that are extremely distant from each other regarding the interpretation of the present situation. With respect to this second condition, it is precisely the recognition or, perhaps the opposite, a lack of recognition of the lines of demarcation within society (“differentiating readings” vs. “universalizing readings”) that marks a fundamental point of divergence between the observations of those authors who confront with the *eminently philosophical task of thinking the present*.

In relation to the assumption, therefore, that the practice of thinking means dealing with the present reality, it is not irrelevant to note that one of the most cited authors in the investigations of the theme of the Coronavirus pandemic is Michel Foucault<sup>54</sup>. In fact, he is the thinker who, besides having developed a set of conceptual tools that are used to analyze aspects of the economic, political, social management of the health emergency, has also understood «philosophy as the surface of emergence of a present reality (*actualité*)» (Foucault, 2010, p. 13) and has proposed «an ontology» (*ivi*, p. 21)

3. With reference to the operation of law and right, see also Benjamin (1996, p. 249) which deals with «the mythic ambiguity of laws that may not be “infringed” – the same ambiguity to which Anatole France refers satirically when he says, “Poor and rich are equally forbidden to spend the night under the bridge”». With respect to the difficulties related to the lockdown and the penal and administrative measures issued (not only by the Italian government) to ensure the curfew and mobility ban, we can recall for example the emblematic (and paradoxical) cases of homeless people sanctioned during the pandemic.

4. Although it is not possible to restore here the complexity of the subject, by “universalizing reading” we refer here to Étienne Balibar’s analyses of the concept of “universal”, of the problem of its construction, as well as of the paradoxical character and ambiguity of universalist discourses. In fact, as the author notes, «the bearers of the universal [...] measure the existing community against the idea of universality» (Balibar 2020, p. viii), and it is for this reason that we can observe the institution of a «paradoxical association of universalist discourse and discriminatory practices» (*ivi*: 8), such as racism and sexism. Ultimately, Balibar argues that the enunciation of the universal unites only by dividing (see *ivi*: vii).

5. Just as an example, I would like to mention the cycle of meetings “*Pensar el presente*”: *Michel Foucault y la pandemia* — organized within the “Programa de Estudios Foucaultianos (PEF)” of the University of Buenos Aires (UBA) — to which I was invited to take part by the coordinators Gabriela Seghezzeo and Marcelo Raffin, whom I take the opportunity to thank.

of it. Such an ontology of *actualité* articulates a question about one's own positioning within a specific history and a given present, in order to define its limits and their surmountable character.

Yet, precisely with respect to our *actualité*, it is not possible to limit to only deal with Foucault. It is difficult to get around the comparison with another thinker, whose analysis of the Covid-19 pandemic, even if mainly referred to the Italian context, have been viewed as paradigmatic also at an international level, obtaining a strong media resonance and at the same time raising several doubts and criticisms (see Kotsko, 2022). As can be easily guessed, I am referring here to Giorgio Agamben who, also starting from a particular interpretation of some Foucauldian categories (which, moreover, constitute one of the main foundations of his rather influential theoretical approach), has intervened several times on the question concerning the political reaction to, and management of, the pandemic. His writings, first released on the website of the Italian publisher Quodlibet — within a personal column — have now been largely collected in a volume entitled *Where Are We Now? The Epidemic as Politics* (Agamben, 2021a).

Given the foregoing, the complex task proposed here is to recognize differences and to differentiate; it constitutes the effort to intervene philosophically in a debate and a set of events still ongoing, open-ended, constantly evolving and deeply uncertain. It is therefore in this perspective that we will examine, in a still preliminary way, on one hand what can be called the *paradoxical character of Agamben's ethical-political position* on the management of the pandemic, and on the other hand a *possible use of the concept of biopolitics*, developed from Foucault, beyond Foucault.

## Agamben's ethical-political position

Agamben's is, without a doubt, one of the most radical positions regarding the measures taken in response to the spread of the Covid-19 epidemic. In fact, we can observe how, making use not only of Foucauldian but also of Schmittian and Benjaminian categories, he has developed what can be defined, with Panagiotis Sotiris, as «an exercise in the biopolitics of the “state of exception”» (Sotiris, 2020) — which, by the way, is in continuity with his analysis of the post-9/11 situation and his (certainly courageous) refusal to submit to biometric data checks upon entering the US, as a protest against the American policies (see Arenson, 2004).

Since his first speech on February 26, 2020 — at the dawn of the arrival of the epidemic in Europe and, specifically, in Italy —, Agamben spoke of «invention of an epidemic» (Agamben 2021a, p. 11). More precisely: on the basis of some early statements by the CNR (the National Research Council in Italy), he defined as «frenetic, irrational, and unprovoked» (*ibidem*), the first emergency measures adopted by the Italian government, since for him these were disproportionate to the number of contagions and to the risks of a disease that had to be considered as «a normal flu» (*ivi*, p. 13). In this regard, it should be recalled that the Italian government decreed: the application of isolation or quarantine in case of infection or contact with confirmed cases of SARS-CoV2; a series of limitations and prohibitions in terms of mobility between regions and municipalities; the suspension of educational services, demonstrations, attendance at school and training activities, cultural services, competition procedures.

Admittedly, in February 2020, the situation was unclear at global and local levels. Yet, in the following months, after his first statements, Agamben did not substantially revise his position. Quite to the contrary, he radicalized his arguments in support of it. Indeed, the Italian philosopher developed an understanding of the epidemic as «the ideal pretext» (*ibidem*) — employed by governments (with the complicity of the media, many jurists, and the Church) once the previous pretext of terrorism had been exhausted — to produce a real climate of insecurity and collective panic, on which to intervene through the expansion of exceptional emergency measures restrictive of freedom and harbingers of unprecedented social control. In his view, the epidemic would be «the battleground of a global civil war» (*ivi*: 60; Agamben, 2015, pp. 1-24), fought against an internal enemy, nested in the body of each of us.

From what has been said up to this point, we can understand how, according to the Italian philosopher, the pandemic emergency should be read in terms of *exception* (a philosophical-juridical category that, unlike the juridical formula “state of emergency”, is not employed in positive law, but which Agamben uses as a fundamental primary category of which emergency represents a sort of empirical variant). This state of exception — to which, for Agamben, we have actually been accustomed since a long time —, far from being temporary, «has finally become the norm» (*ivi*, p. 18): a paradigm of government based on the «ill-advised use of emergency decrees through which executive power effectively replaces legislative power» (*ivi*, p. 36)<sup>6</sup>.

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6. Agamben further argues: «it seems that the words pronounced by the Prime Minister and by the head of the Civil Protection Department have the immediate validity of law (as was once said of the words of the Führer)» (Agamben, 2021a, pp. 36-37).



Moreover, on this very basis, for Agamben, politics has now become totalitarian. On the grounds of security reasons, it has eliminated the possibility of any political activity and has developed pervasive forms of control (see *ivi*, pp. 38-42). Indeed, the Italian philosopher deems emergency measures such limiting or banning mobility, imposing social distancing, and suspending religious services, especially funerals (see *ivi*, p. 38) to be the most pervasive in history, despite the fact that «more serious epidemics have happened in the past» (*ivi*, p. 18). More precisely, for him they are the unacceptable cause of the limitation of freedom and the violation of constitutional guarantees and rights that had never been questioned even during the two world wars and fascism (see *ivi*, p. 38). Not only that, such a political apparatus (*dispositif*) (Agamben, 2009; Antoniol, 2018, pp. 153-155) — giving rise to «a new paradigm for governing people and things» (Agamben, 2021a, p. 55) — would in fact be also responsible for «the deterioration of human relationship» (*ivi*, p. 15), by virtue of which «our neighbor has been abolished» (*ivi*, p. 16), considered as a potential danger «whom we must avoid at all costs» (*ivi*, p. 18). The latter, furthermore, being punishable by imprisonment<sup>7</sup>, for Agamben is comparable — by analogy — to the figure of the «potential terrorist» (*ivi*, p. 15) — hidden in every citizen —, whose need for detection had already constituted an essential instrument of government after the attacks of September 11, 2001 (cfr. Agamben, 2005, pp. 3-4, 22).

According to the Agambenian interpretation, therefore, there is «a massive campaign to falsify the truth» (Agamben, 2021a, p. 46), within which medicine itself (critically defined as «the religion of our time» [*ivi*, p. 24] that has undermined the other two religions «that seemed to hold the West together — Christianity and capitalism» [*ivi*, p. 29]) should be understood as a *technique and an instrument of biopower*, in a condition in which the *biosecurity paradigm* has taken hold. This paradigm — introduced as early as 2013 by Patrick Zylberman — would in fact have, as its distinguishing feature, that of *transforming the right to health into the obligation to health*, thus reducing — in the name of a proof of altruism — the population to biopolitical population (see Agamben, 2021a, pp. 29, 68). The conclusion, then, is that in the context of a more general conception of the functioning of modern politics as biopolitics we would have moved from the *security state*, established in response to terrorism, to *biosecurity*, based on health (see *ivi*, p. 60).

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7. The reference, in particular, is to the crime of culpable epidemic introduced in Italy. According to Article 7 of Decree Law 19/2020, anyone who violates the isolation (in case of positivity from Covid-19) or quarantine (in case of established contact with positives) could be imprisoned from 3 to 18 months, in addition to a fine from 500 to 5000 euros.

Our interpretation is in line with that proposed by Francesco Zini, which underlines how Agamben describes the development of a «totalitarian biopolitical plan of normalization of the state of exception through the pandemic occasion» (Zini, 2020, p. 97). In other words, the state of exception enacted by our governments is, according to Agamben, «a kind of “health terror”» (Agamben, 2021a, p. 55) and hence harbinger of an unlimited securitarian biopolitics, implemented in the name of risks that cannot be effectively determined (see *ivi*: 34). In fact, with the pandemic, life would have been reduced to *bare life* (see *ivi*, pp. 17, 29, 38-41)<sup>8</sup>, to a «purely biological state» (*ivi*, p. 18), thus losing «not only its social and political dimensions, but also its human and affective ones» (*ibidem*). On the contrary, it would be necessary to recognize that human relationships, freedom and dignity are primary and more important than mere survival. In a nutshell, for Agamben it is a question of going beyond the bare life, which is the only thing that, according to him, our society still seems to believe in.

Finally, Agamben emphasizes how not only the rulers have imposed a series of unreasonable liberticidal *dispositifs*, but also the ruled themselves have introjected security measures — a kind of Laboétian *servitude volontaire* (see La Boétie, 2008; Agamben, 1998, p. 11). By virtue of the desire to protect bare life — which, however, «is not something that unites people: rather, it blinds and separates them» (Agamben, 2021a, p. 18) —, the people have become slaves of biopower.

## A paradoxical reading

After analyzing the main aspects of the ethical-political position taken by Agamben in relation to the Covid-19 pandemic, it is particularly interesting to try to reflect now on the very structure of this philosophical perspective. Certainly, one cannot fail to recognize that, by emphasizing how the current health emergency represents a veritable

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8. Using the concept of biopolitics, originally derived from the first volume of Foucault's *The History of Sexuality* (1978, pp. 132-159), already in *Homo sacer*, Agamben examines the relationship between life and politics, or rather between bare life — «that is, the life [...] *who may be killed and yet not sacrificed*» (Agamben, 2005, p. 12) — and sovereign power, starting from the moment when the former becomes the stake of the latter, that is, of political-legal-institutional processes. According to Agamben, in fact, the politicization of bare life «constitutes the decisive event of modernity» (*ivi*, p. 10), and it is precisely from the advent of the modern state that it is possible to observe the production of a biopolitical body — as activity of sovereign power (see *ivi*, p. 11) — and a growing tendency of the political space to coincide with the bare life (see *ivi*, p. 12) — whereas Foucault, as we will see, makes a much more circumscribed use — from a historical point of view — of the category of biopolitics. What we find in Agamben is actually a reworking of the concept of biopolitics that is far from the original Foucauldian formulation, which aimed precisely to abandon the centrality of the category of sovereignty. For an analysis of the concept of biopolitics in Agamben, and of the resemblances and differences with respect to Foucault's use of it, see Lemke (2011, pp. 53-64).

«laboratory in which the political and social orders that await humanity are being prepared» (*ivi*, p. 31), the Italian philosopher grasps — albeit in an apocalyptic tone — an important aspect of the issue. In fact, there is a well-founded concern that the operations connected to many emergency devices and safety technologies will continue even after the end of the pandemic<sup>9</sup>. However, despite this reasonable suspicion, the Agambenian reading presents a character that we might actually call paradoxical.

In attacking the unreasonableness of the suspension of «the normal functioning of life and work» (*ivi*, p. 11) — referring, therefore, also to the need to maintain the levels of production and consumption to normal standards —, Agamben refers to epidemiological statistics (from CNR, ISTAT, WHO). The aim of Agamben, on the one hand, is to affirm the low risk of mortality of the disease — «statistically not even that serious» (*ivi*, p. 18) —, which would affect *only* the most fragile individuals, i.e. those already subject to comorbidities; on the other hand, he aims to denounce the vagueness and non-scientific status of the figures of case counts and fatalities, provided by politicians and media (see *ivi*, pp. 40-43). First of all, it is therefore necessary to underline how ironic, to say the least, is the fact that, in an interview with Agamben on May 20, 2020, for the Greek journal *Babylonia*, the interviewer emphasizes — in consonance with the philosopher's position — how «the subordination of life to statistics inevitably leads to the logic of a life that is not worth living» (*ivi*, p. 62).

As a matter of fact, it is immediately clear the mocking character of this statement. Yet, in order to fully understand its paradoxicality, it is necessary to refer to the category of *biopolitics* in its original formulation, i.e., as it was elaborated by Foucault (2003, pp. 264-239; 1978, pp. 135-159)<sup>10</sup>. The latter argues that, if the classical theory of sovereignty recognized the right and power «to take life or let live» (Foucault 2003, p. 241), as the prerogative of the sovereign, from the nineteenth century onwards there has been instead a fundamental transformation. A new type of power develops, opposite to the previous one: «the right to make live and to let die» (*ibidem*). Not only, the French philosopher states that, in addition to the disciplinary technologies that had established since the end of the seventeenth century, which have as their main target the individual

9. In this regard, great importance in the public debate (not only in Italy) has been assumed, for example, by reflections on “distance learning” in schools and universities. This is a measure that presents obvious criticalities, but also indisputable positive aspects. Also in this case, Agamben's position, based on a sort of *reductio ad hitlerum*, is emblematic. As is now quite well known — given the stir caused by the statement —, he has argued indeed that «The teachers who agree [...] to subject themselves to the new online dictatorship and to hold all their classes remotely are the exact equivalent of those university professors who, in 1931, pledged allegiance to the Fascist regime» (Agamben 2021a, p. 74).

10. For a further analysis of the Foucauldian concept of biopolitics, and also a survey of its use by Agamben, Antonio Negri and Michael Hardt, Roberto Esposito, see Bazzicalupo (2010); Marzocca (2020, pp. 35-84, 143-197).

body, this new technology of power integrated it, although operating on a different scale. The goal of this (non-disciplinary) technique is no longer the detailed coordination of bodies, but of human beings: «a “biopolitics” of the human race» (*ivi*, p. 243) develops and life itself becomes the object of political strategies.

This means that biopower invests, controls and regulates all those phenomena and processes that concern the population — which becomes a *specific statistical parameter* and, at the same time, a political problem (see Revel 2003, p. 119) — and that are closely linked to the *economic functioning* of society. Among these phenomena and processes, what assumes a particularly important role is, of course, *health*. Beginning in the eighteenth century, medicine in fact becomes a governmental knowledge (see Napoli, 2021); diseases, endemics, epidemics are carefully studied, and are investigated not so much because of humanitarian feelings and concerns, but rather because they involve costs: they reduce *the processes of maximizing extraction of labour power from the collectivity*, and require large expenditures for care. It is, therefore, precisely with the aim of satisfying these needs, *mostly economic and responding to the interests of capitalism* (see *ivi*, p. xvi), that a combination of instruments and strategies — ranging from deepening of scientific research, disease prevention, general medicalization and, above all, *statistical investigation* — begin to be massively employed.

Health is therefore something concerning the whole population, something that every individual is called upon to care for (see Foucault, 1980, pp. 167-168). As Foucault states in a passage taken from his unpublished materials<sup>11</sup>: with biopolitics we see the birth of the «obligation for the individual not only to respect the lives of others, but also to respect his own [...] duty of cleanliness, hygiene, medicalization» (Foucault, 1975-1976, unpublished materials)<sup>12</sup>. In short: biopolitics gives rise to general mechanisms of security; more precisely, it is itself a technology of security. This is, in fact, the *power of make live* that characterizes its functioning.

From this short reconstruction of the concept of biopolitics, we can now highlight some elements that are also central for our critical analysis of the Agamben's reading of the current pandemic situation. First of all, it can be noted that — at least according to Foucault's historical investigation — the obligation of the individual in relation to his/her own health (and, more generally, the obligation to health) is neither an aspect that exclusively concerns our *actualité* — which, according to Agamben, is characterized

11. I was able to consult Foucault's unpublished manuscripts, kept at the Bibliothèque nationale de France, in 2017-2018.

12. The original text reads: «obligation par l'individu non seulement de respecter la vie des autres, mais aussi de respecter la sienne propre [...] devoir de propreté, d'hygiène, de médicalisation». On this point see also Foucault (2004, p. 6).

instead by a specific paradigm of government based on biosecurity —, nor a datum or a matter of fact that is linked to a state of exception or even to its permanence. On the contrary, what we can observe (and lament) today is, if anything, an entirely different phenomenon — merely anti-biopolitical — that has contributed to aggravating the effects of the current pandemic emergency: the diminishing equalization capacity of public health services. As noted by Pietro Sebastianelli, in recent years there has been in fact a decrease in the assumption, from an institutional-collective point of view, of the health of the population as a general goal to be achieved by democratic societies. Therefore, we can say that, if on the one hand this has led to a (positive) increase in making the individuals feel responsible in self-care and the care of others, on the other hand the same process has certainly had some negative repercussions, making evident a high degree of lack of responsibility in our governments and a depoliticization that collective health has been subjected to (see Sebastianelli, 2021)<sup>13</sup>.

However, with the aim of analyzing here the Agambenian perspective with respect to pandemic management, there are mainly two other elements — characterizing the functioning of biopolitics in the Foucauldian sense — that it is now necessary to focus our attention on. Firstly, as we have seen, Agamben makes use of *statistics* (in order to deny the dangerousness of the epidemic and to put into question the high number of data on deaths and contagions). Secondly, in denouncing the suspension of *working conditions* due to emergency measures, the Italian philosopher seems to perfectly respond to those same economic requirements that are aimed at ensuring the maximization of production and profits — in fact, as we know from Foucault's *The Birth of Biopolitics*, liberalism and its neoliberal developments constitute the very conditions of intelligibility of biopolitics (Foucault, 2008, p. 22). From what has just been said, we can therefore ask: is it possible that Agamben's reading itself, supposedly hostile to biopolitics, can be actually defined as biopolitics? Certainly, such a statement, in this form, would be incorrect. However, we should not forget that — as Foucault states and Agamben himself recognizes (see Agamben 2021a, p. 80) — *the power to make live* tends fatally to convert itself into the *power to let die*, and on this basis it can be affirmed — of course, in a quite provocative way — that Agamben's ethical-political position presents some fundamentally thanatopolitical traits. More specifically, I suggest that one can recognize how it is precisely a perspective à la Agamben that enables the exercise and functioning of thanatopolitics.

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13. This is a phenomenon partly noted also by Agamben, who, however, gives absolutely no room for an evaluation of the positivity of the responsibility of individuals (see Agamben, 2021a, p. 29).

Again, a clear reference to Foucault can be helpful here. The term thanatopolitics is used for the first time by the French philosopher in 1982 (see Foucault, 1988, p. 160)<sup>14</sup>. However, during his lectures at the Collège de France from 1975-76, Foucault had already questioned the ways of exercising the power of death, when life becomes the object that is taken in charge to ensure the strengthening of collective force. What, then is, thanatopolitics? The latter can be described as that set of procedures that allow individuals to be put to death not only directly, but also indirectly, namely by *multiplying for some individuals the risk of death*. In fact, it is precisely thanatopolitics that makes it possible to introduce a «break between what must live and what must die» (Foucault, 2003, p. 254).

It is exactly on the basis of this definition that we can therefore interpret the Agambenian perspective and observe how it is not based on the power to make live but, rather, on the power to let die. More precisely, reading Agamben's interventions on the pandemic, one can understand that, according to the author, letting people die should not only be accepted, but actually applied (albeit indirectly), by virtue of a pre-eminence of living (i.e., exercising one's freedom and political functions) over surviving. «What is a society that values nothing more than survival?» (Agamben 2021a, p. 18), Agamben wonders indeed, troubled by the limitations imposed by the Italian government to deal with the emergency; or, again: «How did it happen that an entire country, without even realising (*sic.*) what was happening, collapsed both ethically and politically in the face of an illness?» (*ivi*, p. 34).

In this regard, it must be obviously acknowledged that, under non-emergency conditions, such a distinction might be entirely legitimate. However, in a pandemic context (whose specificity, in fact, was hardly recognized by Agamben<sup>15</sup>) this distinction cannot but lose its factuality and relevance, even from a logical point of view: to put it very simply, because in order to live it is indispensable to survive. Moreover, it is precisely the pandemic situation that makes the application of primacy to the exercise of one's freedom, with all the consequences that this entails, a choice (of obvious ethical

14. I would also like to remind the reader here of Achille Mbembe's use of the term "necropolitics" — which is close to, although not coincident with, the term thanatopolitics used by Foucault (Mbembe, 2019, pp. 66-92). For a Foucauldian analysis on necropolitics, with reference to the pandemic situation in Brazil under the government of Jair Bolsonaro's, see Duarte, 2020, pp. 96-103.

15. Agamben, in fact, not only underestimated the emergency, but also analyzed the pandemic by implementing a *reductio ad unum*, that is, comparing it to terrorism. Moreover, even when he had to — of necessity — moderate his positions on the gravity of the situation, he still preferred to argue that: «But it is not my intention to enter into the debate among scientists concerning the epidemic. I am only interested in the extremely serious ethical and political consequences that derive from it» (Agamben, 2021a, p. 26). It is evident that, by doing so, Agamben proposes a (rather problematic, to be true) analysis of the pandemic based on the recognition of the autonomy of ethics and politics.

-political character) that has various repercussions not only on oneself, but also on others, since this may affect everyone's health. One of the most trivial examples, but also among the most discussed in the current public debate, concerns the use of face masks, which — according to Agamben — would cancel the significance of the face as «the site of politics», as «the very condition of politics» (*ivi*, pp. 86- 87; see also Agamben, 2021b).<sup>16</sup> Yet — unless one is a denier of the existence of the pandemic as such — it should be intuitive that deciding not to wear face masks may put at risk the health and life of both the person making this choice and of other people with whom the individual comes into contact. What we are confronted with here, therefore, is not only a decision about the preeminence of one's own freedom over one's own survival, but also a choice about the preeminence of one's own freedom over the survival of others. It is a sort of *micro-thanatopolitics* that multiplies the risk of death for some and, precisely because of this, determines a *break, a separation, between those who can live and those who can die*.

Ultimately, this enacts a politics that is itself a politics of survival (of the strongest, of the richest, of those who can afford better living conditions and health) based on a universalizing position — and, therefore, in the final analysis, on a discriminating and hierarchizing conception. In fact, the argumentation that has been critically analyzed before develops from a fallacious assumption that is merely theoretical and quite disconnected from the actual conditions of real life: that is, it takes it for granted that everyone enjoys equal health conditions and equal access to care.

## Biopolitics beyond Foucault

Putting into question Agamben's position on the pandemic requires not only the assumption of a precise alternative ethical-political positioning in comparison to that of this author, but also the attempt — certainly still preliminary and not exhaustive — to formulate a different philosophical-political interpretation in relation to the *actualité*. It is precisely in this direction that it may be useful, once again, to return to the original Foucauldian concept of biopolitics. In this case, of course, it is necessary to go beyond the many critiques «of the regime of security, imposed in the pandemic conjuncture» (Napoli, 2021, p. xxvi), which — as Napoli pointed out — have «logically [found]

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16. Equally paradigmatic, on this topic, are the recent controversies over vaccines and the introduction of the so-called “green pass” in Italy and other countries. On this point, see also Cacciari and Agamben (2021, <https://www.iisf.it/index.php/progetti/diario-della-crisi/massimo-cacciari-giorgio-agamben-a-proposito-del-decreto-sul-green-pass.html>).



reasons and tools to feed on in so many of Foucault's analyses » (*ibidem*). If anything, the goal is to avoid reducing such Foucauldian reflections to prognostications out of time and space (see *ivi*, p. xxi) and to see if there might be a different way of using them. My proposal, indeed, is to employ Foucault beyond Foucault.

To do this, it is useful to start from two considerations. The first concerns Foucault's own attitude towards biopolitics. As Daniele Lorenzini pointed out, the author «was not meant to show us just how *evil* this “modern” form of power is. Of course, it was not meant to praise it either» (Lorenzini, 2021), but rather to reveal and investigate the evolution of technologies of power and analyze their effects. A similar example to fully understand this relief can be found in *Discipline and Punish* from 1975. This well-known work starts, in fact, with the famous description of the violent torture of Damians — condemned for patricide and publicly quartered, on March 2, 1757, in the Place de Grève (now Hôtel de Ville) in Paris (see Foucault, 1995, pp. 3-7) — and then moves to a thorough investigation, certainly not without harsh criticism, of the transformations of the functioning of penal justice in the age of so-called «sobriety in punishment» (*ivi*, p. 14). Indeed, as Foucault shows, the disappearance of the spectacle of punishment was accompanied by the emergence of new procedural and administrative acts, resulting in a shift to a not unproblematically calculated delay of death — which was «multiplied by a series of successive attacks» (*ivi*: 12) —, and by an extension of the intervention space of control *dispositifs*. Yet, even in this case, although Foucault meticulously describes the danger that is inherent in the development of disciplinary power, and although he warns us against the calculatingly perverse mechanisms that mark the functioning of the prison, it would nevertheless be an incorrect inference to claim that the French philosopher meant to express a preference for the method of torture and public executions.

To return, then, to the initial crux, the point for us is to emphasize the need to get out of abstract dichotomous positions — to be “for” or “against” something — with respect to the biopolitical form of government. These positions, in fact, are not only unwise, but also unhelpful (see Lorenzini, 2021). On the contrary, it is necessary to confront ourselves with the specific historical and political context in which we are embedded and to *critically* evaluate the practical effects of the technologies of power to which we are inevitably subjected.

Having said this, I can thus arrive now to the second consideration. On the basis of the recognition of the exceptionality of the pandemic situation that characterizes our *actualité*, it may be appropriate to mark a double distinction and separation: firstly, between disciplinary and surveillance technologies, on the one hand, and biopolitics, on



the other hand; secondly, between biopolitics and thanatopolitics (see Prozoron, 2017, p. 331)<sup>17</sup>. In fact, it is only by virtue of this premise that one can legitimately argue today the need not to oppose biopolitical strategies, but, on the contrary, to enhance them, hence supporting their strengthening and wider application.

The assumption that underlies our proposal is that the pandemic conjuncture has given rise to a series of extraordinary conditions that exacerbated transformations concerning the exercise of disciplinary power, biopolitics, and thanatopolitics. With particular reference to the healthcare system, it can be observed indeed that, if since the beginning of the pandemic there has been an unfortunate increase in the use of disciplinary and surveillance technologies, this is not only due to the need to cope with the health emergency, but is also dictated, in large part, by the preponderance of the application, in recent years, of thanatopolitical technologies rather than biopolitical ones. The huge cuts to public healthcare, the monopolies and speculations of pharmaceutical companies, the wide recourse to insurance policies, the strengthening of private healthcare — just to mention some of the thanatopolitical maneuvers whose use has been motivated by priorities linked to the mere pursuit of profits — have not only created real lines of demarcation within society (between the privileged and the disadvantaged: that is, between those who have been able to benefit more from medical services and those who have been excluded from them, with obvious repercussions in terms of health), but have also caused enormous difficulties — if not the collapse — of many public health systems, unable to withstand the impact of the pandemic.

In a nutshell, the point is to recognize in the pandemic emergency the unthinkable historical condition that has decreed the need to correct the thanatopolitical dysfunctions and inequities that are currently present in our welfare systems, through a necessary recourse to biopolitics. An exemplary case in this regard concerns the free distribution of anti-Covid-19 vaccines in the United States, the homeland *par excellence* of private healthcare. The biopolitical measure implemented by the U.S. government was, in fact, a far-sighted one that serves precisely to counteract the shortcomings of the thanatopolitical mechanisms that, by excluding large segments of the population from access to care and welfare, could only create an increase in contagions and, consequently, a general worsening of the sanitary condition<sup>18</sup>.

17. It should be noted that, actually, for Foucault, these three technologies of power complement and refer to each other, without cancelling each other out.

18. Clearly, in this regard, it can be argued that the measure adopted by the United States was only made possible by a huge economic investment that (in reality) few governments can afford. This objection, evidently, is not only legitimate, but also goes in the right direction. If the pandemic is by definition global, we would indeed need equally global biopolitical measures.

Ultimately, what we can observe is that, as an alternative to paradoxically thanatopolitical positions, it is necessary to abandon many simplifications and ideological visions that are indiscriminately suspicious of any kind of government intervention, and it is rather important to recognize that biopolitical measures — even when they are linked to economic interests — can have ameliorative effects on living conditions and, consequently, also on conditions of freedom (see Sorrentino, 2012, pp. 66-67). In our view, it is thus in this direction that, starting from the identification of the centrality of the right to health, it becomes necessary to promote the claim of more biopolitics or, more precisely, of a *new form of biopolitics*, which is able to take charge of social, political, legal, economic and health differences, and is therefore based not on equality but on equity.

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# BEYOND AND THROUGH LAW: FOR AN INSTITUTING SELF- REFLEXIVE CRITIQUE OF VIOLENCE. A REFLECTION FROM THE ITALIAN EDITION OF RECHT UND GEWALT BY CHRISTOPH MENKE<sup>1</sup>

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## Abstract<sup>2</sup>

In this paper, starting from the thematization of the paradoxically inseparable, genealogical relationship between law and violence, I aim to articulate, from the perspective of an institutional juridical-political ontology, an *instituting self-reflexive critique of violence*. In the first section, I will concentrate on the Benjaminian thesis of the faithful character of the violence of law as taken up by Christoph Menke in *Law and Violence*. After having established, in the second section, some methodological coordinates useful to define the approach of legal-political ontology, in the third section, I analyze the

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1. Reception date: 20th March 2022; acceptance date: 25th April 2022. The essay is the issue of a research project carried out within the Università degli Studi di Salerno. The Italian translation opens the series *Ombre del diritto*, published by Castelvocchi, which is the result of the research project PRIN 2017 *The dark side of law. When discrimination, exclusion and oppression are by law* carried out by the Department of Legal Sciences of the University of Salerno.

2. Citations from works not presented in English are the result of my translation.

transition from “authoritarian law” to “autonomous law” (Menke, 2018, p. 33), namely the tragic experience of law. In section four and five, I will address some specific philosophical proposals that have attempted, albeit from very different angles and historical contexts and with very different semantics, a philosophical “relief” of the violence of law. The first critique I will consider is the one that Simone Weil addresses to the concept of the person, i.e., to the subject bearer of law. In the transition to the Weilian impersonal, a *destituting paradigm* (Esposito, 2021) of legal-political ontology begins to take shape. From my point of view, this paradigm finds its most radical interpreter in Giorgio Agamben. The destituting paradigm, although allows one to think in a radical manner about “the beyond” of law, it runs the risk of resulting in a form of political nihilism. In a second moment, moving from the two different readings of Kafka’s *Before the Law* proposed by Giorgio Agamben and Jacques Derrida, and thanks to a more general evaluation of their philosophies, I try to bring out the philosophical necessity of a critique of violence that does not remain entangled in the radical but sterile attempt to definitively overcome law in the name of a *justice beyond*, that can never be fully realized, but that is based on a self-reflection of law which, by going to the political genesis of its procedures, deconstructs the faithful violence that resides in itself, without claiming to eliminate it completely. *Beyond and through law*: it is to the rhythm of this formulation that an *instituting legal-political ontology* proposes to criticize the violence of law.

## Key words

Law; violence; legal-political ontology; instituting thought.

## Resumen

En este trabajo, partiendo de la tematización de la relación genealógica, paradójicamente inseparable, entre derecho y violencia, pretendo articular, desde la perspectiva de una ontología jurídico-política institucional, una crítica autorreflexiva instituyente de la violencia. En la primera sección, me centraré en la tesis benjaminiana sobre la acepción de la violencia del derecho, tal y como la recoge Christoph Menke en *Law and Violence*. Después de haber establecido, en el segundo apartado, algunas coordenadas metodológicas útiles para definir el enfoque de la ontología jurídico-política que considero más adecuado para la tematización de la relación entre derecho y violencia, en el tercer apartado, analizaré, a través de un estudio de la *Oresteia* y el *Edipo Rey*, el paso del “derecho autoritario” al “derecho autónomo” (Menke, 2018, p. 33), es decir, la experiencia trágica del derecho. En la sección cuatro y cinco, abordaré algunas propuestas



filosóficas específicas que han intentado proponer, aunque desde perspectivas y contextos históricos muy diferentes y con semánticas muy distintas, un “alivio” filosófico de la violencia del derecho. La primera crítica que consideraré es la que Simone Weil, en polémica con el personalismo francés, dirige al concepto de persona, es decir, al sujeto portador del derecho. En el tránsito hacia lo impersonal weiliano, comienza a configurarse un paradigma destituyente (Esposito, 2021) de la ontología jurídico-política. Desde mi punto de vista, este paradigma encuentra su intérprete más radical en Giorgio Agamben. El paradigma destituyente, si bien permite pensar de manera radical el “más allá” del derecho, corre el riesgo de desembocar en una forma de nihilismo político. En un segundo lugar, partiendo de las dos diferentes lecturas de *Ante la ley* de Kafka propuestas por Giorgio Agamben y Jacques Derrida, y gracias a una valoración más general de sus filosofías, intentaré destacar la necesidad filosófica de una crítica de la violencia que no se quede enredada en el intento radical pero estéril de superar definitivamente la ley en nombre de una justicia completamente “superior” y que nunca podrá realizarse plenamente, sino que se base en una autorreflexión del derecho que, yendo a la génesis política de sus procedimientos, deconstruya la violencia propia del derecho, sin pretender eliminarla por completo. *Finalmente más allá y a través del derecho* es la formulación mediante la cual una *ontología jurídico-política instituyente* se propone criticar la violencia del derecho.

## Palabras clave

Derecho; violencia; ontología jurídico-política; pensamiento instituyente.

## The faithful character of violence

The question of the relationship between law and violence, debated since the dawn of Western legal, political, historical, and artistic thought, is extremely complex and wide-ranging. It covers a range of problems from the institution of law in the ancient world — i.e., the transition from the justice of vengeance to the justice of the equal parts of a political society, staged by Greek tragedy, and in particular by Aeschylus' *Oresteia* and Sophocles' *Oedipus Rex* — to the contemporary issues related to the connection, to say it with Jurgen Habermas, “between facts and norms” (Habermas, 2006). The relationship between law and violence thus invests the general problem of the legitimacy of law, namely the *political* quality of the procedures that law itself implements to construct its legitimacy.

In a book entirely dedicated to the bond that conjoint *Law and violence*, Christoph Menke expresses the paradox of their relationship in the most condensed and effective form, placing two antithetical, if not mutually contradictory, statements in tension: 1) “The first observation is that law is the opposite of violence; [...] 2) The second observation is that law is itself violence; legal decisions, too, use violence” (Menke, 2018, p. 3). According to Menke, law is a complex entity: by introducing legal forms of decision-making at its origin, it places a curb on the endless chain of violence that distinguishes the world of revenge, but to achieve this it can only implement, externally and internally, i.e., on the bodies and minds of the convicts, a certain degree of violence, that is exactly what was programmatically intended to definitely eradicate.

As Francesco Mancuso clearly states in “Oltre il destino della violenza” (‘Beyond the fate of violence’), an essay in the Italian edition of Menke’s work, the problem of the tension between facticity and validity is the focus of the research made by Menke, “which tends to explain the circular, oscillatory, essentially fateful movement of the relationship between legality and violence” (Menke, 2018, p. 10). In §7, Menke affirms, quoting Benjamin, that “the violence of law is ‘violence crowned by fate’ (Benjamin, 1996, p. 242), which is to say, the violence of law consists in its operating as — *like* — fate” (Menke, 2018, p. 30). What exactly does Menke mean by saying, with Benjamin, that *the violence of law is crowned by fate* or, to use another Benjaminian term, that law is “mythic violence” (Benjamin, 1996, p. 248)? Answering this question gives one the possibility to get to the heart of the author’s theoretical proposal, that is to understand how he deals with the juridical *and* political problem of the legitimacy of law.

First, a clarification. Benjamin's theoretical point, which is the fundamental prerequisite for an effective critique of violence, is that the violence of law, in its mythical or faithful character, is not at all about the violent means that law can or cannot employ — it is not tied to *contingency* — but rather “designates an operation that is concerned with itself; an operation, that is to say, in which purpose and means coincide” (Menke, 2018, p. 31) — it is for *necessity* that law is violence.

As mentioned above, to adequately understand the self-referential operation of law in which purpose and means coincide, and thus the faithful character of its violence, one must dwell on the *political-procedural* character of law, i.e., the procedure of equality by which law breaks with the violence of the endless repetition of revenge. To achieve this theoretical aim, Menke turns to “the experience of law in tragedy” (Menke, 2018, p. 33). According to the author, the Benjaminian critique of violence — which can be expressed in two fundamental theses: “1. The violence of law consists in its endless compulsion to repeat the violent enforcement in which it prevails over the extra-legal. 2. The root of the violence of law is that law must prevail over non-law”. (Menke, 2018, p. 33) — must be supplemented with a genealogy of the relationship between legitimacy and violence, that is to be found in the Greek tragedy.

## Legal-Political Ontology

Before analyzing, in the next section, the way Menke marks the fundamental passages of the experience of law in tragedy by reading the *Oresteia* and *Oedipus Rex*, I consider it opportune to establish some methodological coordinates.

1. The first aspect concerns how to understand the second Benjaminian thesis, the one that identifies in the endless repetition of the differentiation between law and non-law the character of the faithful violence of law. As Mancuso points out, recalling Gustav Radbruch's reflections on the negation of law, “the jurist is accustomed to thinking of the non-law as something that is in any case only conceivable in the space of law” (Mancuso, 2022, p. 11). The way Benjamin and Menke approach the question is completely different: the functional differentiation between law and non-law, made from the institution of the justice of law as opposed to the justice of vengeance, marks for the first time a space of irreducible extraneousness between law and non-law, between ought-to- be and being. Non-law, while not being the opposite of law, is completely foreign to it. Non-law pertains to the *ontological* dimension, not to the *normative* one.

To put it in the most direct way possible, the differentiation between law and non-law, as intended by Menke, is literally inconceivable to the jurist: to his eyes such a point of differentiation remains a blind spot. In order to shed light on such a blind spot, which constitutes “the dark side of law” there is a need for the activation of a genealogical gaze that gives way to a philosophical approach that I propose to call *legal-political ontology*. The problem of the legitimization of law, namely the distinction between law and non-law, and thus the relationship between law and violence, has to be framed with the philosophical approach of a legal-political ontology. Neither pure legal theory — when flattened on analytical formalism — nor political philosophy — when understood as a philosophy that claims to ground politics from the perspective of the representation of order, and therefore of the neutralization of conflict (Esposito, 2011) — are able to grasp the genealogical nexus of violence and legality.

2. The second methodological aspect conveys to the concept of violence. In the third part of *Law and violence*, Menke replies to the critics moved to his arguments. The first reply to Daniel Loick concerns the very concept of violence. Substantially, Loick refuses the necessary, conceptual connection between law and violence arguing that “the connection between law and coercion is not a conceptual, but a historical one” (2018, p. 10). Without going into the details of Loick’s critique, what I would like to emphasize is Menke’s response, from which I see the need for a legal-political ontology approach. The violence of law is not an historical feature because “the violence of law is not a matter of its means but rather of its form”. For Menke, the concept of violence “has an ontological quality; it defines the *being* of law: the way in which it operates”. If understood in the instrumental sense, violence is defined by its effect, whether “ontologically understood, as inscribed in the legal form of normativity, [...] violence means the manifestation of the normative vis-à-vis the non-normative” (Menke, 2018, p. 214).

The legal-political ontology approach aims to shed light on the meeting space of *the ontological* and *the normative*, of *being* and *ought-to-be*. By dialectically relating the two dimensions of law and being, the relationship between law and violence can be better understood. From a methodological point of view, this consists, more specifically, in injecting historical, cultural, and social contents into the theory of law, in order to investigate more deeply the level of effectiveness. As Geminello Preterossi points out, “the harshest limit that legal reason encounters on the level of effectiveness”, takes place in the relation to power and violence, that is the “realization of law” (2015, p. 51). On the side of political philosophy, the method makes use of what, in the absence of a specific thematization, takes on the role of an assumption: the political is traversed by con-

flict, by the power of the negative. The failure to recognize the cogency of the negative in the sphere of interest of political philosophy does not allow, as one would like, the construction of a granitic order immune to conflict (Badiou, 2005). On the contrary, such a philosophical operation causes the conflict to continue to press at the margins of the political in the phantasmatic, and therefore much more fearsome, form of the return of a repressed.

## The tragic experience of law

In the Menkian reconstruction of the relationship between law and violence, the tragic experience of law plays a decisive role. For the author, the genre of tragedy and the institution of law are closely interconnected: “Tragedy is the genre of law; law is the justice of tragedy. It is accordingly not only the themes and plots of tragedy that are juridical; so is its genre-specific makeup. This also applies conversely: “not only is tragedy the form in which law is represented, law is also tragedy’s form of justice” (Menke, 2018, p. 6).

Starting from this assumption, the questions I try to answer in this section are the following: how is the *justice of vengeance* distinguished from the *justice of law*? Why is violence not eliminated at all in the transition from the former to the latter sense of justice, as a certain *ideology* would have it? In what does the transition from authoritarian law (*Oresteia*) to autonomous law (*Oedipus Rex*) consist?

As is well known, in Aeschylus’ *Oresteia*, Athens is the place where a tribunal of citizens, to whose votes Athena has added her own, has just acquitted Orestes of the murder of his mother. At the end of the tragedy, Athena creates the Areopagus to watch over the pacified city, whose protection will be entrusted to the terrible Erinyes — the last manifestation of an ancestral, wrathful, archaic, vindictive world — who, transformed by now into the Eumenides, become the guarantor par excellence of the universe of the newly born Athenian democracy.

For the author of *Law and Violence*, *Oresteia* paradigmatically represents one of the fundamental stages of the tragic experience of law, namely the political institutionalization of authoritarian law. The way in which authoritarian law puts an end to the endless chain of killings that torment the world of the justice of retribution, of revenge, is that of the institutionalization of a just proceeding in which the contrasting voices are placed on the same political plane of equality that allows them to recognize each other

as parties to the dispute by ceding their power of judgement to a third, which cannot be a party.

“The break with retributive justice and the accession to the justice of law demands from both antagonists that they see themselves as parties. [...] It demands that they see themselves and the other as parties that are incapable of just judgment on the point of contention between them and so can obtain that judgment only from another: from another who is not merely yet another, yet another party, but categorically different from them, who is not a party — the Other” (Menke, 2018, p. 12).

From my perspective, in this genealogy of the authoritarian law, one of the most interesting points is that Menke does not read the staging of the political institution of the authoritarian law as a simple overcoming of natural violence, but as the transition from one order of justice to another. For Menke, the philosophical fiction of the state of nature has no place in the realism of tragedy. Even if Menke is right to argue that tragedy represents an alternative, realistic mode of expression to philosophical discourses on legitimation that see law as opposed to a fictitious state of nature, it would be appropriate, even with regard to tragedy itself, to sharpen the blade of criticism more, so to speak, by showing that even in the Greek discourse on the political institution of law there are ideological elements that a shrewd treatment of the relationship between law and violence cannot leave out of the analysis.

It is exactly what Nicole Loraux does in a series of essays collected in *The divided City*, a text in which the author intends to show how the Greek world, and specifically the city of Athens, constructs its ideology of a justice without violence by denying the very reality of the political, which is conflict. Loraux's work starts from a reading of a political event. The fundamental question is “to understand what motivated the Athenians in 403 B.C. to swear ‘not to recall misfortunes of the past’ (Loraux, 2006, p. 15). The amnesty episode of 403 BC. — neither the first nor the last in the course of Greek history — has, for Loraux, a strong paradigmatic value, as from it one can understand the nature of the Greek political. One must focus, Loraux suggests, on the oblivion of conflict, on the repression of stasis from the city. By contrasting internal dissension and its condemnation with the glory of external war, therefore maximizing the distance between *stasis* and *polemos*, the polis works its *ideology* of unity and indivisibility. The oblivion of *stasis* allows the internal pacification of the city, which, by relegating to its exterior the cause of all conflict, and thus excluding from its centre every possible reason for opposition, founds the illusion of a law without violence, and of a politics immune to conflict.

Although space does not permit me to do so, it would be useful to further explore the implications of this discourse. Indeed, I am convinced that the interaction with Loraux's thesis on the repression of the political in ancient Greece, and thus the reflection on the paradigmatic (I would say "ontological political") value of the *stasis*, could offer to Menke's perspective an even deeper understanding of the relationship between law and violence. If one would move a critique to Menke's analyses of the bond of law and violence, I think it should be focused right on the lack of a specific thematization of the relationship between law, politics, and war.

The second fundamental step identified by Menke in the tragic experience of law concerns the constitution of autonomous law, which finds its paradigmatic moment in *Oedipus Rex*. For Menke, Sophocles' tragedy thoroughly investigates the relationship between law and non-law, namely the way in which law imposes its interminable and progressive internalization on what is exterior to itself. Autonomous law, in order to legitimize its procedures, to enforce itself, requires not only the institution of a court in which the judge determines what is just in a dispute between parts on the basis of the principle of the political equality of citizens, but also the production of the autonomous subject. As *Oedipus Rex* clearly shows, the autonomous right makes "Everyone [...] becomes the authority that can and wants to turn the violent action of law against the lawless individual as that individual's own deed against him- or herself" (Menke, 2018, p. 23). For Menke, "Oedipus' new insight is that the rule of law can be ensured only when it is exercised from within: when it enforces the legal manner of judging as the own judgment of the subjects it subjugates; when law *and* the subjects become autonomous at one stroke" (Menke, 2018, p. 26).

In Menke's study of the tragic experience of law, the justice of law, unlike the justice of revenge, requires each party to judge and to be judged as an equal citizen. The judgement of law, as based on the political unity, is indeed the judgement of all. But the tragedy of *Oedipus* also shows that precisely in this lies the dominion and violence of law. As already stated, — it is the thesis of the faithful character of the violence of law — "it is not that law, despite its claim to be justified, must resort to additional coercive measures in order to rule. Rather. It must realize its claim to be justified *as* the exercise of violence; [...] the aspiration of law to be justified falls upon its subject as a curse" (Menke, 2018, pp. 28-29).

As I have tried to show, in Menke's study, the justice of law, unlike the justice of vengeance, requires each party to pass judgement as an equal citizen. The judgement of law is in fact the judgement of all. This entails, Menke argues, that "law demand of the

whom it judges, and even the one whom it convicts, that she share its judgement of her (Menke, 2018, p. 27). But the tragedy of Oedipus also shows that precisely in this, i.e., in the condemnation that the subjects of law inflict upon themselves, consists the domination of law that resorts to violence. “Under the rule of law we must condemn ourselves, and this self-condemnation under the rule of law is a curse. Precisely because it is a condemnation we inflict on ourselves, it is a condemnation in which we are not free, and more importantly, *from* which we will never be free. (Menke, 2018, p. 28). This is why law begins with the autonomy of the subject, namely with what Hegel calls “the commandment of right [...]: *Be a person and respect others as persons*” (Hegel, 1991, §36).

### Simone Weil's transition to the impersonal

In open polemic with French personalism, Weil opposes the primacy of rights, brought forward by that tradition, with the precedence and cogency of *obligations*. It is enough to compare two statements, one made by Jacques Maritain and the other made by Weil, to understand the distance that separates the author from what Esposito calls the “juridical vocation of Roman Catholicism” (Esposito, 1996, p. 20). Maritain writes: “The notion of right is even profound than that of moral obligation” (Maritain, 1945, p. 37). As does Weil in *The Need for Roots*: “The notion of obligations comes before that of rights, which is subordinate and relative to the former” (Weil, 2002, p. 2). The notion of right, a part from the fact that it has a “commercial flavour”, and therefore is linked to the semantics of division, exchange, and quantity, is structurally dependent on force. “Rights are always asserted in a tone of contention; and when this tone is adopted, it must rely upon force in the background, or else it will be laughed at” (Weil, 1990, p. 279).

As Benjamin had already grasped in the “Critique of Violence” essay, violence is so inherent to law that it almost coincides with it, as can be seen from the duplicity of the term *Gewalt*, which in German means both law and violence. What makes it possible to juxtapose the Benjaminian critique with Weil's lies in the common assumption that law and *justice* are separated by an irreparable fracture. Law is not justice because law is nothing but legitimate violence. Both have discovered, to say it with Montaigne, the “mystical basis of [...] authority” (Montaigne, 1993, p. 353) that is the act that founds law by hiding its violent origin.



With respect to Benjamin, the further step Weil takes is to center her critique of law on the subject to which it applies, namely the person. This legal figure, considered sacred in the personalist philosophers' circles with which Weil polemizes, is far from indicating what is sacred in every human being. "There is something sacred in every man, but it is not his person. Nor yet is it the human personality. It is this man; no more and no less" (Weil, 1990, p. 273). The sacred has nothing to do with the person, namely with that part of man — the rational part — to which rights are ascribed and duties imposed. Justice — which is one of the senses in which what Weil calls sacred can be understood — does not step the path of law, does not use the weapons of claim, of bargaining, of negotiation, but always arises from "the sense of contact with injustice through pain" (Weil, 1990, p. 275).

By its constitutively possessive and exclusionary character, law, and the figure of the person on whom it rests, is what bars the way to justice. It is certainly not law that will make us more inclined to welcome the cry of pain that arises from injustice<sup>3</sup>. We must then, according to Weil, take another path: it is necessary to enter "into the impersonal" (Weil, 1990, p. 277). To explain what she means by "impersonal", Weil gives an example of rare clarity that deserves to be quoted: "If a child is doing a sum and does it wrong, the mistake bears the stamp of his personality. If he does the sum exactly right, his personality does not enter into it at all" (Weil, 1990, p. 276). If law belongs to the person, justice, and the obligation to which it calls, concerns the impersonal, the anonymous, that which is before or beyond the personal subject. In the example of the child, the correctness of the calculation does not belong to the area in which his personal will is placed, this always linked to the possibility of error, but stands on a different level that connects the child to the impersonal perfection of truth: if the calculation is correct, it means that the personal part of the child is as if silenced, that he adheres perfectly to the impersonal order of things. It is in that part that manages to touch this impersonal order that what is sacred in the human being resides. "So far from its being his person, what is sacred in a human being is the impersonal in him. Everything which is impersonal in man is sacred, and nothing else" (Weil, 1990, p. 275).

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3. For Simone Weil, law is particularistic in the sense that it is both private and privative: it always has to do with privileges that some people have, and others do not. Looking at the genesis of law in ancient Rome, she emphasizes the patrimonialistic character of the Roman legal institution, to which she addresses a harsh criticism. "It is singularly monstrous that ancient Rome should be praised for having bequeathed to us the notion of rights. If we examine Roman law in its cradle, to see what species it belongs to, we discover that property was defined by the *jus utendi et abutendi*. And in fact, the things which the property owner had the right to use or abuse at will were for the most part human beings" (Weil, 1990, p. 279).

## Before the law

Kafka's story *Before the Law* is the place of a possible confrontation between Jacques Derrida's and Giorgio Agamben's reflection on the origin and essence of the law. According to Derrida, Kafka's legend, beyond the fact that it makes manifest the relationship between law and literature, reveals the paradoxical tension that exists between the generality of the law and the absolute singularity of the subject to which it applies. Indeed, what is at stake in the case of the "country man" and the "doorkeeper of the law" is not so much the question of the value of a specific law, be it natural or moral, as the question of the "being of these laws" (Derrida, 2018, p. 36). Taking a completely different route, Agamben sees in the passage commented by Derrida, "the summit and the root of every law" (Agamben, 2017, p. 44). Thus, following the Agambenian "schema of the sovereign exception", according to which the law applies by disapplying itself, it turns out that for the country man "the open door destined only for him includes him in excluding him and excludes him in including him" (Agamben, 2017, p. 44).

Given the decisive importance that the subject of the essence of law plays in the thought of both philosophers, and the importance that the name of Franz Kafka plays in it, in this section, rather than examining their interpretation of Kafka in detail<sup>4</sup>, Agamben and Derrida are, so to speak, brought to the scene as 'conceptual characters', namely as representatives of two alternative legal-political ontologies: *destituting juridical-political ontology* and *deconstructive juridical-political ontology*.

*Before the law*: Agamben and Derrida, in their philosophical attempt to relief the structural violence of law by going to the genesis of its procedures (archeology and deconstruction), lead to two very different political outcomes. Whereas the Agambenian project leads to the rejection of all possible political action, precisely because it is based on the destitution of all actions<sup>5</sup>, and thus result in a form of political nihilism, Derrida, in the insistence with which he will have marked the distance between law and justice traces the way towards an affirmative promise of justice (and democracy) that should be pursued *not only beyond but even through* law. Indeed, as could be shown by numerous

4. On this topic, I would like to refer to my articles *L'expérience littéraire de Kafka comme expérience de la justice* (Galasso, 2020) and *Lire Kafka. Jacques Derrida et Giorgio Agamben devant la loi* (Galasso, 2022).

5. In the epilogue to the volume that concludes his archaeological exploration of politics, Agamben opposes the constituent power of sovereignty — locked as it is in the dead-end dialectic of a violence that poses and a violence that defends law — to the destituting power, or destituent potential. "If the fundamental ontological problem today is not work but inoperativity, and if this latter can nevertheless be attested only with respect to a work, then access to a different figure of politics cannot take the form of a 'constituent power' but rather that of something that we can provisionally call 'destituent potential' (Agamben, 2017, p. 1268).

textual references, I am convinced that Derrida's philosophy expresses a clear affirmative political line that is completely assent in Agamben's. Anyway, in order to articulate an instituting critique of the violence of law, I believe it fruitful to make Derrida's deconstructive paradigm of legal-political ontology interact with the Menkian paradigm of the self-reflexivity of law. I do not believe at all that the two paradigms should be thought of alternatively. Besides, it is Menke himself who mentions Derrida, in addition to the young Hegel, among the attempts most akin to his way of understanding the problem of the relationship between law and violence.

## Towards an instituting critique of violence

The legal-political ontology articulated in this paper must lead to an *instituting* critique of violence. Being an "instituting" legal-political ontology has consequences on both the side of the theory of law *and* on the side of political philosophy.

The best approach to investigate the nexus between law and violence is the *institutional theory of rights*. From this perspective, it is indeed possible to think of law as an "institutional fact", which has the theoretical advantage of overcoming "the alternative between a 'natural law based conception of rights' (at least of basic rights) and a positivist conception" (Kervégan, 2016, p. 78) and, even more significantly for my research, makes it possible to grasp, in the meeting point of *the normative* and *the ontological*, the political-procedural value of the institution of law.

The instituting *political ontology* aims to deal affirmatively with the negative (the violence of law); it aims to think "the negative in a productive manner, subtracting it from the dual tendency towards absolutization and repression that characterizes contemporary philosophy" (Esposito, 2021, p. 71). Indeed, giving an affirmative, instituting political tone to the philosophical operation of a critique of the violence of law makes it possible to avoid the following risks:

- (i) *Removal of the negative*. The first error is based on the failure to recognize the structural link between law and violence. This leads to a form of "normative idealism", that is to "imagine law as progressively triumphant in the meritorious work of masking the Gorgon-like face of the power of civilization against a barbaric violence, the legacy of a dark past" (Mancuso, 2022, p. 7).

- (ii) *Absolutization of the negative*. The second risk is that of understanding law and violence as indistinguishable. Such an approach is based on a clear rejection of the idea that law arises in opposition to violence as its ordering factor, and results in a form of political nihilism, which ends up by definitively obscuring the emancipatory power of law.

From the perspective adopted here, Menkian's idea of a relief of law as self-reflection turns out to be the most convincing. In dealing with the problem of the genesis of law in Greek tragedy, Menke highlights the conflictual, violent relationship that law has with "the lawless and norm-free". In order to accomplish what Menke does not hesitate to describe as an "impossible challenge" — that is, the fact that law from the beginning "must secure not just this or that law but the law of law" — law "must time and time and again 'suspend' itself". Recalling Schmitt, Menke defines the constitutive operation of law as follows: "The suspension of the law is its way of wielding power — as violent rule over the extra- or non-legal". For the author, the alternative to suspension lies precisely in the idea of a *relief of law*, a "relief from its suspension", which "consists in a form of the implementation of political-procedural judgment that is liberated from its violent rule over the extra- or non- legal" (Menke, 2018, p. 38).

According to Menke, when one is facing with this possibility of liberating from the violent rule of law, there are two possible types of response. The first, defined by Menke as the 'regressive answer', consist in "sublation of the difference between law and non-law", and in the "reconciliation of law with the nonlegal". Based on the model of a "teleological concept of pedagogy", the regressive answer implies that "the paideic sublation of the violent rule of law" is accomplished in the combined elimination of both law and politics. In fact, the repressive response coincides with that normative idealism that, by not recognising the negative, ends up removing the *instituting* difference between law and politics. The reflexive response does not at all require the erasure of the difference between law and non-law, but, on the contrary, requires that "the difference itself must be released" in a "non cratically, non violently" modality. For Menke, this response is reflexive because it is realised "only by law changing itself: by a law that has become self-reflective" (Menke, 2018, p. 39).

In what does the self-reflection of law consist? Even if it may seem little "the self-reflection of law reveals the contradiction between the two pretensions — the right of law to prevail over the non-legal, and the right of the non-legal to be taken into account

in law that prevails over it — whose identity law maintains in its ordinary operation” (Menke, 2018, p. 54). Thus, the self-reflection of law consists in the recognition of the contradiction that inhabits law itself. For Menke, this contradiction cannot in fact be resolved through a decision, but rather must be grasped in its radical paradoxicality and developed as such.

“That happens in an implementation of law that tries to satisfy two mutually exclusive demands at once. This must be an implementation that realizes law *and* disrupts it; an implementation that enacts the equality of the citizens *and* realizes the difference between citizen and non-citizen. [...] The self-reflective implementation of law bursts the autonomous identity of self and law and lends full expression to the contradiction, which is to say the unity of unity and contradiction, of citizen and non-citizen, of participation in and obliviousness, refusal, incapacity of law” (Menke, 2018, p. 55).

*Beyond and through law*: it is only to the rhythm of this deconstructive or self-reflexive movement that law can effectively criticize its violent faith.

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Among his works, we quote:

*Verità e comunità in Maurice Merleau-Ponty* (La città del sole, 1998); *Un'etica del nulla. Libertà, esistenza, politica* (Liguori, 2001); *Storia, filosofia e politica Camus e Merleau-Ponty* (La città del sole, 2003); *Le radici della disuguaglianza. La potenza dei moderni* (Mimesis, 2008); *ECity. Antropologia della tecnica* (Rubbettino, 2018); *Nocity. Antropologia della tecnica* (Castelvecchi, 2018).

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# THE INTERNAL TURN OF DEMOCRACY. THE ASSANGE CASE<sup>1</sup>

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## Abstract

The essay wonders to what extent liberal democratic systems can be separated, in relation to freedom, from autocratic power devices. One of the analysis criteria followed by the A., is constituted by the story that saw as protagonist the activist Julian Assange. The Australian journalist, showed the very close bond between power and Internet communication nowadays, and the libertarian potentialities hidden in this bond. He also pointed out the existence of a “subversion” level that Occidental systems are not willing to tolerate, because even in them, as in any other power device, there is a need for survival that makes use of specific, well-defined and unavoidable immune mechanisms.

In the essay, finally, we analyze the problematization of the concept of freedom, and its political operability, facing the danger of conformism, media manipulation and depoliticization always looming in democracies.

## Keywords

Assange; Democracy; Freedom; Ideology; Power.

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1. Reception date: 20<sup>th</sup> February 2022; acceptance date: 9<sup>th</sup> April 2022. The essay is the issue of a research project carried out within the Università degli Studi di Salerno.

## **Resumen**

El ensayo se pregunta hasta qué punto los sistemas liberales democráticos pueden ser independientes, en relación con la libertad, por los dispositivos de poder autocrático. Uno de los criterios de análisis enseguido por el A. consiste en el caso de Julian Assange. El periodista australiano ha demostrado el vínculo estrechísimo que existe entre el poder y la comunicación informática hoy, y las potencialidades libertarias escondidas en este vínculo. Assange ha resaltado también la existencia de un nivel de “eversión” que los sistemas occidentales no están dispuestos a tolerar, ya que también en ellos, como en cualquier otro dispositivo de poder, existe una necesidad de supervivencia que se sirve de mecanismos inmunes muy precisos e ineludibles.

En el ensayo, además, se articula en torno al problema del concepto de libertad, y de su funcionamiento político, ante el peligro del conformismo, de la manipulación mediática y de la despolitización siempre inminente en las democracias.

## **Palabras clave**

Assange; Democracia; Libertad; Ideología; Poder.

## Introduction

It is quite obvious to reiterate, that in democracy, one of the most important rights of “citizens” is freedom of expression. This right, however, is enshrined in the constitutions so it seems pointless to discuss it. It is quite obvious that, in freedom of expression, the right to publish any information of common interest is fully entitled.

When it happens that, as in the case of investigations and processes raged against the Australian journalist Julian Assange, all this is an outright violation, and there is no doubt that it must be denounced without hesitation.

The contradiction expressed by Euro-American political systems as for the case of Assange, however, cannot be easily dismissed as a violation, although sensational, of libertarian rules of which these same systems become advocates. Actually, we must carefully analyze the mishaps happened to Assange and *WikiLeaks* journalists, of which, however, we have not seen the epilogue yet, analyzing them from a philosophical and political point of view. In other terms, I think it is extremely important, and also urgent, to inquire this sad case, first of all asking ourselves how “The Assange case” could have happened inside the contemporary liberal democracies.

In short, what are the reasons why systems of power defining themselves “democratic” and guaranteeing freedom of expression yet in their constitutional charters, keep persecuting a journalist who published information able to shed light — with unquestionable, verified and never denied documents —, not about the activities of individuals but about the action of a state or those people who represent the institutions. Is this a simple abuse of power by the involved countries? Is this a coincidence or, as I believe, behind this behaviour — however non-occasional but systematic and long lasting — there is a cogent logic, almost a historical necessity that we have to lay bare?

Thus, I would begin with a fundamental question: are Western liberal democracies substantially different from other power devices that occurred in history or, at least on a main point, all of them are converging? I will adopt this second hypothesis: all power systems, also those liberal democratic, essentially agree on the need to protect themselves, denying, if necessary, also the freedom of expression.

I will try to explain the reasons why this happens, placing the Assange case inside this context of philosophical investigation.

## The survival of power

Liberal democratic systems, though firmly rooted in modern political speech, descend from a more than bimillenary history, sinking its roots inside the entire cultural and political path of the Occidental world. It is neither useful, nor possible outlines here a genealogy of this path. We just have to admit that, in our time, these systems have reached a considerable degree of structural articulation (we live in the world of complexity) and present a series of contradictions and paradoxes — the result of this same complexity.

In terms of freedom of expression, this complexity is ambivalent: on the one hand it promotes the structuring of legal and institutional mechanisms that make despot's life difficult, because it is not easy for a man of power (even the President of the United States of America), whoever is, a person or organ of the State, to dispose of power in an arbitrary manner, but on the other hand, it allows the unnoticed weakening of individual freedom. Actually, the great masterpiece of modern *soft power*, came nowadays to its most complete historical maturation, was convincing men to be free, just as this freedom is threatened.

The liberal democratic world is actually supposed to be libertarian, it makes of freedom its *ideological point d'honneur*, but condemns to nothingness those who are opposed to *mainstream* that dominates the public space. Certainly, even after having harshly criticized and condemned the government, in general, we can sleep relatively quiet because we hardly will be awakened by political police — as maybe it can happen in old-style, autocratic, and despotic power systems. It is also difficult to dissipate the heavy and claustrophobic feeling, that our complaint will be inexorably condemned to stand empty and insignificant — as well as, after all, the public life of most men and women who live in postindustrial societies, is insignificant.

If I could synthesize with a formula, I should say that, in liberal democracies, the forms of power, aim to resort to preventive war in foreign policy, while, concerning the formation of subjectivity, in such a preventive manner, let the political freedom abort at birth. After all, we cannot help agreeing with an American brilliant author, (Wolin, 2008, e-book), when he speaks about “inverted totalitarianism”:

Rather, in coining the term “inverted totalitarianism” I tried to find a name for a new type of political system, seemingly one driven by abstract totalizing powers, not by personal rule, one that succeeds by encouraging political disengagement

rather than mass mobilization, that relies more on “private” media than on public agencies to disseminate propaganda reinforcing the official version of events.

And, however, it does not always happen as described above, because the management of events can get out of hand. So it happens that liberal democratic systems are “obliged” to show a different side, more “primitive” and explicit, dangerously resembling that of autocratic power: historical situations in which such systems are forced to remove the mask of *soft power*, that is, the apparent tolerance and rule of law. A particular case attracted the attention of the international press, and globally stirred the conscience: “the Assange case”. Regarding that case, a scholar who followed the entire biographical itinerary of the Australian activist, on this point, appropriately highlights some differences but also dangerously continuities between autocratic and democratic systems:

Una dittatura avrebbe inviato sicari e manganellatori a liquidare Julian Assange e i giornalisti di WikiLeaks. Il complesso militare e d’intelligence degli Stati Uniti e dei loro alleati, invece, ha usato, e continuerà a usare, tecniche meno brutali. E questo è certamente preferibile. Ma il punto è che non c’è bisogno di essere brutali quando si può far crollare un giornalista con la tortura psicologica invece che con quella fisica. Non serve fare bruciature di sigaretta sulle braccia di Julian Assange, quando lo si può portare sull’orlo del suicidio, con dieci anni di detenzione arbitraria senza un’ora d’aria e senza via d’uscita. Non serve mandare sicari per fermare le pubblicazioni di una testata, quando basta usare la *lawfare* e tenere i suoi giornalisti e le sue fonti in un clima di perenne intimidazione (Maurizi, 2021, e-book).

How can this all happen? Why did what actually constitutes the concrete historical denial of freedom appear inside a liberal reality? I believe that the answer must be searched inside the deepest reasons that support any power association — even the liberal democratic State. If we go back, actually, to the time of its foundation, we have to acknowledge that theorists of sovereignty had thought the state institution as the shell designed, more than protect and subjugate the citizens to an order that could also conflict with their interests. The modern state is born on a precise, imperative, anthropological assumption: the absolute lack of limits which are intrinsic to human nature as to the explanation of freedom. Hobbesian definition of freedom (Hobbes, 1994, e-book) is “absence of opposition”: LIBERTY, or FREEDOM, signifieth (properly) the absence of

opposition (by opposition, I mean external impediments of motion) and may be applied no less to irrational and inanimate creatures than to rational.

In Hobbes' perspective, viewed the absence of ethical and ontological limits to freedom, it is necessary to give the sovereignty over a territory and people who live there, to a monopolist of legitimate physical force (*auctoritas non veritas facit legem*). Only in this way, that mass of atomized individuals, free and equal, usually anarchist and undifferentiated, may become a political corps, or, in widely used words, may become a people.

It is clear that we must not only interpret the State in its Hobbesian absolutistic version but we need to also consider its historical reinterpretations. The liberal and democratic criticism (Locke, Rousseau) provided some decisive objections to absolutism, contributing fundamentally to the contemporary conception of statehood. They intended to achieve two different but parallel aims: to reduce the interference of the State, as an autonomous apparatus, and increase the chances of action and participation of citizens to the management of common affairs. This "democratic" turn, however, the libertarian tradition that goes from Alexis de Tocqueville (1811) to Hannah Arendt (1958) says it very well, took rather a "biopolitical" turn, depriving the citizens of the sphere of active politics, confining them to much less significant role of producers/consumers. Those distinct but convergent expressions are born exactly from here. They were so successfully in the interpretation of mass societies, namely *individualism and depoliticization*.

In this perspective, the figure of State as it manifested itself in modern times and as it remains in the period characterized by globalization, appears even better: it is a living organism that cannot hold the same needs of life, typical of any collective body.

If all this is true, it is necessary, then, to wonder why it should behave in a different way from other bodies — all structured to defend organic life. Why should the State not "organize itself" as a real military device capable of defending and offending any entity external to it? If we enter into this perspective, we fully understand that also the liberal democratic State — as a form of power like all the others — is intended to display the forces that wanted to put him in crisis, or even just threaten its conservation, as a real challenge from which it is necessary to defend. From the state point of view does not care whether these forces are internal or external. The State corps — is made to defend its identity— if this identity has internal threats to its security, the organism will provide to fight and expel it by itself.

Consequently, the result is an evident, relentless and nihilistic position: this attitude is poorly democratic or not democratic at all. It is clear that, actually, not always the fighting between the endogenous principle of the organism that wants to survive (the

power) and the external threat to it (the radical critique) can unfold in the sun light, since, if they were revealed, some conflicts might endanger precisely that survival to which the State cannot give up. That is why I talk about nihilism: by raising the relationship between the identity and alterity, as a military relationship of logical and existential opposition, transforming the other into an enemy. It is relentless to involve in a potential destruction both terms of the relationship.

### **The *via crucis* of extradition**

We are dealing with the Assange case now. Particularly, it is necessary to remember some of recent judicial events that have seen him on the stand, taking into accounts the general conditions within which those events have developed. So, on January 5th, 2021 the medical motivations did not suffice to British justice to deny the extradition of Assange.

The same year, on October 27th, as attested by the doctors who visited him, the journalist had a transient ischemic attack. The trauma occurred during his appearance in video conference, at The Belmarsh Superior Court. According to the opinion of the American physician Bill Hogan, member of the international group, *Doctor for Assange*, the ischemic attack occurred to Assange is very rare for a man of fifty years. It is, therefore likely, that “a direct chain of psychological events” determined it. Dr. Hogan also affirmed that accident was “entirely and avoidable” but USA and Great Britain “ignored the alarms”.

The deteriorating health of Assange has been documented for a long time: it is the subject of several appeals, as well as repeated critics addressed to the British Government by humanitarian organizations, physicians and the United Nations itself. But despite this, USA and Great Britain, that is, the flag-bearers of Occidental liberal democracies, appear adamant, while continuing to use against Assange hardly conform methods to the rules of imprisonment that should connote the rule of law.

From this, is it not legitimate to conclude that both governments are “responsible” for the conditions of the *WikiLeaks* founder? It can be assumed that those measures intended to cause his death, considered as the right punishment for his militancy in the interest of justice and historical truth.

This suspicion is endorsed by the subsequent decision promulgated on December 10th, 2021 by the High Court of London. The court overturns the sentence that denied

the extradition, on March 14th, 2022, the United Kingdom Supreme Court dismisses the appeal lodged by Assange's lawyers, leaving the last decision to the Home Secretary. On April 21st, 2022, The Westminster Magistrates' Court issues a formal order of extradition in USA, during an audience to which Assange attends in video-conference. The Court with its verdict and behind an appearance of legality, took a political position that will be perhaps resolved with the detention for life or more likely with the death of Assange — these methods are, out of any doubt, worthy of a despotic regime. The judges decided to deliver Assange into the hands of a government that, if did not try to kidnap or get killed him, as well as trusted sources state, certainly violated his democratic rights: for example, by subjecting him to a very pervasive surveillance system, secretly implemented during the forced permanence in the Ecuadorian Embassy in London.

In light of recent events, thus, it would appear that, in the substantial indifference of the Australian government, the opposition politicians in Great Britain and of the international press itself, the last hopes to avoid extradition to USA, reside in the Supreme Court of the United Kingdom and in the European Court of Human Rights. However, it is very difficult to expect some favorable outcomes for WikiLeaks founder, without a massive mobilization of consciences viewed the relationships inside these institutions, and the progressive deterioration of the Occidental "democracies" too.

## **Assange, the Subversive**

Let now see in details how Assange became a real and intolerable danger. Is he liable for serious misconduct (infringements) such as to undermine the benign and tolerant face of *soft power*? To penetrate the heart of the problem, we have to approach the Internet issue.

What kind of freedom do we enjoy when we browse the Web? In Internet, the individual freedom is limited to what the software on the server (that is their owners) allows. On this point, the same Assange well expresses: In Internet quello che puoi fare è deciso dai programmi che esistono, dai programmi che girano, e pertanto il codice è legge. (Assange, 2013, e-book)

If this is true, we can already obtain an initial answer to our question. Actually, freedom opportunities are very small inside a sociopolitical situation in which the rules of participation are written by others. If we consider, for example, that a social network like Facebook, has more subscribers than the number of the inhabitants of China, we



can well conclude that the power of impact, of manipulation of public opinion, of data control by a private body (and the public authorities to which that body gives account) far surpasses that of any other country in the world. The owners of the network, in fact, have the control over everything that is published. Through mysterious algorithms they can hide, highlight or delete news, facts and people. The data we send to the platforms could turn against us at any time and, in any case, could allow the exercise of a “listening” power to forces whose existence we even ignore.

Moreover, computer systems produce noise, a lot of noise: a huge amount of materials is called to obscure the facts that they want to hide. Is this not also the strategy of normal television programming?

Among the thousands of news that could be offered to citizens, are selected, with surgical precision, exactly those that appear in line with the masters of information: whether it is a government or a private enterprise. Public television, also Italian, shows it clearly — it changes very little. It comes again here, dramatically, the famous Orwellian expression of the “non construction of nonperson or non news”.

Sponsors’ money and the approval of those who really matter: these are the requirements on which “the guiding criteria of free information are based”. The same criteria, however, inspire the sale of books, the cultural choices, the construction of the visions of the world and the same policy options.

In the reign of “acquired” freedom, that is where freedom is ideology, information is thought and managed as the possibility of excluding or marginalizing. In our time it is almost impossible to break the wall of insignificance, for those who want to produce something really free and in/formative, and not what the system is perfectly capable of recovering dialectically in the society of entertainment.

Perhaps originality and even subversion were easier at the time of the absolute sovereigns rather than in a historical phase that is assumed to be liberal and libertarian. But Assange made it! *WikiLeaks* managed to pierce the reinforced concrete stopper that controls the information. The founder of *WikiLeaks*, in fact, penetrated the system and had the courage to turn it against itself. How did this happen? Obviously, by electronic means. If we assume that the real essence of contemporary power, in fact, focuses on the technocratic communication apparatus, if we admit that our historical world is dominated by what we might call *the global electronic city* (Martone, 2018; Martone 2021), then the only way to attack the system is to enter on its main stronghold, that *Matrix* from which everything departs and where everything is brought back. In this context, it becomes understandable that only ingenious hackers, like Julian Assange and his

collaborators, could undermine the system in the truest and deepest sense, and, to do this, the Australian journalist hit the power in the most delicate point:

Come un gruppo di ribelli che fa un blitz e poi si dilegua, colpivano e poi sparivano. Cambiavano contatti e avevano un'acuta consapevolezza della sorveglianza che forze di polizia, eserciti, servizi segreti, giganti della finanza mettevano in campo contro i giornalisti che percepivano come una minaccia. (Maurizi, 2021, e-book)

In the case of Julian Assange, the fight for freedom has been activated by electronic means in the knowledge that the system of power not only Occidental, at the time of globalization, finds right on Internet, in its uses and abuses, the diamond tip. The digitalization of data, in fact represents, at the same time and for the same reasons, the main axis of power but also its highest level of exposure.

Since 2006, Assange is among the promoters of the website *WikiLeaks*: in the course of some years he publishes documents and secret information from anonymous sources. Among these, there are also confidential reports on the bombing in Yemen, on corruption in the Arab world, extrajudicial executions by the Kenyan police on the Tibetan uprising in China in 2008, the oil scandal in Peru and the e-mails of the Turkish government after the purges of Erdogan in 2016. *WikiLeaks* gained international attention in 2010, when it made public a series of reports provided by Chelsea Manning. Among these news, were also present the video *Collateral Murder*, the diaries of the war in Afghanistan, and the diaries of the war in Iraq.

After the leaks in 2010, the government of the United States understood that it was necessary to destroy *WikiLeaks* and promptly initiated an investigation. The accusations that in sequence have been addressed to him, in one of the most intricate judicial events of contemporary history, not being able to blame him for having denounced heinous crimes committed by politicians, military, etc., and thereby pilloried the public image of American democracy, more simply they first challenged him sexual offenses, then filed, and later, after various, complex and pretext judicial events, accused him of having violated The "*Espionage Act*", a law dating back to 1917, through the hacking of reserved passwords.

This decision, however, was criticized by editors of some newspapers including *The Washington Post* and *The New York Times*. In any case, it remains very problematic to accuse someone of having violated the state secret when to be involved are facts that do

not risk harming the security and integrity of the state itself, understood as a community of associates and not as an apparatus of organs, structured to coordinate and provide for the needs of the former. In other words, one can not use the alibi of the secret to prevent the detection and punishment of facts contrary to the constitutional order, concerning the defense of civil, social and humanitarian rights.

Internet, its management and control, in this sense, is confirmed to be the top of power of our time. Assange himself tells us so:

Perciò alla base della rivoluzione delle comunicazioni hitech, e della libertà che ne abbiamo ricavato, c'è l'intera economia moderna di mercato, neoliberale, transnazionale e globalizzata. In realtà ne è il vertice. È il massimo, in termini di risultato tecnologico, che la moderna economia neoliberale globalizzata può produrre. Internet è sorretta da interazioni commerciali estremamente complesse tra produttori di fibre ottiche, fabbricanti di semiconduttori, compagnie minerarie che estraggono tutta questa roba e i vari lubrificanti finanziari che permettono i commerci, i tribunali per far rispettare le leggi sulla proprietà e così via. Così diventa il vertice della piramide dell'intero sistema neoliberale (2013, e-book).

The Australian journalist showed gloomy, sad and even criminal pages — power could not accept to view them published without taking big risks from the point of view of its ideological self-entitlement and therefore of its own survival.

Also, thanks to *WikiLeaks*, the Occident had to witness the fall of prestige and respect by the world community not included in the zone of American influence. Consequently, the arrest and the tormenting detention of Assange, as well as the processes to which it has been subjected, require us to reflect on the profound geopolitical transformations of these years, that is the ways in which the American Empire is reacting to current geopolitical historical events that seem to direct history towards the transformation of the World Order from unipolar to multipolar.

In this framework, it is well understood that one could not deal with the informative mechanism of *WikiLeaks* in the same way that liberal democratic capitalism always does, that is to consider antagonism as the engine of its own dynamism. The *WikiLeaks* device, very differently, was thought as a real masterpiece of anti-power production.

Both the macro-sectoral system of politics and the micro-sectoral one of Internet, failed to sustain the impact and is well understood, returning to the initial question of my essay, that The United States and its allies had to mobilize their immune defense

system. They did so because those systems possess a Deep-state level, or *arcana imperii*, that can not be drawn in any way and less even closer, less than ever disclosed. Exactly, from this point of view, as it happens in autocratic systems.

Contemporary capitalism, as mentioned, different in form but not in substance from the despotisms of always, elaborated refined methods to transform the opposition into new expansive possibilities of itself. In the case of Julian Assange, this strategy could not be realized because what emerged was not only a scandalous matter (that one can cover up or even use as mass distraction material), but attempted the state secret and the news that are daily hidden in the palaces of power — what, in fact, coincides with power itself and its survival. If it had been allowed, perhaps, others could have imitated or perfected Assange's action, inevitably leading the system to collapse.

Pandora's box uncovered by *WikiLeaks* is emblematic and exemplary. He showed, and his historical-biographical story, made it even better to see, that there is not even transparency in the political power that makes transparency its ideological point of honour. In this sense, *WikiLeaks* did not simply challenge the system but put it into crisis: *WikiLeaks* reporters witnessed an unprecedented and unusual way of democratic subjectivization:

En d'autres termes, avec Snowden, Assange et Manning, ce ne sont pas seulement de nouveaux objets politiques qui apparaissent ; ce ne sont pas uniquement de nouveaux points de dissensus qui voient le jour et sont portés sur l'arène publique: ce sont de nouveaux modes de subjectivation. Ces trois personnages n'interrogent pas seulement ce qui se déroule sur la scène politique et la façon dont cela s'y déroule: ils mettent en crise la scène politique elle-même (Lagasderie, 2014, e-book).

That is why they could not let him get away with it:

L'obiettivo del complesso militare e d'intelligence degli Stati Uniti e dei loro alleati è distruggere WikiLeaks, far fuori un'organizzazione giornalistica che, per la prima volta nella storia, ha creato una crepa profonda e persistente in quel potere segreto, che da sempre non risponde a nessuno e usa il segreto di Stato non per proteggere la sicurezza dei cittadini, ma per garantirsi l'impunità, nascondere incompetenza e corruzione (Maurizi, 2021, e-book).

Apart from the personal fate of the Australian activist, therefore, his story marks a very dangerous drift for democracies in their ethical substance. Assange's story shows that the question of "Reason of State" not only does not move away from its modern structure, in the direction of processes of democratization perhaps more transparent and free, but it becomes more and more explicit that governments demand from journalists, and intellectuals, the support to the political lines of "national security". The implications of the Assange case for press freedoms and democracy are difficult to overestimate. Therefore, they require us to think deeply about who we are and what we want to become.

## Heroes of freedom

From Socrates onward, the heroes of freedom are many as significant. The same way as Socrates, Spartacus, Christ, Giordano Bruno, in a very sober but deeply ethical sense, Assange is a hero, in the "erotic" sense of expression — a hero of freedom precisely. After years of imprisonment and harassment, none of the reasons for obtaining release was accepted:

Nonostante il Working Group on Arbitrary Detention delle Nazioni unite avesse ripetutamente chiesto il suo rilascio, il relatore speciale dell'Onu contro la tortura, Nils Melzer, avesse riscontrato tutti i sintomi della tortura psicologica e 117 medici di tutto il mondo avessero scritto una lettera all'autorevole rivista di medicina 'The Lancet' per chiedere di porre fine alla 'tortura di Assange e assicurargli l'accesso alle migliori cure prima che sia troppo tardi (Maurizi, 2021).

Commenting on the Assange case, therefore, the British movie director and activist Ken Loach asks a question that seems inevitable: Per quanto ancora possiamo accettare che il meccanismo del potere segreto, responsabile dei crimini più vergognosi, continui a farsi beffe dei nostri tentativi di vivere in una democrazia? (Pref. Maurizi, 2021, e-book).

To answer Loach's questions, we must first of all be aware that there are "free countries", where by this expression we mean an acquisition of freedom given once and for all. Freedom is essentially an experience, not an individual property of the subject, or of a community. In this light, we must also consider heretical figures who, with somewhat

emphatic expression, the history of all ages pointed out as *heroes of freedom* (Bazzicalupo, 2011): human beings, that is, capable of standing as apostles, and even as martyrs, of freedom itself. Why are they the heroes? Obviously, what comes most spontaneously to say is that they are so for the courage they show in their public action. There is no doubt, but there is also another aspect. The heroes of freedom, like Assange, have the ability to identify the exposed point of the problem, its specific *vulnus*, the exposed nerve to which it is really sensitive. It is not easy to reach that point, and, in fact, not everyone has the hero's hardening: this is all more true in a reality that boasts an ideology of freedom capable of metabolizing antagonisms, making it the engine of its own dynamism. Assange said loud and clear that the King is naked. In an anti-heroic time, a time where heroes are paper and digital, a time deeply farcical, instead, Assange is a dramatic hero. And, on the other hand, a hero of freedom can only be dramatic, because he is destined to relate to death and self-sacrifice.

Basically, the main fault of Assange is to have put images, e-mails and videos online. He reacted against the distorted information, using, however, Internet. Perhaps with this action, the activist conclusively proved that today the heroic figure indisputably can only use — in a perhaps pirate way — the same tools that make the system large and powerful. It is a sort of inverted Schmittian ruler, in which the ruler is the *hacker* who inaugurates a state of anti-power exception.

The Australian journalist forced the Occident to witness helplessly the display of an undesirable image: that is the one that highlights an imperialism that provokes wars, deaths and destruction in the world for its own geopolitical and economic advantage. In other words, the concrete damage to which Assange and WikiLeaks exposed the Western Empire was to show how completely false the justifications of those wars, as well as the manner in which they were fought, despite these were confirmed by self-proclaimed experts and amplified and endlessly repeated by the powerful media device of the Occident. In this way, the Australian journalist managed to become the main enemy of the military/industrial apparatus, as well as the most relevant power lobbies in USA and allied countries. Against him an unusually unanimous agreement was created: the prison for Assange became a goal that agreed all Washington (usually very divided). All this says a lot about how the Australian journalist was able to do his job well. From his action, however, we will not only retain the awareness that freedom has always a cost; neither we can only remember it as something memorable that deployed powerful state organizations against a single man. As it always happens when it comes to heroes, the memory of an exemplary act persists. The sad story of the Australian journalist leaves

us, as a gift, a positive opportunity from the democratic point of view: an immune system that defends itself, got on the ropes by a man who denounces its unmentionable truths, can exaggerate with the self-preservation and fall victim to itself. In other terms, it may happen that the denial of the other (in this case, in the form of democracy and truth) can produce unexpected heterogenesis of the ends. If a level of defense is necessary for any living system, an excess of immunization can cause implosion, or the crisis of the system itself.

## Voluntary servitude?

Leaving in the background, the critical discussion of the Assange case, with some concluding reflections, now I would like to broaden my gaze on the typically modern category of freedom, in the conviction that, without an adequate perception of its, it is impossible to understand the story that saw *WikiLeaks* and its founder protagonists.

There are good reasons to believe that man, if wanted to follow his natural impulses, and this in every age, would tend to seek servitude rather than freedom. There are important classical texts on this point and it is pointless to dwell. Here, I mention only two of them: the essay on the voluntary servitude of Étienne de La Boétie (2014) and the fifth book of *Karamazov brothers* of Fëdor Michajlovič Dostoevskij (2017), the latter of them dedicated to «the myth of the great inquisitor».

For most people, it is more comfortable and easier to depend on the will of others than assume the burden, sometimes very heavy, of thinking, judging and deciding on their own.

In the concept and, especially, in the experience of freedom there are great paradoxes. When we dedicate ourselves to an imposed task, perhaps, we wish to free ourselves from that engagement to take back our freedom. But when this goal was reached, the result could disprove our expectations: feeling free means not being protected by the banks of the command of others and by heteronomous engagement — that can also mean protection. Here are the reasons why the devotion to an external cause can be for many people a mandatory reason for living. Outside of that, in fact, there is something to avoid at all costs: perhaps the loneliness and the thought that it conveys. Without freedom there can be no thought and so is vice versa: for most people/mass there is nothing more disorienting than free thought.

Individual in mass societies fears the responsibility of choosing: the risk of destabilization of one's own identity remains a looming danger over each and there are few who agree to face it. Behind scrubs, uniforms we feel instead reassured and the world becomes habitable again.

To the use of conscious freedom, mass/men always oppose "voluntary servitude". This is the great internal turn, the great unsolved *riddle*, that democracy will always be faced. As also the Assange case proved well, liberal democratic systems are based on the *ideology* of freedom: the essence of this ideology is to make that freedom is with us, then deny itself when freedom, radically experienced by a single rebel, puts at risk the conformism of imposed freedom. All this is cloaked by an apparent freedom (which is similar to indifference and consumer apathy) that remains so only to the extent that it does not come to contest closely the power of the tyrant.

One of the most blatant manifestations of hypocrisy of the ideology of freedom is that the autonomy of citizens is not as important as the economic strength of the oligarchs of the regime, by virtue of which they can buy more media, more votes, more judges — they can corrupt and threaten more than others. All this is more true, as we saw, in the time when the Internet can form and distort subjectivities at will.

It is clear that the commitment to freedom can only be singular: in it must always be alive the awareness, that despite all evidence to the contrary, another world is possible. This because freedom is not a reality placed within the subjects, although it must necessarily be born in the minds of men, but reveals itself as an act of contestation of the existing.

In this sense, freedom is always subversive. Freedom is an existential thrill, an unease, a desire that does not find satisfaction in the existing. Freedom is also the courage to assert this uneasiness against all those who cry out to scandal hoping not having, as Assange, to witness with prison, suffering, defamation. Freedom is therefore risky, since it is a question of combating the homologation to which any human community is founded even more that of post-industrial advanced consumerism.

The greatest feat a man can accomplish is the translation of the *novum* he feels inside in a recognizable act, with the hope that this action of rupture will become the founder of a new history. On this regard, it is useful to remember that ancient belief in Aristotelian ethics that took new impetus in the philosophy of Hannah Arendt, according to which politics does not belong to the scope of necessity, but enters fully into the field of things that "can also be different", and that for this reason they are free (Arendt, 1948).



In short, politics belongs to the realm of freedom and, conversely, freedom is essentially political activity, because it is the privileged place of application of imagination and courage. Politics is the front end between our corporeity and the world. Finally, politics is the place where the possible can become real.

If only a few turn to a certain vision of the world, they will be crazy, but if they are so many to oppose — slowly weaving a canvas capable of rebuilding a democratic fabric worthy of this name, by creating new criteria that do not respond only to the dominant techno-financial power structure — perhaps, they can actually change something important, and that is trying “to retrain life”. When a system of power is accepted “because there are no alternatives”, in reality political servitude has already won us. In our contemporaneity these dangers are several, strong and looming (Mounck, 2018).

Men can be divided into two categories: there are those who seek the truth and those who seek the belonging, who tries to protect himself in the reassuring ranks of the majority, and who instead pursues his own way, for all that is bumpy and tiring, towards peace and dialogue.

If we care the fate of democracy, we must encourage this second along with the critical thinking that characterizes it. The construction by web slogans of political speech, instead, the criminalization (Assange), or the pathologization of *parresiasta* through the militarization of ideological language, does not build democracy but the cancellation of its very nature. If that “militarization”, however, as it always happens, is supported by a powerful media apparatus it is even worse, as the approval of the public debate is thus being carried out through a *reductio ad unum* that is exactly the opposite of democratic spirit and practice.

To face the challenges of digital technology, we should do much more than just keep writing our protests on social media or be disgusted by the manipulations of the system. Our task is more difficult and fundamental: we will have to change our way of thinking technology, ourselves and the others (Susskind, 1922).

In the minds of citizens, yet, it is not hard to see so much confusion and some accommodation on dominant positions. The news overlap and are almost never inspired by the will to make understand how things are actually. The intent, rather, is to push in the ideological direction decided by the masters of media. All this produces information chaos and provides the opportunity to less aware citizens to react by taking narcissistically any position that can be fanatically flaunted and defended on social media. In short, it came determining a great labyrinth from which, sometimes, emerges some crazed Icarus who flies for a few moments before sinking miserably into the Aegean.

In this horizon, however, we risk not considering a decisive event: if the world now assumed the architectural features of a labyrinth without real exits, the centre of power is instead well established in its place. Today the difference between citizens and power is given by the fact that the first are in the labyrinth, while power is itself the labyrinth. Not even power can come out of it, because it would be like coming out of oneself, but in relation to citizens, it knows its form and, has huge benefits. It strives in every way to increase the number of its corridors to make it increasingly difficult to recognize the labyrinth as such. If this were happening, in fact, the story of Assange showed it very well, the whole system would melt like a huge hologram behind which there is nothingness.

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# **NOTAS Y DISCUSIONES**

## **LAS LARGAS SOMBRAS DEL "SIGLO CORTO".**

**Un enfoque sobre las categorías  
del siglo XX**



# **LAS LARGAS SOMBRAS DEL “SIGLO CORTO”. UN ENFOQUE SOBRE LAS CATEGORÍAS DEL SIGLO XX I GUERRA**

## **THE LONG SHADOWS OF THE “SHORT CENTURY”. A FOCUS ON THE CATEGORIES OF THE 20TH CENTURY PRIMPER PASO: SOBRE LA GUERRA**

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Según la feliz intuición de Eric Hobsbawm en 1989, la caída del Muro de Berlín y el hundimiento del socialismo real ponen fin a los acontecimientos históricos del siglo XX once años antes de lo previsto en el barrido cronológico. El fin del equilibrio bipolar, el hundimiento de un sistema político lleno de contradicciones, pero protagonista indiscutible de todos los acontecimientos políticos del siglo XX, la soledad del sistema capitalista y de los Estados Unidos de América como superpotencia capaz de ejercer un

papel hegemónico en un área de influencia geopolítica que se extendía potencialmente a todo el mundo parecían marcar irrevocablemente el fin de una era. Lo que surgió fue una imagen irénica del tiempo histórico que se abría, un tiempo histórico que dejaba atrás de forma definitiva las contradicciones del pasado. Como prueba de ello, podemos observar cómo en el debate historiográfico, especialmente en el ámbito conservador, abundan las obras que proponen una imagen totalmente negativa del siglo XX, descrito como una época oscura que hay que relegar irrevocable y felizmente al pasado: a modo de ejemplo, el siglo XX ha sido definido como la “era de la violencia” por Niall Ferguson, el “siglo de las ideas asesinas” por Robert Conquest, o el “siglo de las tinieblas” por Todorov.

La identidad de un siglo no es, por supuesto, algo dado por naturaleza, sino el resultado de un debate con muchas voces entre las que, afortunadamente, no faltan autores que han apuntado los méritos sin cerrar los ojos a las profundas contradicciones: el citado Hobsbawm, por ejemplo, no deja de señalar cómo el siglo XX fue también el siglo del fin del colonialismo, de un proceso masivo de alfabetización de masas y de la invención del bienestar universalista en una porción, aunque parcial, pero sustancial del planeta.

Por otra parte, la identidad de un siglo no es patrimonio exclusivo del debate historiográfico: la filosofía política -que no por casualidad, precisamente en el siglo XX, se enfrenta a la historia declinando este encuentro en paradigmas teóricos- tiene el deber de tomar parte en este debate, en primer lugar para reconciliarse con un trozo tan relevante de su historia, y en segundo lugar porque es la disciplina en la que resulta más evidente y urgente la necesidad de cuestionar la fuerte tesis discontinuista que querría archivar definitivamente el siglo XX. El siglo XX fue en muchos aspectos precisamente el siglo de la política, y esto nos ayuda a comprender su irresoluble naturaleza contradictoria y la imposibilidad de una tipificación polarizadora. Empecemos por algunas palabras clave en torno a las cuales se ha debatido ampliamente en el debate filosófico-político del siglo XX, por orden estrictamente alfabético: alienación, autoritarismo, comunidad, crisis, democracia, derechos, desigualdades, fundamentalismo, género, guerra, ideología, legitimación, lucha de clases, nacionalismo, opinión pública, poder, soberanía, estado de excepción. Y tratemos entonces de pensar en las grandes cuestiones políticas de nuestro tiempo: ¿es remotamente concebible prescindir de este bagaje conceptual para orientarnos en los enigmas y cuestiones urgentes de nuestro tiempo? ¿De ese siglo XXI que muchos habían predicho que sería radicalmente distinto de su predecesor?

Reflexionar sobre estas cuestiones no significa pensar que nada ha cambiado: para cada una de las palabras clave mencionadas, es posible de hecho trazar un itinerario complejo e intrincado que muestra tanto las afinidades y analogías con el debate del siglo XX como las diferencias radicales con respecto a él. A esto hay que añadir la aparición de fenómenos radicalmente nuevos: baste pensar, por ejemplo, en la revolución digital y el impacto que tiene en todos los fenómenos políticos: participación de los ciudadanos en la política, concentración oligopolística de los grandes actores mundiales, transformación de los procesos de acumulación y producción, sistemas de defensa de los Estados, potencial de control sin precedentes de los poderes públicos.

El debate que abrimos en las páginas de SoftPower pretende precisamente rechazar las polarizaciones entre una tesis discontinuista y otra continuista, cuestionando en su lugar la dialéctica entre continuidad y discontinuidad que puede encontrarse en cada cuestión relativa a nuestro presente. Sin dar por sentada una tesis, pero abriendo un debate, sobre todo ante la reaparición de fenómenos que aparentemente encajarían perfectamente en una continuidad ideal con el siglo XX. De las categorías mencionadas, la más evidentemente del siglo XX es la de la guerra. No es que hayan faltado guerras en los primeros años del siglo XXI, pero la guerra ruso-ucraniana se nos presenta con un aspecto decididamente del siglo XX, caracterizada por fuertes enfrentamientos sobre el terreno entre tropas de tierra, artillería, tanques y tiroteos. En este conflicto no se consideran prioritarias las operaciones sofisticadas con drones, misiles y actitudes destinadas a minimizar al máximo las bajas. La propia motivación inicial de la guerra es del siglo XX, iniciada por una disputa sobre las fronteras y la soberanía de dos Estados opuestos.

También estamos retomando debates que creíamos archivados, relativos a los conflictos de clase, la pobreza estructural, el capitalismo ladrón, el desmantelamiento y la consiguiente necesidad de un nuevo esfuerzo para reconstruir las estructuras del bienestar, la brecha cada vez más amplia entre unos pocos superricos y una multitud de subclases precarias situadas económicamente por debajo del umbral de la pobreza. Vuelven así una serie de reflexiones que ponen de nuevo en circulación las categorías marxianas de explotación, plusvalía, producción y reproducción social, reinterpretadas a la luz de modos de poder e instituciones completamente diferentes en comparación con los contextos en los que se afirmaron con fuerza en el siglo pasado. Basta pensar en la gobernanza política y económica y en la reestructuración de los espacios políticos urbanos. ¿Qué ocurre entonces con la tendencia al fortalecimiento de las identidades nacional-estatales? Lejos de cumplirse la profecía de Altiero Spinelli sobre la progresiva cesión de

soberanía por parte de los Estados nación en favor de organismos transnacionales, con la Unión Europea a la cabeza, asistimos, por el contrario, a una nueva nacionalización de la política estatal en Europa, en la que los partidos identitarios avivan el fuego de las identidades étnicas o políticas. Por otra parte, si el capitalismo global se ha legitimado en un momento dado mediante un aparato ideológico, destinado ante todo a “superar” las categorías de fronteras y soberanía, éstas reaparecen hoy bajo las formas más dramáticas y paroxísticas como producto del propio neoliberalismo.

Por último, la noción de estado de excepción, no sólo directamente relacionada, siguiendo a Carl Schmitt, con los temas de la toma de decisiones políticas y la guerra, sino estrechamente entrelazada con el tema de la pandemia, como ha puesto de manifiesto el asunto Covid-19, que ya dura dos años. El amplio debate público, extremadamente polarizado entre los partidarios de la línea europea de lucha contra el virus y los defensores de la resistencia a la represión de los derechos y el endurecimiento del control social -en primer lugar Giorgio Agamben- nos remite, de nuevo, a discusiones que ya habían surgido durante el siglo XX. Por otra parte, los estudios sobre la gubernamentalidad biopolítica, más que un criterio para situarse entre los que están a favor y los que están en contra, representan precisamente una forma de expresar la ambivalencia, pero también la ambigüedad, de la contemporaneidad, constituida por la coexistencia y superposición de diferentes técnicas y racionalidades de gobierno que hacen que el panorama que tenemos ante nuestros ojos sea más complejo y difícil de interpretar.

En este primer número recibimos contribuciones de Luca Baccelli, Stefano Pietropaoli y Emmanuele Quarta. La primera contribución se centra en el análisis del desorden jurídico provocado por el actual conflicto entre Rusia y Ucrania, pero parte de un análisis histórico de las relaciones internacionales. Después de 1989, el poder de la ONU para intervenir militarmente (como excepción al principio de no intervención en la jurisdicción interna de Estados soberanos) con el pretexto de evitar crisis humanitarias permitió que se reafirmara el debate sobre la existencia de “guerras justas”. Es precisamente esta categoría, tras los sucesos del 11 de septiembre de 2001, la que se ha convertido en el motivo de EE.UU. para declarar la “guerra contra el terror”, basándose en que EE.UU. considera la libertad y la democracia como valores que deben defenderse y garantizarse en cualquier sociedad. Rebus sic stantibus, la decisión de Putin de intervenir militarmente contra un gobierno ucraniano que es (según él) pronazi y el presagio de un supuesto genocidio perpetrado por los ucranianos contra la población rusoparlante del Donbass sería igualmente legítima. En este sentido, Baccelli señala



que el conflicto actual no está socavando realmente el orden jurídico internacional porque, de facto, éste nunca se ha construido sobre cimientos estables. El orden internacional, que veía a Estados Unidos como superpotencia mundial y a China como su competidor económico directo, sólo tenía sentido mientras Rusia se viera frenada por la pobreza, la corrupción y la delincuencia derivadas de su repentina adopción del libre mercado. Dada la evolución de los acontecimientos, por un lado, se vislumbra la necesidad de una adaptación europea a un orden internacional multipolar en el que Rusia jugará un papel coprotagonista y, por otro, cabe preguntarse si el conflicto ruso-ucraniano no es un síntoma más de un proceso general de marginación de Europa. En su contribución, Stefano Pietropaoli propone una lectura crítica de las continuidades y discontinuidades del propio concepto de guerra mediante un análisis del impacto de las tecnologías de la información en el ámbito bélico. Partiendo de un análisis de la evolución del "derecho de guerra" desde el siglo XX, el autor se interroga sobre las implicaciones -tanto en el plano militar como en el jurídico- de la utilización de las llamadas nuevas tecnologías en un teatro de guerra. Si los recientes acontecimientos en el plano internacional nos enseñan que ciertas técnicas militares —como la invasión territorial, la ocupación militar de ciudades e infraestructuras estratégicas, el uso masivo de la artillería para desgastar al enemigo— han logrado sobrevivir y adaptarse al arte de la guerra del nuevo siglo, no cabe duda de que la creciente utilización de medios tecnológicos avanzados en los conflictos militares contemporáneos ha abierto también un nuevo frente, en cierto modo paralelo: el de la ciberguerra. Esta innovación, como señala el autor, ha configurado un cambio radical en la concepción "espacial" de la guerra. En otras palabras, el conflicto militar ya no se manifiesta (o no sólo) en un espacio geográfico más o menos circunscrito y, por tanto, controlable, sino también —y, quién sabe, sobre todo— en ese no-espacio hijo de los procesos globalizadores que han caracterizado (y siguen caracterizando) nuestra era: el ciberespacio prescinde de la tradicional concepción westfaliana de las fronteras internacionales. Por último, el artículo de Emmanuele Quarta analiza el retorno de la amenaza atómica a partir de las reflexiones del filósofo y militante antinuclear alemán Günther Anders (1902-1992). Si, como se ha destacado anteriormente, la guerra contemporánea se manifiesta y se libra en escenarios y con el uso de tecnologías hasta ahora inéditas, es igualmente evidente cómo el fantasma del uso de armas nucleares ha vuelto a cernirse sobre el Viejo Continente más de treinta años después del final de la Guerra Fría: Desde los primeros días de la invasión rusa de Ucrania, el presidente ruso Vladimir Putin había advertido a los miembros de la alianza atlántica sobre una posible implicación

directa de la OTAN en el conflicto ruso-ucraniano, planteando la posibilidad del uso de cabezas nucleares tácticas en caso de amenaza directa a su país. Sin embargo, la amenaza nuclear no sólo se deriva del uso concreto del arma atómica, sino también de los riesgos asociados a las operaciones militares en curso en el este del país y los posibles daños a la central nuclear de Zaporizhzhya. Quarta propone a Anders volver sobre el arma nuclear y el impacto de las bombas lanzadas por el ejército estadounidense sobre las ciudades japonesas de Hiroshima y Nagasaki. Este acontecimiento, en la lectura propuesta por Anders, representa un punto de inflexión en la historia de la humanidad. Tras el primer uso del arma atómica, Anders diagnostica la entrada de la humanidad en una nueva y última fase histórica: la, aunque suspendida, del “Tiempo del Fin” que, sin embargo y en cualquier momento, puede convertirse en el “Fin de los Tiempos”.

# IS WAR STILL A SCOURGE? UKRAINE AND THE INTERNATIONAL LEGAL (DIS)ORDER<sup>1</sup>

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Nothing will be like before, again? In ‘the West’ the media coverage of the War on Ukraine and mainstream public opinion leave us such a feeling. We are supposed to see a previously unknown break in the international order, an attack on liberal democracies by the Russian authoritarian regime. On the other side, Putin’s propaganda openly speaks of the conflict commitment of the broader West and the NATO. Then, of course, there is the rest of the World. On March 2<sup>nd</sup>, 2022, the UN General Assembly “overwhelmingly” adopted a resolution demanding the “unconditional withdraw” of Russian army from Ukraine. But among the 35 abstentions there were countries like China, India, in an unusual agreement with Pakistan, Iran, South Africa. On April 8<sup>th</sup> China together with other 23 countries voted against the resolution calling for Russia to be suspended from the Human Rights Council; the 48 abstentions including Brazil, Mexico, Egypt, Saudi Arabia, Malaysia and Indonesia. The governments which represents the majority of humankind do not share the “Western” point of view. It would be easy to stress the authoritarian character of most of those governments, but it would be an error to underestimate the widespread – e.g., in Africa – latent hostility against “us” and the impatience against “our” double standards for what concerns aggressions and humanitarian emergencies.

Dealing with this issue, I assume a preliminary hypothesis: international law, the UN Charter and several international declarations and covenants are something more

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1. Reception date: 19<sup>th</sup> March 2022; acceptance date: 24<sup>th</sup> April 2022. The essay is the issue of a research project carried out within the Università degli Studi di Camerino.

than a “paper world” constructed by lawyers, as in the scornful diagnosis proffered by Michael Walzer 45 years ago (Walzer, 1977, p. xxi). Furthermore, law is a necessary, even if insufficient, resource to face international conflicts, whereas the “*unmediated* moralization of politics” (Habermas, 1996, p. 212) lead to fundamentalism imposing „a kind of universalized ethnocentrism”. Only “inclusive legal procedures open to all of the parties involved that enjoin them to reciprocal perspective-taking” can enable “to engage in the degree of decentering of interpretive perspectives” (Habermas, 2004, p. 103). From a unilateral — e. g. Western — point of view a clear distinction between our own interests and universalizable principles is impossible. This function of law is quite evident in domestic contexts, were the high voltage of the moral conflicts emerging from value-polytheism can be reduced by their transformation in legal principles and norms. This is more arduous in the international context. But international law can weave a web of thin threads in order to tie the Leviathans to the ground as Lilliputians did with Gulliver.

An ambitious project of “peace through law” (Kelsen, 1944) has been implemented after World War II. In the preamble of the UN charter “we the peoples of the United Nations” declare the war to be a “scourge” and determine “to maintain international peace and security”. The states “shall refrain in their international relations from the threat or use of force” (art. 2). So, the “application of armed force” by the Security Council established in Chapter VII is not properly “war”. Article 51 acknowledges “the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations” but “until the Security Council has taken measures necessary to maintain international peace and security”. In the same epoch the new constitutions of countries like Germany (art. 26), Japan (art. 9) and Italy (art. 11) included the refusal, or repudiation, of war.

There is no doubt that Russian invasion of Ukraine is an aggression — the “supreme international crime” according to the sentence of the Nuremberg trial, recognized within the principles of international law by the General Assembly resolution 95 (I) on 11 December 1946. The definition of aggression approved by the General Assembly in the resolution 3314 (XXIX – 14 December 1974) includes “the invasion or attack by the armed forces of a State of the territory of another State”. There is no justification for this invasion, even if in recent years the US have consistently armed and supported Ukraine in different ways, or if Ukraine itself has applied to join the NATO, which has “barked at the doors of Russia” according to Pope Francis (Fontana, 2022). Such as the Arab neighbors pressing under Israel did not justify in 1967 the Six Days War and the seizure

of whole Palestine. And there is no doubt that the Security Council will not intervene, because of the veto right entitled to the five permanent members, including Russia.

The impotence of the Security Council has been evident during the Cold War. Just remember USSR interventions in Hungary, Czechoslovakia, Afghanistan, coups d'état supported by Western powers such as in Iran and Chile or USA escalation in Vietnam. After 1989 seemed the UN seemed able to resume their original function. The Gulf War in 1991 — when Iraq perpetrated an act of aggression against another UN member, Kuwait — was authorized by the Security Council, even with significant ambiguities and it was hailed as the reaffirmation on international law and/or, a “just war”. In the subsequent years the “humanitarian interventions” were on focus. Facing with humanitarian crisis, it was argued that the Security Council can authorize military actions derogating the principle of non-intervention in equally sovereign States domestic jurisdiction, let alone “pre-emptive strikes”, which were orphans of any kind of legal justification.

Anyway, the massive airstrikes against the former Yugoslavia in 1999 represented a turning point. NATO began such an action after the refusal by the Slobodan Milosević's government to accept hard conditions in Rambouillet, without any kind of authorization by any organ of the UN. Bridges, infrastructures, the TV Broadcasting Company were intentional targets, the China Embassy a collateral damage. Attempts in legitimating of such a war were based on the humanitarian emergency (genocide, according somebody) in Kosovo, victim of the repression by Serbian army and militias. Eminent lawyers tried to give a legal justification elaborating the category of “instant custom” (Cassese, 1999) but most of Western intellectuals adopted moral or anthropological categories: humanity vs bestiality (Habermas, 1999).

After 9/11 the George W. Bush administration, supported by eminent thinkers, declared the “war on terror”. Afghanistan was the first target, without any justification by the UN (indeed, a kind of justification arrived *ex post*). A justification was searched before the war to Iraq in 2003, but the veto right was not necessary to negate it: the majority of the Security Council was contrary. Anyway, US, UK and their allies launched a huge attack and this time boots were on ground. The West was divided: among the main countries of “Old Europe”, only the Italian and Spanish right-wing governments supported the illegal invasion. An aggression, the “supreme international crime”.

These aggressions have been repeatedly perpetrated in the last two decades, in the context of a “re-militarization of the relationships between states” (Colombo, 2022) paralleled in the intellectual field by a process of rehabilitation of the “just war”. Such a category, traceable in Aristotle and Roman law, was moralized and theologized by

thinkers like Augustine and Aquinas in order to justify participation by Christians in military action, in spite of Evangelical nonviolent maxims. Such a category was abandoned in the post-Westphalian era and a fortiori in the nuclear age with the *ius contra bellum* proclaimed by the UN Charter. Norberto Bobbio's parabola is impressive: in 1966 he declared the war to be "the antithesis of law", "like an earthquake or a storm" (Bobbio, 1979, p. 60); in 1991 he qualified *Desert Storm* as a "just war", inasmuch as legally justified. But just war had been resuscitated as an ethical category. Walzer's "moral argument" sketches an ethics which binds combatants and whose principles — like the legitimate answer to an aggression and the immunity of non-combatants — are universally acknowledged.

The discourse on just war spread out during the US and allies war on Iraq in 1991, even if pro-intervention thinkers such as Massimo Cacciari or Jürgen Habermas shown meta-ethical caution ("just war" is an anachronistic expression in the post-metaphysical epoch) (Habermas, 1991). This caution vanished in 1999, when Habermas declared the NATO war on Yugoslavia having "good ethical justifications" (Habermas, 1999). But after 9/11 the short circuit between supposed universal principles (seen as moral values, even if formulated as rights) and military intervention was shut. Walzer subscribed the statement "What We Are Fighting For", which supports the "War on terror" on the basis that "the idea of a 'just war' is broadly based, with roots in many of the world's diverse religious and secular moral traditions"<sup>2</sup>. In the 2002 *National Security Strategy of the United States of America* the White House affirms that the values of "freedom, democracy, and free enterprise" "are right and true for every person, in every society" and that justifies the use of force to defend them against terrorists and "rogue states" which jeopardize them<sup>3</sup>.

Walzer reaffirms the idea that what makes a war "just", the *justa causa* which entitles the *ius ad bellum*, is the reaction to an aggression. But he significantly expands the meaning of aggression (e. g. from the 1974 resolution of UN General Assembly): "aggression often begins without shots being fired or borders crossed" (Walzer, 1977). To threaten an aggression is equated to actual aggression and "pre-emptive self-defense" is morally justified. Such an approach is replied by the White House in 2002: "For centuries, international law" conditioned "the legitimacy of preemption [...] on the existence of an imminent threat". But confronting rogue states and terrorists such a concept must

2. "What We're Fighting For: A Letter from America" February 13, 2002 [https://avalon.law.yale.edu/sept11/letter\\_002.asp#:~:text=Your%20human%20dignity%2C%20no%20less,we%20must%20not%20be%20enemies](https://avalon.law.yale.edu/sept11/letter_002.asp#:~:text=Your%20human%20dignity%2C%20no%20less,we%20must%20not%20be%20enemies).

3. *The National Security Strategy of the United States of America*, September 2002, <https://georgewbush-whitehouse.archives.gov/nsc/nss/2002/>

be adapted: “our best defense is a good offense”<sup>4</sup>. The supposed possession of weapons of mass destruction appears to be a sufficient condition for a pre-emptive strike. If it is demonstrated that this is not the case, as after Iraqi invasion, the “intent” to produce them can be sufficient<sup>5</sup>.

In the first years of the millennium the US have perceived themselves as the only global iperpower even if astonished and terrified after death and destruction had been taken on its ground. As well known, in the meantime the Empire has been confronted by other rising global powers in the geopolitical and geo-economical space. Different actors do not have bothered to be authorized by the Security Council in their open or covert military interventions. Anyway, the revived just war theory seems to enjoy good health. In the acceptance speech of the Nobel Peace Prize (in 2009: a pre-emptive prize at the beginning of his term) President Barack Obama made wide reference to just war, adding “I — like any head of state — reserve the right to act unilaterally if necessary to defend my nation”<sup>6</sup>. Today Walzer, both in the historical journal of the American left and in the *Wall Street Journal* (Walzer, 2022a; 2022b), celebrates the vitality of his theory. He does not give up to preach European liberals, still hoping to negotiate with Putin, whereas the diplomatic way is precluded and “every way out now passes by military victory” (Mastrolitti, 2022). Walzer’s argument sounds sinister when Russia has 6,000 atomic warheads and its president is diagnosed by Western leaders and newspapers as a psychotic criminal. Even if we do not evoke a *Doctor Strangelove* scenario, Walzer’s words are symptomatic of a widespread attitude in Western policy makers, journalists and liberal intellectuals. While civilians are killed, tortured, raped and displaced, the ideological dimension of war prevails on humanitarian issues, the imperative to avoid death and the sufferance of the people. If one of the sides is “just” (we, of course) one cannot be neutral, and war crimes cannot but be perpetrated by the other side. Appeals to diplomacy and demands to negotiate are assimilated to treason, not to say of the attempts to consider context, reasons and wrongs on both parts. The just war theory allows to moralize that stuff. So, it has played a crucial role in the process of normalization of war as “means of resolving international disputes”<sup>7</sup>.

4. *The National Security Strategy of the United States of America*, <https://georgewbush-whitehouse.archives.gov/nsc/nss/2002/nss5.html>

5. “President Bush Discusses Iraq Report”, October 7, 2004, <https://georgewbush-whitehouse.archives.gov/news/releases/2004/10/20041007-6.html>

6. “Remarks by the President at the Acceptance of the Nobel Peace Prize”, December 10, 2009, <https://obamawhitehouse.archives.gov/the-press-office/remarks-president-acceptance-nobel-peace-prize>.

7. Costituzione della Repubblica Italiana, art. 11.

Putin and his spin doctors appear to have familiarized with the discourse of just war and humanitarian intervention. In Russian propaganda war is not named, the “special military operation” is presented as a pre-emptive strike against the “genocide” perpetrated by Ukrainians on Russophone population in Donbass, the Kyiv government delegitimized as philo-Nazi and reference to the 1999 war is too easy. If the ideological context tells us “*de te fabula narratur*”, on the other side we have to question if Russia is actually jeopardizing a liberal and stable international order. Unfortunately, this order never existed after Cold War. The winner did not elaborate a strategy to deal with the defeated enemy. The unilateral hegemonic project of the “New World Order” has been working as long as Russia has been crushed by poverty, corruption and criminality consequent at the sudden adoption of “free market” and capitalist economy and for the time necessary to China for rising up as an economical hyperpower. In the meantime, the borders between war and peace blurred more and more

Is there a way out? Even if we acknowledge a role played by the international law it would be illusory thinking that peace, and the limitation of war, could be obtained only through law. War is an elaborated institution whose function is to neutralize the “natural” taboo of infra-specific killing, so effective in non-human animals. There is a deep anthropological level to deal with. And it is rooted in economic, social, and cultural processes which have to be tackled, whereas a legal superstructure is not enough. If we consider the higher expression of legal pacifism, the supposed global government by the United Nations, we cannot but realize there is a constitutive and intrinsic ambivalence in its structure. The declared “sovereign equality” is contradicted by the privilege attributed to the five permanent members of the Security Council, entitled by the veto right and consequently immune by potential censures and interventions. This send the maintenance of peace back to the equilibrium between the main nuclear powers, and designs an “international power by the great powers identical in its constitutional outline to that of the Holy Alliance” (Zolo, 1995, p. 8). In prognosticating the impossibility to reform the United Nations, Danilo Zolo wished for a “weak pacifism” based on the acknowledgment of “diversity, change and differentiation” (Zolo, 1995, p. xv). He hypothesized “a constellation of ‘international legal regimes’ capable of co-ordinating the subjects of international politics according to a systemic logic of diffuse and polycentric normative structures and forms of leadership” (Zolo, 1995, p. 153).

From different perspectives, Walzer ad Habermas sketched pluralistic models of global governance (See Walzer, 2000; Habermas, 2004, pp. 115-93). A key role in such a model would be played by regional organization like the European Union. Actually,



EU and its members States are constantly dealing with the Russia-Ukraine dossier, cooperating in the military support of Ukrainian “resistance”, welcoming the latter membership application, applying though economic sanctions to Russia, discussing the embargo on oil and gas, increasing their military budget. As to agree with Carl Schmitt, it appears that only confronting an enemy makes Europe finally able to find a common identity and to constitute itself as a unitary geopolitical subject. But actually, we are facing the revamping of NATO and a weakening of UE as an independent actor. And, unfortunately, Europe risks to lose its very constitutive principles, starting with pacifist vision and universal protection of rights. The same unitary answer to the humanitarian emergency allows member countries to discriminate (white, possibly fair haired) Ukrainians from Asian and African refugees (with their shades of color). From another point of view, we should ask if the Ukrainian war is a sign, and a step, in a general process of marginalization of Europe: open war is fought only in peripheral areas and this testifies that the barycenter of international relations is moving elsewhere (Colombo, 2022).

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# **OTRA MANERA DE HACER LA GUERRA. GUERRA Y DERECHO EN LA ERA DIGITAL<sup>1</sup>**

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## **ANOTHER WAY OF WAGING WAR WAR AND LAW IN THE DIGITAL AGE**

### **La guerra global**

Hasta principios del siglo XX, la decisión de recurrir a la guerra se consideraba un “derecho natural” del que todo Estado era titular (C. Schmitt, 2002). La guerra entre Estados no era justa ni injusta: era un asunto de Estado, y como tal no necesitaba ser justa (C. Schmitt, 1988). Pero a partir de 1919 cobró fuerza una idea opuesta, según la cual el uso de la fuerza debía considerarse una infracción del derecho internacional. Animando este impulso (solo aparentemente) irenista estaba la percepción de un conflicto cuya naturaleza trágica sin precedentes se expresaba en la entrada simultánea en escena de dos nuevos elementos: el aire y el fuego. El espacio de la guerra estalla en todas las direcciones. El cielo está surcado por bombarderos que traen la guerra desde arriba y se convierte en el teatro de los duelos aéreos. Esta verticalidad aérea se forja con el fuego de la técnica, en la misma fragua donde se construyen tanques, cañones de largo alcance y submarinos, y donde se desarrollan los gases tóxicos.

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1. Fecha de recepción: 2 de abril 2022; fecha de aceptación: 4 de abril 2022. El presente artículo es el resultado de un proyecto de investigación desarrollado en el Dipartimento di Scienze giuridiche de la Università degli Studi di Firenze.

En el plano normativo, la inversión del derecho a hacer la guerra en su opuesto exacto (la guerra como crimen) ya se había elaborado —aunque de forma todavía aproximada— en el estatuto de la Sociedad de Naciones. Posteriormente, en el Pacto de París (o Pacto Kellogg-Briand) de 1928, casi todos los Estados del mundo expresaron su condena a la guerra como medio para resolver las diferencias internacionales y se comprometieron a renunciar a ella como instrumento de política nacional. Este punto de vista fue recogido y consagrado en la Carta de las Naciones Unidas tras la Segunda Guerra Mundial.

La guerra terrestre del viejo derecho público europeo era ya un recuerdo lejano. La Segunda Guerra Mundial fue una guerra aérea, una guerra mecanizada, una guerra submarina, una guerra química y una guerra atómica. Pearl Harbour y Dresde, Coventry e Hiroshima son los lugares que testimonian los efectos catastróficos de una nueva revolución espacial (Colombo, 2006).

Como es sabido, la Carta de las Naciones Unidas establece que sus miembros deben resolver las controversias internacionales por medios pacíficos, absteniéndose de recurrir a la amenaza o al uso de la fuerza (art. 2), y confiere al Consejo de Seguridad la responsabilidad de mantener la paz y la seguridad internacionales (art. 24), bien mediante medidas que no requieran el uso de la fuerza (art. 41), bien mediante acciones que impliquen el empleo de fuerzas aéreas, marítimas o terrestres (art. 42). En otras palabras, la Carta ha establecido la prohibición para todo Estado de recurrir autónomamente a la guerra con la única —pero fundamental— excepción de la legítima defensa, expresamente reconocida como “derecho natural de autoprotección individual o colectiva”, que todo miembro puede ejercer “en caso de ataque armado contra un miembro de las Naciones Unidas, mientras el Consejo de Seguridad no haya tomado las medidas necesarias para mantener la paz y la seguridad internacionales” (art. 51).

El uso de las armas se ha considerado así un fenómeno regulable desde el punto de vista jurídico, pero al mismo tiempo la guerra se ha convertido en un acto ilícito internacional con sólo dos excepciones fundamentales: la guerra como sanción adoptada por el Consejo de Seguridad; la guerra como medio de legítima defensa de un Estado ante una agresión en curso. Por lo tanto, puede decirse que, en el plano normativo, la relación entre la guerra y el derecho sigue estando determinada por las Naciones Unidas y por la atribución al Consejo de Seguridad del papel de árbitro de la guerra y la paz en el plano internacional. Sin embargo, debido a la elección de atribuir un poder de veto a los cinco miembros permanentes del Consejo de Seguridad, el mecanismo que regula el uso de la fuerza a nivel internacional ha resultado ser sustancialmente inadecuado o

ineficaz, ya que ninguna guerra emprendida por países como Estados Unidos, el Reino Unido, Francia, China o Rusia puede considerarse un delito internacional. Por lo tanto, nos encontramos ante un punto muerto. Incluso hoy, las cinco potencias vencedoras de la Segunda Guerra Mundial siguen teniendo el poder de decretar la legitimidad de una intervención bélica, y es evidente que no están dispuestas a renunciar al privilegio que les otorga la Carta, lo que hace que las Naciones Unidas sean irreformables de facto (Zolo, 2005).

Las consecuencias de esta situación son evidentes. Por un lado, el Consejo de Seguridad ha seguido siendo el único árbitro de la legitimidad del recurso a la guerra por parte de los Estados que se creen objeto de un acto de agresión, manteniendo firmemente en sus manos la facultad de interpretar las disposiciones del artículo 51 de forma extremadamente restrictiva o, por el contrario, absolutamente elástica, según la conveniencia política y estratégica de los cinco miembros permanentes. Por otra parte, en lo que respecta a la utilización de medidas apropiadas para proteger la paz y la seguridad internacionales, el Consejo de Seguridad —en particular debido a los vetos cruzados de Estados Unidos y la URSS— estuvo durante mucho tiempo en un punto muerto, que solo terminó con el fin de la Guerra Fría. Ninguna disposición de la Carta de la ONU impidió la matanza de cientos de miles de personas en Corea o el establecimiento de “Zonas de Fuego Libre” en Vietnam del Sur.

Solo a partir de la última década del siglo XX el Consejo de Seguridad ha comenzado a utilizar ampliamente los instrumentos previstos en el Capítulo VII de la Carta de la ONU (Cassese, 1993). En algunos casos se ha tratado de medidas que no implican explícitamente el uso de la fuerza, destinadas a garantizar el respeto de las sanciones ya establecidas por las Naciones Unidas. En otros, el Consejo de Seguridad ha autorizado un uso limitado de la fuerza en el contexto de las llamadas operaciones de mantenimiento de la paz. Otras veces, el Consejo ha llegado a autorizar el uso de “todos los medios y todas las medidas necesarias” para salvaguardar la paz. Y es fundamental a este respecto señalar que, debido a la falta de institución de una fuerza internacional dirigida por las Naciones Unidas (véase el capítulo VII, artículos 43-47 de la Carta), las organizaciones militares regionales, in primis la OTAN, han sido autorizadas a recurrir a la guerra. Pero aún más significativo es que en muchos casos el Consejo de Seguridad no ha autorizado el uso de la guerra y, sin embargo, se han llevado a cabo operaciones militares que no solo no se han considerado ilícitas, sino que se han justificado moralmente (y en algunos casos legalmente) en nombre de la doctrina de los derechos humanos (Zolo, 2002).

En los últimos años, la tensión entre dos de los principios fundamentales de la Carta de las Naciones Unidas se ha resuelto cada vez más en el sentido de la prevalencia de la protección de los derechos humanos sobre el principio de la integridad territorial de un Estado soberano. A muchos les ha parecido un éxito, pero cabe señalar que se ha conseguido cada vez con más frecuencia haciendo caso omiso de las normas establecidas por el derecho internacional sobre el uso de la fuerza. Además, los cinco miembros permanentes del Consejo de Seguridad (y Estados Unidos en particular), si por un lado han reclamado el derecho a intervenir en defensa de los derechos humanos incluso a costa de violar la soberanía de otros países soberanos, por otro han reclamado constantemente su propia intangibilidad ante posibles acusaciones de que ellos mismos están violando dichos derechos (Zolo, 2009). Por lo tanto, no parece excesivo hablar de una hipersoberanía sustancial de estos actores en la escena internacional.

Este es el contexto en el que la guerra tras el final de la Guerra Fría se ha convertido en una guerra global: global porque está desespacializada en un sentido geopolítico e indefinida en términos de tiempo, pero global también porque es ilimitada en términos jurídicos (Galli, 2002).

## **Guerra y ciberespacio**

Los cambios en la conducción de las hostilidades siempre han estado estrechamente relacionados con la evolución de las tecnologías aplicables a las necesidades de la guerra. Al igual que la fusión del bronce, la producción de pólvora o la fusión del átomo, el desarrollo de las tecnologías de la información no podía sino implicar una transformación en la forma de hacer la guerra. Pero este último cambio es más profundo que muchos otros. Implica la dimensión espacial de la guerra, en la medida en que la guerra global “se manifiesta en el no-espacio (en el sentido moderno) de la globalización”, llevando a término la lógica de la movilización total y la guerra discriminatoria que había sido provisionalmente frenada por la Guerra Fría (Galli, 2002, p. 53).

La guerra global como máxima expresión de la técnica no sólo se refiere a la mejora de los sistemas de puntería de los misiles, a la posibilidad de encriptar las comunicaciones estratégicas con sistemas inimaginables hasta hace unos años, o a golpear un objetivo a miles de kilómetros gracias a un dron controlado por satélite. En otras palabras, las tecnologías de la información no solo han innovado profundamente los

instrumentos “clásicos” de la guerra (armas, medios, comunicaciones, etc.), sino que ellas mismas son un instrumento y un objetivo de la guerra. Es en este último sentido que la guerra contemporánea se convierte en algunos casos en una guerra tan diferente de las formas anteriores que merece un nuevo apelativo: ciberguerra (Halpin, 2006).

El ciberespacio se ha convertido en uno de los campos de batalla en los que se miden las pequeñas y grandes potencias (Hildebrandt, 2013). Después de la guerra terrestre, marítima, aérea y submarina, ¿ha llegado la hora de una guerra librada en el espacio virtual? Para algunos, la idea puede evocar la imagen de un inmaculado teatro de guerra, pisado por técnicos con batas blancas y donde el único sonido audible es el rápido tic-tac de los dedos sobre el teclado de un ordenador. Y, sin embargo, sigue tratándose de la guerra, con o sin su tributo de sangre, los uniformes rotos, los gritos de los cuerpos destrozados por una granada (Gartzke, 2013).

El gran problema de la ciberguerra radica precisamente en esta representación ilusoria de una guerra menos violenta y brutal que el enfrentamiento entre falanges hoplitas, la caballería medieval o la artillería del siglo XIX. Como en todas las guerras, la ciberguerra también tiene la finalidad de golpear objetivos considerados fundamentales para asegurar la victoria sobre el enemigo. Y como en cualquier guerra, el mejor armamento y equipamiento de las tropas puede resultar una ventaja táctica decisiva.

Desde el final de la Guerra Fría, y aún más después del 11 de septiembre de 2001, la guerra contra el terrorismo se ha convertido en el arquetipo de un nuevo tipo de guerra. En contra de los deseos de muchos irenistas, la guerra no ha desaparecido. Ha cambiado de aspecto. Términos como uso de la fuerza, guerra contra el terrorismo, construcción de la paz, intervención humanitaria, operaciones de paz y otros se han convertido cada vez más en disfraces hipócritas de un fenómeno que afecta a la vida de millones de personas. El hecho de que la expresión más sencilla e intuitiva que indica el recurso colectivo a la violencia —la “guerra”, de hecho— esté ahora prohibida en el léxico jurídico y político contemporáneo no debe engañarnos. Las consecuencias de esta eliminación son evidentes. La posibilidad de no utilizar el término guerra abiertamente es un recurso formidable para aquellos que pueden hacer uso de la propia guerra. Si ya nadie declara la guerra es porque recurrir a ella es ilícito en el plano jurídico y cada vez menos justificable ante la opinión pública. Si la guerra ya no se declara formalmente, es mucho más fácil eludir la responsabilidad relacionada con la observancia de las normas que disciplinan la actividad bélica (el llamado *jus in bello*).

En los últimos veinte años la guerra —independientemente del nombre con el que

se la denomine— se ha convertido así en una guerra sin espacio ni tiempo (Justicia Infinita era el nombre original de la operación Libertad Duradera puesta en marcha tras el ataque terrorista al World Trade Center). Las distinciones del antiguo derecho internacional humanitario —entre civiles y militares, entre neutrales y beligerantes, entre prisioneros y combatientes— han implosionado así, y junto con ellas se ha desvanecido la posibilidad misma de limitar el conflicto de la guerra. La ciberguerra es quizás la expresión más inquietante de esta nueva guerra. Accionando un joystick o un ratón, es posible golpear a cualquiera, en cualquier lugar y en cualquier momento.

Las armas empleadas son diferentes a las que estamos acostumbrados, pero no por ello son menos destructivas. La infraestructura informática de cualquier país es ahora tan esencial para el funcionamiento del aparato estatal como para la prestación de servicios a la población. Como tales, son objetivos principales de un ciberataque. No se trata solo de hacer inaccesible un sitio concreto (normalmente mediante ataques DDoS), o de piratear bases de datos confidenciales y revelar su contenido. Un ciberataque puede producir daños materiales y víctimas humanas de forma totalmente comparable a un arma analógica. Con el malware, es posible bloquear el suministro de electricidad, gas o petróleo de un país (recuérdese el episodio del oleoducto Colonial en mayo de 2021, que dejó fuera de servicio la planta que suministra el 45% del combustible a la costa este de Estados Unidos), abrir a distancia las esclusas de una presa, interrumpir la gestión del tráfico por carretera, aéreo o ferroviario (con las consecuencias imaginables) o dañar una central nuclear.

Un ejemplo que puede aclarar este punto mejor que cualquier explicación es el caso Stuxnet (Zetter, 2014). Este término denota un malware desarrollado con el fin de causar daños físicos a los sistemas de control de procesos industriales, típicos de grandes plantas como fábricas, refinerías, etc. En 2010, la central nuclear iraní de Natanz sufrió un ciberataque a través de Stuxnet. El “misil cibernético” provocó la destrucción de la sección de enriquecimiento de uranio de la planta al enviar órdenes anómalas a más de mil centrifugadoras, que se aceleraron de esta manera hasta destruirse. Al mismo tiempo, Stuxnet permitió camuflar los datos de control del sistema, impidiendo que el problema se detectara a tiempo para asegurar la planta. De este modo, el ataque se descubrió cuando el proceso era irreversible.

Si se conoce suficientemente la tipología del atentado y los daños causados por el mismo, es más complicado rastrear a la persona que lo ha concebido y ejecutado. Es un hecho que la ciberguerra no solo no se declara —y, por tanto, cada ataque es un ataque sorpresa— sino que, sobre todo, no se reconoce quién ataca, lo que dificulta



entender por qué lo hacen, cuáles son sus próximos movimientos y cómo reaccionar.

Desde el punto de vista jurídico, la cuestión de si, más allá de los clarísimos problemas de aplicación, el derecho internacional de los conflictos armados es aplicable a la ciberguerra es central (Brown & Poellet, 2012).

## Desde Tallin hasta Kíev

El actual conflicto entre Rusia y Ucrania no es más que la enésima y llamativa confirmación de esta nueva forma de hacer la guerra (que complementa sus manifestaciones análogas), cuyos pródromos ya se podían vislumbrar a finales del siglo pasado y que se reveló por primera vez de forma muy clara en 2007, cuando Estonia fue protagonista de la recordada Primera Guerra de la Red. Durante al menos tres semanas, los sistemas informáticos de las principales instituciones políticas, financieras y medios de comunicación del país báltico fueron objeto de un ciberataque masivo (del que, por supuesto, el principal sospechoso fue Rusia) que impidió su correcto funcionamiento. Al año siguiente, la OTAN quiso enviar una señal de claro valor simbólico estableciendo en la capital estonia su cuartel general para la defensa de las infraestructuras estratégicas occidentales: el Centro de Excelencia de Ciberdefensa Cooperativa (CCDCOE). Como parte de las actividades de este grupo de expertos, se promovió la redacción de un documento que enmarca el problema de la aplicabilidad del derecho internacional a las operaciones de ciberguerra. El grupo de expertos encargado de la investigación elaboró algunas normas aplicables a la ciberguerra en el Manual de Tallin sobre el Derecho Internacional Aplicable a la Ciberguerra de 2013 (M. N. Schmitt & NATO Cooperative Cyber Defence Centre of Excellence, 2013).

El grupo de expertos encargado de la investigación identificó hasta 95 normas aplicables a la ciberguerra en el Manual de Tallin sobre el Derecho Internacional Aplicable a la Ciberguerra de 2013. El texto aborda una larga serie de temas agrupados por áreas temáticas: la relación entre el Estado y el ciberespacio, el uso de la fuerza y la legítima defensa, el derecho de los conflictos armados, el tratamiento del personal médico y religioso, la neutralidad, la ayuda humanitaria, etc. Según las intenciones de los autores (que oficialmente no reflejan las de la OTAN), el Manual debe interpretarse como un intento de limitar el potencial destructivo de las operaciones de ciberguerra mediante su encuadramiento en el derecho internacional de los conflictos armados vigente.

Uno de los puntos centrales del Manual (*Rule 10*) es que “a cyber operation that constitutes a threat or use of force against the territorial integrity or political independence of any State, or that is in any other manner inconsistent with the purposes of the United Nations, is unlawful”. Esta formulación recuerda la prohibición de la amenaza (del uso de la fuerza) y del uso de la fuerza sancionada por el art. 2.4 de la Carta de las Naciones Unidas (“All Members [of the United Nations] shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations”), y que ahora se ha establecido indiscutiblemente como una norma de derecho internacional consuetudinario. El Manual propone inmediatamente después (*Rules 11 y 12*) las siguientes definiciones: “A cyber operation constitutes a use of force when its scale and effects are comparable to non-cyber operations rising to the level of a use of force”; “A cyber operation, or threatened cyber operation, constitutes an unlawful threat of force when the threatened action, if carried out, would be an unlawful use of force”.

Obviamente, estas definiciones no resuelven el problema central: ¿cuándo el ataque (cibernético) alcanza tal intensidad que puede considerarse un uso de la fuerza? La respuesta, como es fácil adivinar, no es unívoca. Al fin y al cabo, la historia del derecho internacional no es más que la historia de las posibles respuestas a esta pregunta. En cualquier caso, cabe señalar que el manual propone una lista de parámetros que deben tenerse en cuenta para llegar a una solución (gravedad, inmediatez, carácter directo, invasividad, mensurabilidad de los efectos, carácter militar, implicación del Estado y presunta legalidad). Además, considerar un ciberataque del mismo modo que un ataque militar “clásico” conlleva consecuencias jurídicas precisas. Entre ellos, una de los más relevantes es el reconocimiento del derecho del Estado atacado a reaccionar con la fuerza cuando el ciberataque alcanza el nivel de conflicto armado. De hecho, la *Rule 13* prevé expresamente la autodefensa frente a un ataque armado: “A State that is the target of a cyber operation that rises to the level of an armed attack may exercise its inherent right of self-defence. Whether a cyber operation constitutes an armed attack depends on its scale and effects”. Sin embargo, también en este caso, el problema se refiere a la decisión sobre la consecución del nivel de ataque armado.

El Manual de 2013 fue actualizado y ampliado en febrero de 2017 (M. N. Schmitt & NATO Cooperative Cyber Defence Centre of Excellence, 2017). La nueva versión —que consta de 154 disposiciones— complementa la anterior con secciones dedicadas

específicamente a la responsabilidad de los Estados, el derecho del mar y el derecho internacional de las telecomunicaciones. Aunque también trata del derecho internacional aplicable a las operaciones cibernéticas en “regímenes jurídicos de tiempo de paz”, el nuevo nombre carece ahora de referencias explícitas a la guerra: “Manual de Tallin 2.0 sobre el derecho internacional aplicable a las operaciones cibernéticas”.

Por muy desinteresada, independiente e imparcial que sea la labor de los expertos que han trabajado en las dos versiones del Manual, lo cierto es que el resultado de sus esfuerzos —además de no tener ninguna fuerza jurídicamente vinculante— se percibe claramente como “centrado en la OTAN”, sin expresar en absoluto las diferentes interpretaciones y sensibilidades de actores internacionales clave como China y Rusia. Este carácter problemático se ve sin duda agravado por la consonancia del Manual con los objetivos fijados por la estrategia cibernética desarrollada por el Departamento de Defensa estadounidense en los últimos años. De hecho, la OTAN y Estados Unidos sostienen unánimemente no solo que el derecho internacional se aplica al ciberespacio, sino que su defensa se incluye entre las obligaciones de defensa colectiva para las que se creó la Alianza. Desde esta perspectiva, el gobierno estadounidense ha aumentado considerablemente en los últimos años el presupuesto de gastos del cibercomando (CYBERCOM) para crear una fuerza de misión cibernética compuesta por 6.200 operadores y 113 unidades.

El objetivo general de la defensa del ciberespacio es evitar o al menos contener los daños a las infraestructuras críticas, tanto militares como civiles. Pero este objetivo debe alcanzarse en un escenario en el que las distinciones del viejo derecho internacional, como las que existen entre civil y militar, neutral y beligerante, prisionero y combatiente, se han roto: la ciberguerra no solo no se declara —y por tanto todo ataque es por sorpresa— sino que, sobre todo, no se reconoce quién ataca, por qué, cuándo y cómo lo hace, cuáles serán sus próximos movimientos, cómo se debe reaccionar, etc.

Detrás de la mayoría de los ciberataques sigue habiendo Estados nacionales, pero hay numerosos casos de operaciones que pueden rastrearse hasta entidades no estatales (basta pensar en las actividades de grupos como Anonymous). En este sentido, desde hace algunos años se habla de ciberterrorismo para indicar los atentados perpetrados por grupos de hacktivistas que explotan las tecnologías de la información para generar miedo o intimidar a una sociedad considerada enemiga a partir de un juicio inspirado en una ideología precisa.

También, desde esta perspectiva, el conflicto actual atestigua que entidades como el colectivo bielorruso Conti o la organización rusa conocida como Killnet son capaces de

lanzar ataques capaces de interrumpir las infraestructuras estratégicas de países considerados enemigos.

Estas amenazas deben tomarse muy en serio. Hoy en día nadie puede considerarse inmune a esta otra manera de hacer la guerra.

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# LIVING AT THE TIME OF THE END: READING GÜNTHER ANDERS IN THE LIGHT OF THE RUSSO-UKRAINIAN WAR

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## **At Doom's Doorstep**

The Doomsday Clock was created in 1947 by The Bulletin of the Atomic Scientists and can be defined as “a design that warns the public about how close we are to destroying our world with dangerous technologies of our own making” through the imagery of apocalypse, which is represented by midnight on the clock. Clearly, back at the dawn of the Cold war, the most recognizable threat to humanity consisted by and large of nuclear weapons, especially in the context of growing confrontation between the United States and the Soviet Union. Today, scientists at The Bulletin take into account a wider range of threats, such as climate change, new technologies, and biosecurity, when deciding whether the hands should be moved closer to – or farther from – midnight. Ever since its creation, the Doomsday Clock has been reset 24 times, the latter being in 2020, when it was moved from two minutes to midnight to 100 seconds to midnight, that is, the closest the hands had ever gotten to the hypothetical end of the world. Such decision was subsequently confirmed in January 2021, first, and then again in January 2022, roughly a month before the beginning of the Russian military invasion of Ukraine. Humanity now finds itself “at doom's doorstep”, the 2022 Doomsday Clock Statement reads, citing concern about rising nuclear risks, widespread inaction over climate issues by national governments and international organisations alike, burgeoning biological

threats to human civilization, as well as the risks associated with ever-growing disinformation campaigns and cyber-attacks.

As it is known, ever since the first days of war, talks on use of strategic nuclear weapons have dominated the international media environment. On February 27, 2022 – that is, three days after the beginning of the invasion – Russian President Vladimir Putin ordered the “Defence Minister and Chief of the General Staff to put the Russian Army’s deterrence forces on high combat alert” (Putin, 2022). Since then, the possibility of resorting to nuclear weapons has been repeatedly evoked by the Russian political leadership. It is worthwhile highlighting that the 2022 Statement was updated in the wake of the beginning of the Russian-Ukrainian conflict, even though the hands had not been moved closer to the symbolic midnight that means world destruction. It should also be noted that the farthest the hands were set from midnight was in 1991, that is, in conjunction with the end of the Cold war and the signing of the first START treaty on the reduction of strategic arms by the United States and the Soviet Union. As the infamous “Short Twentieth Century” came to an end with the collapse of the Soviet Union, the 1991 Statement was unsurprisingly imbued with (albeit cautious) post-Cold war optimism. The Doomsday Clock was set “in a new region because we feel the world has entered a new era”, the Statement read back then. Three decades later, we now know that such optimism was, to say the least, misplaced: not only did old-fashioned threats – such as war and terrorism – not disappear, but in our globalized, post-9/11 world, a new kind of de-territorialized threats to mankind came into place. Consequently, new fears came along, and old ones resurfaced, so much so that, in the wake of the Russian invasion of Ukraine, the International Campaign to Abolish Nuclear Weapons (ICAN) published guidelines on how to deal with the issue of nuclear anxiety.

To be sure, the global audience had reasons to worry about the most ominous effect of nuclear-associated accidents even *before* the events of February 2022, that is, before the ongoing war in Ukraine and the ever-looming menace of either a potential accident at the Zaporizhian nuclear plant or the actual use of strategic weapons in the conflict. Already in 2011, the Fukushima nuclear disaster – whose long-term effects cannot be fully assessed yet – seemed to remind us, so to speak, that the ghost of nuclear holocaust had not been permanently confined in the Chernobyl nuclear power plant sarcophagus. In other words, the world may as well have entered into a ‘new era’ after the end of the Cold war; nevertheless, it is worthwhile discussing how radically different this world at ‘the end of history’ truly is. Hence, opening a debate on the heritage of the Twentieth century on Soft Power is a much-welcomed initiative.



The purpose of this essay is not to assess how seriously the current nuclear threat should be taken: I have no mean to evaluate whether this new surge of nuclear anxiety is justified, nor am I interested in doing so. Instead, it takes the opportunity to discuss nuclear weapons and the inherent threat they represent from a (geo-)philosophical standpoint and, more specifically, through the reflections by German philosopher Günther Anders (1902-1992) on the subject of atomic energy and nuclear weapons. The reasons behind such choice are manifold but can be easily summed up as follows: first and foremost, Anders' major work, *Die Antiquiertheit des Menschen*<sup>1</sup>, consists of one of the most profound and radical critical theories of technology as a whole; secondly, he actively campaigned against the danger of atomic energy and even kept correspondence with Claude Eatherly, the pilot who provided weather reconnaissance support for the dropping of the atomic bomb on Hiroshima on August 6, 1945; thirdly, he addressed the issue of atomic energy and nuclear weapons from a philosophical and moral standpoint. Even though that of the nuclear threat is a recurring theme in many of Anders' works, for the sake of clarity we shall mostly refer to (some of) his "Theses for the Atomic Age" (*Thesen zum Atomzeitalter*), as this short text – which was published upon request of the students who attended a two-day seminar on "The Moral Implications of the Atomic Age" Anders held at the Free University of Berlin in 1959 – aptly sums up his views on the subject, which were further developed in other works.

Of course, one must keep in mind that Anders wrote his twenty-two theses on the Atomic Age under the influence of the events of Hiroshima and Nagasaki and, decades later, would update them in the light of the nuclear accident in Chernobyl. Nonetheless, and such is the argument I shall develop in the following sections, reviewing Anders' theses today might provide what I believe could be useful insights to understand our current situation on a theoretical, moral level by an author whose vast intellectual production may open further lines of research. Hence, in the next section, I will try to sum up and review Anders' perspectives on the consequences of Hiroshima on both world and human history. In the third and last section, I will briefly discuss the principle of deterrence, as well as Anders' critical stance on such subject.

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1. To my knowledge, this work has not yet been translated into English, even though an unofficial, self-published translation of both volumes by Josep Monter Pérez can be found online. The lack of an official translation raises problems regarding the title, for which it is not uncommon to find different versions, such as 'The Obsolescence of Man' or 'The Antiquatedness of Man', among others.

## Living at the Time of the End

Over the last thirty years, few works have drawn the same amount of attention (and criticism) as Francis Fukuyama's 'The End of History and the Last Man' (1992), so much so that it has become a commonplace to understand it as the ultimate epitome of post-Cold war optimism about the future of Western liberal democracies. While properly conveying the debate sparked by Fukuyama's best-known work would exceed the scope of this essay, its main assumption was that, instead of just the end of the Cold war, the years 1989-1991 marked "the end point of mankind's ideological evolution and the universalization of Western liberal democracy as the final form of human government" (Fukuyama, 1989, p. 2). As highly debatable as this may be, it is still revealing of the widespread confidence on the beginning of a new era among Western government officials and intellectual circles alike, especially but not exclusively in the United States, at the end of the East-West confrontation.

Fukuyama's take on a historicistic approach was mostly concerned with, of course, the subject of world politics, whereas Anders was far more interested in the moral consequences of technological progress, with the nuclear weapon representing the acme of such technocratic process. However, oth, as it is known, share – to a certain degree – the same concern over the relationship between technology and the ethics-politics dyad.

In his Theses, Anders came to diagnose Hiroshima as a worldwide condition (Anders, 1962, p. 493). Ever since the dropping of the nuclear bomb on the Japanese city of Hiroshima on August 6, 1945, "the age in which at any given moment we have the power to transform any given place on our planet, and even our planet itself, into a Hiroshima" (Anders, 1962, p. 493) has begun. In this New Age, Anders argue, humankind became 'modo negativo' omnipotent and yet *completely* impotent, given that the condition of our own omnipotence lies *precisely* in the fact that "we can be wiped out at any given moment" (Anders, 1962, p. 493). As a consequence, this New Age we entered in 1945 is, according to Anders, our 'Last Age': it does not matter how long it will last, "for there is no possibility that its 'differentia specifica', the possibility of our self-extinction, can ever end – but by the end itself" (Anders, 1962, p. 493). In his views, nuclear energy came to embody the very essence of the third industrial revolution, "not because it is a physical *novum* – which it also is – but because its possible or probable effect is of a *metaphysical nature* – which cannot be claimed for any previous effect brought about by humans" (Anders, 2010). *Metaphysical*, he further clarifies, and not *epochal*, because the latter would imply "the continuation of history and a succession of other epochs" (Anders,

2010), which he does not deem possible *precisely* because of the consequences of the nuclear attack on Hiroshima.

Therefore, under such predicaments the very concept of ‘time’ is somewhat suspended: by its own nature, the Last Age ushered in by the first and only use of nuclear weapons in armed conflicts will last insofar as its end will be endlessly delayed, for the end of the Last Age would equal to the end of everything, the end of the world as a whole. Anders define such state of things as a ‘respite’: in the Last Age, our ‘mode of being’ as humankind “must be defined as ‘not yet being non-existing’, ‘not quite yet being non-existing’” (Anders, 1962, p. 493). Hence, the implications on our moral existence as ‘not-yet non-existing’ beings in the Age of Respite produce a shift in the most basic moral question, which now needs to be reformulated in a radical way: according to Anders, “instead of asking ‘How should we live?’, we now must ask ‘Will we live?’” (Anders, 1962, p. 493). In other words, in our global condition of ‘not yet non-existence’, the nature of morality itself is displaced: in the Last Age, the normative categories of ‘right’ and ‘wrong’ give way to a different kind of ethics. For these reasons, Anders – who, as I mentioned earlier, was actively engaged as an anti-nuclear militant – suggested that the only possible answer to this new question should be summed up as follows: “although at any moment The Time of the End could turn into The End of Time, we must do everything in our power to make The End Time endless” (Anders, 1962, p. 494). In this sense, Anders clarifies, we are at the same time Apocalyptic (in that we believe in the eventuality of the End of Time) and anti-Apocalyptic (because “we fight against this man-made Apocalypse” [Anders, 1962, p. 494]).

What Anders define as the Time of the End – the End of Time dichotomy (*Endzeit – Zeitenende*) – as Hiroshima as a global condition – is a rather specific situation.

First, “in this Time of the End”, he wrote, “everybody is in deadly reach of everybody else” (Anders, 1962, p. 495). As we have learnt by the recent COVID-19 pandemic, certain threats are inherently transnational in scope (Enemark, 2009, p. 204). Much like infectious diseases, international terrorism, and cyberattacks, “radioactive clouds do not bother about milestones, national boundaries or curtains”, which means that in our Hiroshima-world “distances are abolished” (Anders, 1962, p. 495). If, as it would be later argued by David Harvey, technological advancements have reduced the relative distance between once faraway places, shrinking the world to the size of a “global village” or a “spaceship earth” (Harvey, 1989, p. 240), one may consider the invention of the nuclear bomb as perhaps one of the *first* truly global factor behind the globalizing processes that marked the second half of the Twentieth century. In other words, what is

more *global* than a device whose consequences, if employed, would bring about unprecedented destruction potentially *everywhere*?

Secondly, the inherent dangers of nuclear weapons exceed the self-evident fact that, in today's world – with over 13,000 strategic arms in current arsenals and nine nuclear-armed states<sup>2</sup> – the actual use of an atomic weapon could potentially lead, if not to the annihilation of humankind altogether, *at least* to unprecedented scales of devastation and millions of casualties. If, on the one hand, “[a]ny distinction between near and far, neighbours and foreigners, has become invalid” and “today we are all ‘proximi” (Anders, 1962, p. 495), we are, on the other hand, unable to picture the immensity of the apocalyptic danger itself.

Such impotence might seem trivial at first, and yet – Anders argue – it is of the utmost importance. First and foremost, because the ability to imagine in a comprehensive way the consequences of this man-produced apocalypse – to “visualize this nothingness”, in Anders’ own words – is a *conditio sine qua non* to take action and effectively *fight* against such possibility. Hence, even if “[s]uch ‘total abstraction’ [...] surpasses the capacity of our natural power of imagination”, as “what we have to visualize today is not the not-being of something particular within a framework [...], but the nonexistence of this framework itself” (Anders, 1962, p. 496), we need our imagination to match our own ability, as *homines fabri*, to actually *produce* the non-existence of the world as humankind. In other words, we as a species have been capable, by the means of technological advancements, to create the very same device that could lead to the end of human life; nonetheless, we are unable to conceive the consequences of the deadly weapon we *ourselves* created.

This gap between our ability to *produce* and our inability to *imagine* is part of what Anders defines as Promethean discrepancy or Promethean shame. It should be noted that, while only briefly evoked in the Theses, this category is the object of a thorough investigation in the first volume of *Die Antiquiertheit des Menschen* and represents a cornerstone in Anders’ philosophy of technology and its impact on human beings. As human beings, because of our ‘*natum esse*’ we, as human beings, share, we cannot but feel shameful when confronted with the qualities of the objects we ourselves produce. In other words, compared with the inherent limitedness of the human species, this peculiar shame has its roots in the fact of having come into being (or of having been born), instead of having been *manufactured*, so much so that our uniqueness, our own non-reproducibility, is perceived

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2. These numbers come from the ICAN website. For further reference: <https://www.icanw.org/>

as a *limit*. Hence, “we are smaller than ourselves” (and, one may add, smaller than *machines* and *products*), in that we are “incapable of mentally realizing the realities which we ourselves have produced” (Anders, 1962, p. 496). In other words, “while ordinary Utopians are unable to actually produce what they are able to visualize, we are unable to visualize what we are actually producing” and are, therefore, “inverted Utopians” (Anders, 1962, p. 496). This, as we will see, has many implications on the

As we have discussed earlier, the nuclear threat – the worldwide range of nuclear warheads – has led to the abolition of both *time* and *space*. This, however, does not translate to the abolition of *distances* altogether, as we are confronted with the “the daily increasing distance between production and imagination” (Anders, 1962, p. 499). Therefore, what we are unable to visualize by means of our imagination is simultaneously ‘limitlessness’ (that is, our ‘pragmatic life horizon,’ “the one within which we can reach and be reached” [Anders, 1962, p. 497]) and ‘nothingness’ (the ever-looming threat of the consequences of technological progress, or human annihilation). It is important to note that – when discussing of the ‘imagination nothingness’ – Anders does not refer exclusively to the most widespread of ‘imagination,’ but, more precisely, to *fear*, for “it is our capacity to fear which is too small and which does not correspond to the magnitude of today’s danger” (Anders, 1962, p. 498). In other words, ‘fear’ is nothing else but “the imagining of nothingness ‘in concreto’” (Anders, 1962, p. 498) and it is fear that we should recognize (and embrace) as a driving factor to fight against the possibility of the End of Time.

The abolition of *time* and *space* on the one hand and the ever-increasing gap between *imagination* and *production* on the other hand – in short, our condition of inverted Utopians – is even more dangerous as *feeling*, too, “has ceased to live up to responsibility” (Anders, 1962, p. 497). The argument he develops can be summed up as follows: we can easily imagine the act of murdering a fellow man and either repent or not. What we cannot visualize in our imagination is, however, “to do away with one hundred thousand people by pressing a button”, for “the wider the gap, the weaker the brake-mechanism” that would prevent us from committing such an ‘act’ (Anders, 1962, p. 497). And yet, Anders warns us, the killing of hundreds of thousands of people by pressing a button – or by controlling a drone from a military base located thousands of kilometres away from the *locus belli* – can hardly be considered an ‘action’ *stricto sensu*, “for activities which formerly had occurred as actions and were meant and understood as such by the acting subjects themselves, now have been replaced by other variants of activity: 1) by working, 2) by triggering” (Anders, 1962, p. 500).

To put it shortly, if work is a substitute for action, triggering can be seen as a substitute for work, in that “in triggering, the specific characteristics of work – effort and consciousness of effort – are diminished, if not nullified” (Anders, 1962, p. 501)<sup>3</sup>. In other words, the fact of simply pressing a button could hardly be considered a form of work, nor an action. And yet, “although seemingly no one would have done anything, this ‘doing nothing’ would actually produce annihilation and nothingness” (Anders, 1962, p. 501), so much so that the displacement between the ‘act’ and the ‘scene’ of the suffering – the killing of millions – do not coincide, no one can perceive what they are *actually* doing: ‘schizotopia’, hence, instead of ‘schizophrenia’ (Anders, 1962, p. 501). Furthermore, the displacement between the ‘act’ and the ‘consequences’ thereof lead to the ‘macabre abolition of hatred’. As Anders put it: “atomic war will be waged with less hatred than any war before: attacker and victims will not hate each other since they will not see each other” (Anders, 1962, p. 504)<sup>4</sup>.

## Apocalypse Now?

A well-known quote by Stanley Kubrick’s masterpiece ‘Dr Strangelove or: How I Learned to Stop Worrying and Love the Bomb’ main character – that is, the unsettling ex-Nazi advisor Dr Strangelove himself – goes as follows: “Deterrence is the art of producing in the mind of the enemy... the fear to attack” (Kubrick, 1964). The popular quote by Dr Strangelove does, indeed, sum up the ‘basic concept’ behind the logic of deterrence, that is, “an enemy will not strike if it knows the defender can defeat the attack or can inflict unacceptable damage in retaliation” (Betts, 2013, p. 88). Often understood as the “crucial ingredient in winning the Cold war without fighting World War III” and the “backbone of U.S. national security” (Betts, 2013, p. 87), the principle of deterrence – alongside the doctrine of Mutual Assured Destruction (MAD) – is perhaps what defined the most international relations throughout the post-World War II decades, providing the element of stability that ensured that the Cold war turned out to be, in fact, a long peace with only relatively ‘minor’ tensions arising between the two blocs (Gaddis, 1986, p. 123).

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3. I am, of course, aware that such distinction between ‘action’, ‘work’, and ‘triggering’ would deserve a deeper discussion; nonetheless, I hope to develop these categories in further writings.

4. Hower, Anders notes that “in order to nourish what a perverted age calls “morale,” identifiable and visible objects of hatred will be exhibited, in emergency cases invented – ‘Jews’ of all kinds. Since hatred can bloom only if the objects of hatred are visible and can fall into the hater’s hand, it will be the domestic scene from which one will choose scape goats” (Anders, 1962, p. 505).

In other words, the principle of deterrence rests on the *threat* of the use of nuclear warheads: in a paradoxical fashion, one may argue that nuclear weapons exist to prevent nuclear war from breaking out. The idea that “if it were not for our ability to threaten with total annihilation, we would be unable to hold the totalitarian menace in check” (Anders, 1962, p. 144) is, however, rejected in full by Anders. First and foremost, he argues, the nuclear weapon has *already* been used – against Japan – even though “those who used it were not in danger of falling victim to a totalitarian power” (Anders, 1962, p. 144). What he does find ‘totalitarian’ is, in fact, the very act of *threatening* – either openly or implicitly – with nuclear war, “as this threat amounts to blackmail and transforms our globe into one vast concentration camp from which there is no way out” (Anders, 1962, p. 145). In other words, deterrence – which, again, consists on an unspoken mutual threat – might have served as perhaps the most powerful self-regulating mechanism in post-war international politics *and*, at the same time, as the greatest threat to world peace: once again in a paradoxical fashion, we may argue that deterrence works insofar as it does not stop working.

Günther Anders “published these words in order to prevent them from becoming true” and warned his readers: “[i]f we do not stubbornly keep in mind the strong probability of the disaster, and if we do not act accordingly, we will be unable to find a way out” (Anders, 1962, p. 505). The ambition of this essay was, of course, much more restricted in scope than Anders’ twenty-two theses. The eightieth anniversary of the bombing of Hiroshima and Nagasaki is due in a few years, while the wind of war is blowing back at the geographical doors of Europe for the first time after the end of the Yugoslav wars. It is sure that war in the post-Cold war age is inherently different than the old-fashioned, localized, proxy conflicts that marked the history of the last century.

It is also sure that, although for too long ignored or deemed unlikely, the sole possibility of an all-out nuclear conflict is still, in fact, a *possibility* and one may add, following Anders’ reflections, that it will *always* be a possibility. As I have stated earlier in this essay, I was not interested in trying to assess the actual chances of a nuclear war breaking out in Europe any time soon, for I as well – to quote once more the words by Günther Anders – am naturally restricted by the narrowness of my own imagination. However, I believe that there is a great deal to be learnt about the dangers of the world we live in by rereading Anders’ works. If we were to adhere to Anders’ theses, we currently find ourselves stuck in the Time of the End and have been doing so for the last eight decades. However, if we were to believe in the concerns raised by the scientific community at the Bulletin, the End of Time is just 100 seconds away.

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# **RESEÑAS**

**Sobre el libro Rosaria Piroso.  
Dal diritto alla salute all'healthism.  
Una ricognizione giusfilosofica  
(mucchi 2021)**



# FROM THE CRITIQUE OF HEALTHISM TO A RENEWED IDEA OF THE RIGHT TO HEALTH<sup>1</sup>

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The volume by Rosaria Piroso, the tenth of the series “Social practice and legal theory” directed by Thomas Casadei and Gianfrancesco Zanetti, leads to the contemporary debate concerning the relationship between bioethics and law: more specifically, it focuses on the specific political implications and juridical aspects linked to healthism, as a technique of neo-governmental power.

The purpose of the work consists in an attempt to

“carry out a reflection on health starting from the recent debate, which originated in the US context and is being developed in various European national contexts. [...] The discussion aims here to show how the contribution of a critical theoretical approach to law can lead to an understanding of healthism as a process of vulnerabilization” (Piroso, 2021, pp. 10-13).

The book is divided into three chapters: the first focuses on the “historical-social genesis of the term healthism” (p. 11), the second and the third ones also delve into the perspective of vulnerability and intersectionality, as critical tools for an interpretation of the health-care approach. Healthism is understood as an authentic technique of power aimed at the “depoliticization” of the right to health, “rooting the implementation in the individual’s capacity for self-determination and, therefore, placing its protection in the private sphere” (p. 11).

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1. Discussion on Rosaria Piroso, *Dal diritto alla salute all'healthism. Una ricognizione giusfilosofica*, Modena, Mucchi, 2021, pp. 105.

The first chapter (see pp. 17-41) deals with the historical origin of healthism: the author underlines that the term has been used for the first time by Irving Kenneth Zola in 1977 according to the meaning of medicalization in the sense it can manifest itself both in the form of discipline, and as a device for social exclusion: “ ‘medicine’ generates a broad effect of social control, since, by combining the truthful canon of religion and the authoritative canon of law, it reproduces the binding nature of religious and juridical institutions” (p. 17).

Consequently, healthism borrowing a certain negative inflection of biopower and the dichotomy between normal and pathological as elaborated by the French philosopher and epistemologist Georges Canguilhem (p. 20), affirms an idea of health based on a distinction *per saltum* between “healthy” and “unhealthy”, according to whom individual choices are conceived as primary *ratio*.

Therefore:

“according to this vision, individuals by undertaking appropriate actions, i.e. by adopting lifestyles and practicing healthy behaviors, could have avoided most diseases, [...] starting from the assumption that the prevention and containment of diseases can be achieved through responsibility, knowledge and individual behavior” (pp. 18-21).

However, this approach has raised several doubts and critical issues regarding its effectiveness and usefulness but also from the point of view of justice, since in relation to health it assigns all responsibility to individual choices by not considering “the influence of environmental factors on health of human beings, illusorily conceived as central players on the planet, capable of shaping and modifying the structures” (p. 20).

Following these measures to promote well-being, the very meaning of the right to health is completely reviewed by the healthist approach which was built “as a political construction functional to the dismantling of the US Welfare State” (p. 36), and considers health no longer as a prerogative of the State but, essentially, as a market tool.

It therefore becomes evident how this orientation of political practice is strongly aimed towards “a system centered on the privatization of healthcare” (p. 22), which shows how the translation of *healthism* with the term *health-care* is misleading, since these terms underlie and pursue two very different concepts of health and personal well-being.

The first, on the one hand, implies an idea of health “exclusively connected to individual behavioural, cultural and psychological determinants” (p. 21) strongly linked to a

liberal (and classist) anthropology which looks at health as a “means for the attainment of a productive life” (p. 28); the second, on the other hand, is connected to an idea of health which could be understood “as an attitude or a tendency [...] to cultivate a healthy lifestyle, characterized by correct nutrition and constant sporting activity [...] [without however conceptualize it] as a generative factor of inequality” (p. 24). In other words, healthism is different from “health-care”, in light of the social relevance of the implications of the behaviors and responsibilities attributed to different individuals and groups.

From a full understanding of this non-negligible semantic difference, it is also possible to draw a fundamental distinction between the *healthist approach* and the *health-based approach*. In the first case we are witnessing a false promotion of health, which in fact rewards the wealthiest segments of the population — capable of being able to afford a healthy lifestyle in any condition and at any time — to the detriment of the subordinate classes, powerless from a political point of view and stigmatized from a socio-medical point of view. In the second case, instead, we can identify a real and effective promotion of health (cf. p. 21), through collective political choices that protect and conceive health as a fundamental value, starting from the interdependence and dignity of all citizens (see Zullo, 2012, and Santonocito, 2022).

In this way, the anthropological framework of healthism is outlined: within healthist approach the liberal paradigm is firmly connected to the “ableist” one, in an attempt to provide the latter with a political and juridical justification through the dichotomy between “healthy people” and “unhealthy people” (the author deals with it in detail in the second chapter).

The focus is specifically on the direct consequences of the assumptions and policy choices (Piroso, 2021 p. 26) attributable to healthism described in the first part of the volume. Within a political-institutional framework, where the rationalistic libertarian model of the *unencumbered self* (p. 69) is absolutely dominant, a precise and complex process of multilevel vulnerability is triggered. It can be divided into three moments: the production of inequality, the strategy of stereotyping, and finally the creation of situated vulnerabilities.

Recalling the most recent debate on these issues, situated vulnerabilities are understood as “vulnerabilities which are not determined by metaphysical presuppositions, [...] but which are constituted by complex constellations of historical and institutional factors, which properly determine a normative horizon in which [...] a given “comprehensive group” is in fact disadvantaged” (Zanetti, 2019, p. 9). They are therefore considered as the product of those new meta-cultural legacies, resulting from the permeation of previous

stigmatization strategies, i.e. the so-called symbolic logics, understood here as narrations of non-neutral perception (ibid., p. 147).

This process intervenes vigorously on the social fabric, resulting in an effective discriminatory practice which provokes a health-status discrimination for several subjects and/or vulnerable groups, both in a positional and in an identity sense (see, on this point Macioce, 2021, pp. 131-151 and 153-169).

In this context, consequently, these persons and groups are affected by the stigma of the *unhealthy person* — “that is, not sufficiently inclined to perceive health as a priority and unable to take care of it and, in any case of necessity, according to a stigmatizing anthropological vision, reluctant to resort to “modern medicine” and incapable to understand its importance” (Piroso, 2021, p. 20) — all those individuals who can be ascribed for various reasons to socially or medically identified groups, such as obese people, smokers, people belonging to religious minorities who decide not to practice sports or more generally all those who for economic reasons cannot afford a healthy lifestyle, unable to access so-called healthy food and sports activities.

Therefore, it is no coincidence that “the greater diffusion of these cases [is to be noted] among the socially and economically disadvantaged segments of the population [...] [and that] the healthist approach ends up penalizing more vulnerable people” (p. 34).

Healthism is therefore, this is the interpretation proposed by Piroso, as a technique of neo-governmental power which intends to “correct” certain groups of people (p. 37), through a doubly discriminatory strategy, since, from on the one hand, it marginalizes individuals and, on the other, it blames them for their exclusion (p. 49).

In the light of this key-analysis, in the third chapter the author adopts the intersectional methodology (as punctually developed in Bello, 2020), in an attempt to explain the pervasiveness of the discriminations implied by healthist policies, through a gaze that identifies in the interweaving of certain racial, gender (see Piroso 2021, p. 50), scholastic (see p. 68), religious (see p. 69), sports (see p. 70) and/or professional (see p. 77) factors the strengthening of asymmetric power structures.

Healthism apparently results in a set of health-based neutral practices for the promotion of health and the prevention of possible socially viral diseases, but it actually turns out to be the cog of a broader device of power functional to social supremacy, political and economic of the privileged groups to which men and women belong so-called *wasp*, or white Anglo-Saxon protestant man/woman, to which - at this point - the letter “h” of healthist can be also added (see p. 65).

Healthism, philosophically based on the Millian's maxim *homo faber fortunae suae* (cf. p. 55) and on the western identity model, thus rejects the notion of vulnerability and in particular, not revealing the precarity (cp., for example Butler, 2009) which arises from the social and juridical practices developed in the healthist political form.

In the conclusions, animated by a precise constructive goal (Pirosa, 2021, pp. 81-86), Pirosa attempts to outline the theoretical assumptions and the legal paths to be taken as contrasting actions to promote the idea of public health as a value to be pursued. In this regard, a fundamental role is reserved for the Foucauldian research perspective — understood as a “diagnostic tool for epistemically fertile itinerarie” (p. 36) — and for a new heuristic conception of vulnerability (see Pastore, 2021), functional to the recovery of that epistemology that leads us to “care” (Pirosa, 2021, p. 86).

Care is thus reconceptualized as a relational agency which “can only emerge in the context of a living world, [...] in which the dependence on other human beings and vital processes triggers the [...] ability to act” ( Pirosa, 2021, p. 41 ), responding to the processes of vulnerabilisation that healthism had triggered and that the COVID-19 pandemic has aggravated in recent years, thus giving *impetus* to the configuration of the right to health, which should no longer be understood as a private issues, but as a public interest and, at the same time, as a fundamental subjective right.

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# SOBRE LA REVISTA

*Soft Power* es una revista que nace del trabajo conjunto de estudiosos del sur de Europa y de América Latina, con el objetivo de solicitar la investigación sobre el nuevo paradigma de poder gubernamental, que hoy organiza el mundo, con especial atención a la zona geopolítica.

En respuesta a la urgente necesidad de repensar las categorías jurídicas y políticas tradicionales de la modernidad, tiene como objetivo el análisis crítico y reflexivo, centrado en resaltar el carácter problemático de actualidad.

*Soft Power* es publicada semestralmente. Asume un lenguaje interdisciplinario para garantizar la pluralidad de puntos de vista sobre el enfoque temático elegido, dando espacio a las contribuciones de filósofos políticos y del derecho, politólogos e historiadores del pensamiento político, pero también economistas y sociólogos.

La revista también tiene una sección, un *forum* de discusión, que le abre paso a la lectura de un libro de gran resonancia y analiza su tema desde diferentes perspectivas.



# ABOUT THE JOURNAL

*Soft Power* is a review born from the joint work of scholars of the South Europe-Latin America, with the aim of hastening the research on the new paradigm of governmental power, which organizes the world with particular attention to that geopolitical area. Responding to the urgency of a rethinking of the traditional legal and political categories of modernity, it intends its analysis as critical as reflective, focused as it is onto highlighting problems of the present time.

*Soft Power* is published semi-annually. It adopts an interdisciplinary language to ensure the plurality of perspectives on the theme proposed from time to time, giving room to the contributions of political and law philosophers, political scientists and historians of political thought, as well as economists and sociologists.

The review also has a section, a discussion forum, that moving from the reading of a book of great resonance and importance, and it analyzes its topic from different perspectives.



# NORMAS PARA LOS AUTORES DE LA REVISTA

## Indicaciones para los artículos

Los artículos deben ser enviados como archivo al correo electrónico [softpower.journal@gmail.com](mailto:softpower.journal@gmail.com). Con cada contribución enviada a *Soft Power Journal* se debe adjuntar una carta donde el autor declara que el artículo no se ha presentado a otra revista y que no lo será mientras que la dirección no haya rechazado su publicación (Declaración de originalidad y de exclusividad). Después de la recepción, el Comité Editorial evaluará si el artículo cumple con las condiciones básicas requeridas por la revista. Posteriormente a este primer proceso interno de evaluación, el artículo se someterá a la evaluación de árbitros anónimos externos con un procedimiento de *blind peer reviewed*. El resultado de la evaluación será comunicado al autor en un período inferior a seis meses de la recepción del artículo. Si se requiere, el autor deberá tomar en cuenta las observaciones del evaluador, aportar los ajustes solicitados y reenviar la contribución correcta en un plazo no superior a los quince días. Al momento de recibir el artículo modificado, el Comité Editorial le informará al autor de su aprobación. Se asume que los artículos tienen el consentimiento de los autores para la publicación a título gratuito. El Comité Editorial se reservará el derecho de decidir en qué número aparecerán los manuscritos aceptados.

Los artículos enviados deberán respetar los siguientes requisitos:

- El texto no podrá tener una extensión superior a 40/50.000 caracteres (tamaño DIN A4), incluyendo resúmenes, cuadros, gráficos, notas de pie de página y referencias al final de cada artículo.
- El texto irá en letra Times New Roman tamaño 12, a espacio 1,5 líneas; las notas de pie de página irán en letra Times New Roman tamaño 10 a espacio sencillo.
- En la primera página debe figurar el título centrado y en mayúsculas. Más abajo se escribirán, también centrados, el nombre y apellido del autor o autores, así

como el centro o la institución a la que está(n) adscrito(s). En seguida debe figurar un resumen (*abstract*) con una extensión de entre 100 y 150 palabras y una lista de palabras clave (*keywords*) de 3 a 5 términos. Tanto el título como el resumen y la lista de palabras clave deben tener una versión en español y otra en inglés, para facilitar su inclusión en las bases de datos internacionales y en los repertorios bibliográficos.

- El artículo debe venir acompañado de los datos que permitan contactar al autor (dirección de correo electrónico), así como de un breve currículum indicativo (datos académicos, líneas de investigación y principales publicaciones). Se debe especificar el número de líneas o renglones o número de palabras o caracteres.
- Para las citas, estas se entrecomillarán “al comienzo y al final del texto”. Las citas largas (más de tres líneas) deberán ir sangradas dejando una línea en blanco antes y otra después de la cita. No deberá ser así cuando el texto largo venga citado como nota o dentro de ella.

Las citas bibliográficas se basan en pautas establecidas por la American Psychological Association (APA). Los autores deben adecuarse estrictamente al esquema presentado a continuación:

- **Para citar libros (un autor):**

En el texto: (Hart, 1961, p. 15)

Referencia al final de cada artículo:

Hart, H. L. A. (1961). *The Concept of Law*. London: Oxford University Press.

Si el libro tiene más de una edición o volúmenes o se cita algún tomo (t.) o volumen (vol./vols.) en particular, la referencia es la siguiente:

En el texto: (Basadre, 1983, VI, p. 57) que equivale al tomo sexto, página 57, de la obra de Basadre del año 1983.

Referencia al final de cada artículo:

Basadre, J. (1983). *Historia de la República*. 7.<sup>a</sup> ed., t. 11. Lima: Editorial Universitaria.

- **Para citar libros (dos o más autores):**

En el texto: (Deleuze & Guattari, 1980, p. 185)

Referencia al final de cada artículo:

Deleuze, G. & Guattari, F. (1980). *Mille Plateaux Capitalisme et Schizophrénie*. Paris: Les Editions du Minuit.

- **Para citar capítulos de libro, artículos de monografías colectivas, prólogos, epílogos:**  
 En el texto: (Rosenau, 2004, p. 19).  
 Referencia al final de cada artículo:  
 Rosenau, J. N. (1992). Governance, Order, and Chang in World Politics. En J. N. Rosenau & E. O. Czempiel (Eds.), *Governance without Government: Order and Change in World Politics* (pp. 1-29). Cambridge: Cambridge University Press.
- **Para citar artículos de revistas científicas y de diarios:**  
 En el texto: ( Bazzicalupo, 2016, p. 59)  
 Referencia al final de cada artículo:  
 Bazzicalupo, L. (2016). Populismo y liberalismo: la pretensión de la inmanencia. *Soft Power. Revista euro-americana de teoría e historia de la política y del derecho*, 4(2), 57-70.
- **Para citar documentos de internet:**  
 En el texto: (Rosanvallon, 2004)  
 Referencia al final de cada artículo:  
 Rosanvallon, P. (2004). La democracia en América Latina. En PNUD. *Contribuciones para un debate. Comentarios*. Recuperado de [www.ndipartidos.org/es/node/1336](http://www.ndipartidos.org/es/node/1336).

Eventual indicación del traductor irá al final del texto.

Los artículos que no se adecuen a estas características serán devueltos.

## Indicaciones para reseñas y ensayos bibliográficos

Las reseñas y los ensayos deben enviarse como archivo al correo electrónico [softpower.journal@gmail.com](mailto:softpower.journal@gmail.com). El texto, acompañado de los datos que permitan contactar al autor, deberá presentarse a espacio sencillo y en letra Times New Roman tamaño 12; las notas de pie de página, en letra Times New Roman tamaño 10. Las reseñas deben constar de máximo 4 páginas; los ensayos bibliográficos, de un máximo de 10 páginas.

El Comité Editorial evaluará la publicación de los textos y decidirá en qué número se publicarán.

# EDITORIAL RULES FOR AUTHORS

## Recommendations for articles

The articles shall be sent as an archive file to the e-mail [softpower.journal@gmail.com](mailto:softpower.journal@gmail.com). The authors have to add a paper stating that the article has not been sent to another journal and it will not until the direction will take a decision about the publication (Declaration of originality and exclusivity). After receiving, the Editorial Board evaluates if the article is in line with the basic conditions requested by the journal. After this internal evaluation, the article will be submitted to an external anonymous referee with a process of *blind peer reviewed*. The result will be communicated to the author not later than six months after receiving the article. If requested, referee's remarks shall be taken into account by the author, which shall make corrections and send again the text within fifteen days. When receiving the amended text, the Editorial Board will inform the author about the approval. It is assumed that the publication of the articles is free of charge. The Editorial Board reserves the right to decide the issue in which the article will be published.

The articles shall fulfill the following requirements:

- The text shall not exceed 7.000 words (A4 sheet), including abstracts, tables, graphics, footnotes and bibliography page at the end of each article.
- The text shall be written in Times New Roman, 12 points, 1,5 line spacing; footnotes shall be written in Times New Roman, 10 points, single spacing.
- The title shall appear on the first page, centered and in capitals. Then the name and surname of the author or authors and their affiliation, also centered, shall appear and then an abstract (among 100-150 words) and a list of keywords (among 3 and 5). The title, abstract and the keyword list shall have both a Spanish and an English version, in order to facilitate the inclusion in international databases and bibliographic indexes.
- The articles shall be accompanied by information for contacting the author (e-mail address) and by a short *curriculum* (academic information, research topics and main publications).

- Quotes shall be written in double quotation marks “at beginning and at the end”. Long quotes (more than three lines) shall be preceded and followed by a blank line (not if the text is quoted as a footnote or inside it).

Bibliographic references are based on guidelines established by the American Psychological Association (APA). Authors must strictly adapt to the scheme presented below:

- **Book (one author):**

In the text: (Hart, 1961, p. 15)

Reference to the end of each article:

Hart, H. L. A. (1961). *The Concept of Law*. London: Oxford University Press.

If the book has more than one edition or volume, or a book (bk) or volume is cited (vol./vols.) in particular, the reference will read as follows:

In the text: (Basadre, 1983, VI, p. 57) which means volume six, page 57 of the 1983 work of Basadre.

- **Reference to the end of each article:**

Basadre, J. (1983). *Historia de la República*, 7.<sup>a</sup> ed., t.11. Lima: Editorial Universitaria.

Book (two or more authors):

In the text: (Deleuze & Guattari, 1980, p. 185)

- **Reference to the end of each article:**

Deleuze, G. & Guattari, F. (1980). *Mille Plateaux Capitalisme et Schizophrénie*. Paris: Les Editions du Minuit.

- **Book chapter, articles of collective monographs, prefaces and epilogues:**

In the text: (Rosenau, 2004, p. 19).

Reference to the end of each article:

Rosenau, J. N. (1992). Governance, Order, and Change in World Politics. En J. N. Rosenau & E. O. Czempiel (Eds.), *Governance without Government: Order and Change in World Politics* (pp. 1-29). Cambridge: Cambridge University Press.

- **Articles of scientific journal and newspaper articles:**

In the text: (Bazzicalupo, 2016, p. 59)

Reference to the end of each article:

Bazzicalupo, L. (2016). Populismo y liberalismo: la pretensión de la inmanencia. *Soft Power. Revista euro-americana de teoría e historia de la política y del derecho*, 4(2), 57-70.

- **Internet documents:**

In the text: (Rosanvallon, 2004)

Reference to the end of each article:

Rosanvallon, P. (2004). La democracia en América Latina. En PNUD. *Contribuciones para un debate. Comentarios*. Recuperado de [www.ndipartidos.org/es/node/1336](http://www.ndipartidos.org/es/node/1336).

Any indication of the translator will go to the end of the text.

Articles not fulfilling these requirements will be rejected.

## **Recommendations for reviews and bibliographical essays:**

Reviews and bibliographical essays shall be sent as an archive file to the e-mail [softpower.journal@gmail.com](mailto:softpower.journal@gmail.com). The text shall be accompanied by information for contacting the author and shall be written with single spacing in Times New Roman, 10 points. Reviews shall not exceed 4 pages; bibliographical essays shall not exceed 10 pages.

The Editorial Board will evaluate the publication of the text and will decide the issue in which it will be included.



# CÓDIGO DE ÉTICA

Prevenir publicaciones negligentes es una de las importantes responsabilidades del Consejo y del Comité Editorial. Este código describe la política de *Soft Power* para asegurar el tratamiento ético de todos los participantes en la revisión entre pares y en el proceso de publicación. Editores, revisores y autores están invitados a estudiar estas directrices y dirigir cualquier pregunta o duda a los correos: vgiordano@unisa.it o softpower.journal@gmail.com.

Esta guía se aplica a los manuscritos presentados a *Soft Power* a partir del 1.º de enero del 2014 y podrán ser revisados en cualquier momento por el Editor y el Consejo Editorial.

## Deberes del Editor

El Editor es responsable del contenido de la revista y de garantizar la integridad de todo el trabajo que se publica en ella.

- **Las decisiones sobre la publicación:** El Editor tiene el derecho de tomar la decisión final sobre si aceptar o rechazar un manuscrito en referencia a la importancia, originalidad y claridad del manuscrito, y su relevancia para la revista.
- **Revisión de los manuscritos:** *Soft Power* sigue un proceso de revisión de “doble ciego”, por lo que los autores no conocen a los revisores y viceversa. El Editor se hace responsable de obtener la revisión oportuna, independiente y anónima de revisores debidamente cualificados que no tienen intereses en competencia de descalificación, de todos los manuscritos enviados a la revista. El Editor se hace responsable de asegurar que la revista tenga acceso a un número suficiente de evaluadores competentes.
- **Justa revisión:** El Editor y el Comité Editorial deben asegurarse de que cada manuscrito recibido por *Soft Power* sea revisado por su contenido intelectual sin distinción de sexo, género, raza, religión, nacionalidad, etc., de los autores.
- **Confidencialidad de la documentación presentada:** El Editor y el Comité Editorial asegurarán adecuados sistemas de control para garantizar la confiden-

cialidad y la protección contra el uso indebido del material enviado a la revista durante la fase de revisión; la protección de las identidades de los autores y evaluadores; además, se comprometen a adoptar todas las medidas razonables para preservar la confidencialidad de las identidades de los autores y revisores.

- **Divulgación:** El Editor debe garantizar que los manuscritos presentados se procesan de manera confidencial y que ningún contenido de los manuscritos será compartido con nadie más que el autor correspondiente o los revisores.
- **Conflictos de interés:** El Editor debería excluir de considerar manuscritos que tienen un real o potencial conflicto de interés que resulte de las relaciones o conexiones competitivas, de colaboración, financieras o de otro tipo con cualquiera de los autores, empresas o instituciones relacionadas con el manuscrito.
- **Autoridad:** Al Editor pertenece la decisión última y la responsabilidad de la revista. El Editor debe respetar los componentes de la revista (lectores, autores, revisores, equipo editorial) y trabajar para garantizar la honestidad e integridad de los contenidos de la revista y asegurar una mejora continua en la calidad de la revista.

## Deberes de los revisores

- **Justa revisión:** Los revisores deben evaluar los manuscritos de manera objetiva, justa y profesional. Los revisores deben evitar prejuicios personales en sus comentarios y evaluaciones, y deben expresar sus opiniones claramente con argumentos de apoyo. Los revisores deben proporcionar revisiones fundamentadas y justas. Estos deben evitar ataques personales y no deben incluir ninguna opinión que sea difamatoria, inexacta, engañosa, obscena, escandalosa, ilegal o de cualquier otra forma objetable, o que infrinja los derechos de autor de cualquier otra persona, derecho de privacidad u otros derechos.
- **Confidencialidad:** La información relativa a los manuscritos presentados por los autores debe ser confidencial y será tratada como información privilegiada. Los revisores no deben discutir del manuscrito con cualquier persona que no sea el editor, ni deben discutir cualquier información del manuscrito sin permiso.
- **Certificación de las fuentes:** Los revisores de los manuscritos deben asegurarse de que los autores hayan señalado todas las fuentes de datos utilizadas en la

investigación. Cualquier tipo de similitud o coincidencia entre los manuscritos considerados con cualquier otro documento publicado de los cuales los revisores tienen conocimiento personal debe ser inmediatamente comunicada al Editor.

- **Puntualidad:** En el caso de que el revisor perciba que no es posible para él/ella completar la revisión del manuscrito en el plazo estipulado, debe comunicar esta información al Editor, de manera tal que el manuscrito pueda ser enviado a otro revisor.
- **Derecho de rechazo:** Los revisores deben negarse a revisar los manuscritos: a) cuando el autor ha formulado observaciones escritas sobre el manuscrito o sobre su versión anterior; b) cuando aparecen conflictos de interés que resulten de relaciones de colaboración, financieras, institucionales, personales o conexiones de otro tipo con cualquiera de las empresas, instituciones o personas ligadas a los artículos.
- **Quejas:** Cualquier queja relativa a la revista debe, en primera instancia, ser dirigida al Editor de *Soft Power*.

## Deberes de los autores

- **Originalidad:** Los autores deben garantizar que ninguna parte de su trabajo es una copia de cualquier otro trabajo, ya sea escrito por ellos mismos u otros, y que el trabajo es original y no ha sido previamente publicado en su totalidad o en parte sustancial.
- **La autoría del artículo:** La autoría se limita a aquellos que han dado una contribución significativa a la concepción, diseño, ejecución o interpretación del estudio presentado. Otros que han hecho una contribución significativa deben estar inscritos como coautores. El autor debe asegurarse de que todos los coautores hayan avalado la versión definitiva del documento y acordado su publicación final.
- **El plagio y autoplagio:** El trabajo en el manuscrito debe estar libre de cualquier plagio, falsificación, fabricaciones u omisión de material significativo. El plagio y el autoplagio representan un comportamiento editorial poco ético y son inaceptables. *Soft Power* se reserva el derecho de evaluar los problemas de plagio y redundancia en una base de datos, caso por caso.

- **Reconocimiento de las fuentes y de los conflictos de intereses:** El autor debe indicar explícitamente todas las fuentes que han apoyado la investigación y también declarar cualquier conflicto de interés.
- **Puntualidad:** Los autores deben ser puntuales con la revisión de sus manuscritos. Si un autor no puede cumplir con el plazo establecido, debe escribir a los correos [vgiordano@unisa.it](mailto:vgiordano@unisa.it) o [softpower.journal@gmail.com](mailto:softpower.journal@gmail.com) tan pronto como sea posible para determinar la posibilidad de prorrogar la entrega del artículo o su retirada del proceso de revisión.

El Código de Ética de la revista *Soft Power* se basa principalmente en las siguientes fuentes en línea:

- COPE - Committee on Publication Ethics, 2011. Code of conduct and best practice guidelines for journal editors. Accessed February 2014.
- Ethical-Guidelines, 2011. Ethical Guidelines for Educational Research, 2011. Accessed February 2014.

# CODE OF ETHICS

The prevention of publication malpractice is one of the most important responsibilities of the Editorial Board. This Code describes *Soft Power's* policies for ensuring the ethical treatment of all participants in the peer review and publication process. Editors, Reviewers and Authors are encouraged to study these guidelines and address any questions or concerns to the [vgiordano@unisa.it](mailto:vgiordano@unisa.it) or [softpower.journal@gmail.com](mailto:softpower.journal@gmail.com).

These guidelines apply to manuscripts submitted to *Soft Power* starting January, 1, 2014, and may be revised at any time by the Editorial Board.

## Duties of Editor

The Editor is responsible for the content of the journal and for ensuring the integrity of all work that is published in it.

- **Publication decisions:** The Editor has the right to make the final decision on whether to accept or reject a manuscript with reference to the significance, originality, and clarity of the manuscript and its relevance to the journal.
- **Review of manuscripts:** *Soft Power* follows a double-blind review process, whereby Authors do not know Reviewers and vice versa. The Editor is responsible for securing timely, independent and anonymous peer review from suitably qualified reviewers who have no disqualifying competing interests, of all manuscripts submitted to the journal. The Editor is responsible for ensuring that the journal has access to an adequate number of competent reviewers.
- **Fair Review:** The Editor and their editorial staff must ensure that each manuscript received by *Soft Power* is reviewed for its intellectual content without regard to sex, gender, race, religion, citizenship, etc. of the authors.
- **Confidentiality of submitted material:** The Editor and the editorial staff will ensure that systems are in place to ensure the confidentiality and protection from misuse of material submitted to the journal while under review and the protection of authors' and reviewers' identities and will themselves take all reasonable steps to preserve the confidentiality of authors' and reviewers' identities.

- **Disclosure:** The Editor should ensure that submitted manuscripts are processed in a confidential manner, and that no content of the manuscripts will be disclosed to anyone other than the corresponding author, reviewers, as appropriate.
- **Conflicts of interest:** The Editor should excuse themselves from considering a manuscript in which they have a real or potential conflict of interest resulting from competitive, collaborative, financial or other relationships or connections with any of the Authors, companies or institutions connected to the manuscript.
- **Authority:** The Editor must have ultimate authority and responsibility for the Journal. The Editor should respect the Journal's constituents (Readers, Authors, Reviewers, Editorial Staff), and work to ensure the honesty and integrity of the Journal's contents and continuous improvement in journal quality.

## Duties of reviewers

- **Fair reviews:** Reviewers should evaluate manuscripts objectively, fairly and professionally. Reviewers should avoid personal biases in their comments and judgments and they should express their views clearly with supporting arguments. Reviewers must provide substantiated and fair reviews. These must avoid personal attack, and not include any material that is defamatory, inaccurate, libelous, misleading, obscene, scandalous, unlawful, or otherwise objectionable, or that infringes any other person's copyright, right of privacy, or other rights.
- **Confidentiality:** Information regarding manuscripts submitted by authors should be kept confidential and be treated as privileged information. Reviewers should not discuss the manuscript with anyone other than the Editor, nor should they discuss any information from the manuscript without permission.
- **Acknowledgement of Sources:** Manuscript reviewers must ensure that authors have acknowledged all sources of data used in the research. Any kind of similarity or overlap between the manuscripts under consideration or with any other published paper of which reviewer has personal knowledge must be immediately brought to the Editor's notice.
- **Timeliness:** In the event that a reviewer feels it is not possible for him/her to complete review of manuscript within stipulated time then this information must be communicated to the Editor/Guest Editor, so that the manuscript could be sent to another reviewer.

- **Right of refusal:** Reviewers should refuse to review manuscripts: a) where they have provided written comments on the manuscript or an earlier version to the Author, b) in which they have any conflicts of interest resulting from collaborative, financial, institutional, personal, or other relationships or connections with any of the companies, institutions, or people connected to the papers.
- **Complain:** Any complaint relating to the journal should, in the first instance be directed towards the Editor of *Soft Power*.

## Duties of Authors

- **Originality:** Authors must ensure that no part of their work is copied from any other work, either authored by themselves or others and that the work is original and has not previously been published in whole or substantial part.
- **Authorship of the paper:** Authorship should be limited to those who have made a significant contribution to conception, design, execution or interpretation of the reported study. Others who have made significant contribution must be listed as co-authors. The author should ensure that all co-authors have affirmed the final version of the paper and have agreed on its final publication.
- **Plagiarism and self-plagiarism:** All work in the manuscript should be free of any plagiarism, falsification, fabrications, or omission of significant material. Plagiarism and self-plagiarism constitute unethical publishing behavior and are unacceptable. *Soft Power* reserves the right to evaluate issues of plagiarism and redundancy on a case-by-case basis.
- **Acknowledgement of Sources and Conflict(s) of interests:** The author should indicate explicitly all sources that have supported the research and also declare any conflict(s) of interest.
- **Timeliness:** Authors should be prompt with their manuscript revisions. If an Author cannot meet the deadline given, the Author should contact to [vgiordano@unisa.it](mailto:vgiordano@unisa.it) or [softpower.journal@gmail.com](mailto:softpower.journal@gmail.com) as soon as possible to determine whether a longer time period or withdrawal from the review process should be chosen.

The Code of Ethics of *Soft Power* draws heavily from the following on-line sources:

- COPE – Committee on Publication Ethics, 2011. Code of conduct and best practice guidelines for journal editors. Accessed February, 2014.
- Ethical-Guidelines, 2011. Ethical Guidelines for Educational Research, 2011. Accessed February, 2014.





