

# Soft Power

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

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Volumen 11, número 1, enero-junio, 2024



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## EDITORIAL

# AUTHORITARIAN LIBERALISMS

Gianvito Brindisi

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# LIBERALISMOS AUTORITARIOS

In recent years, there has been a significant reorientation of studies on neoliberalism which has reevaluated and modernized the concept of authoritarian liberalism. This term was coined by Hermann Heller in reference to a speech by Carl Schmitt in 1932 to the German employers' association, titled *Starker Staat und gesunde Wirtschaft*. Schmitt's controversial target was the Weimar Social Democracy, which he deemed a weak total state due to its subjection to democratic demands for redistribution. In fact, Weimar represented the failure of the depoliticization of the economy as conceived by liberalism, hence the success, albeit relative, of attempts to democratize the economy. In contrast, Schmitt advocated for a *strong total state*, capable of separating itself from the economy and governing the masses by increasingly technical means, differentiating between friend and foe.

Heller, with the notion of authoritarian liberalism, which he viewed as a creation of the German ruling classes against the proletariat, stigmatized the idea of a strong state opposed to democratic pluralism that renounced to exercise its authority in the economic sphere. By describing the content of authoritarian liberalism as the "retreat of the 'authoritarian' state from social policy, liberalisation (*Entstaatlichung*) of the economy

and dictatorial control by the state of politico-intellectual functions" (Heller, 2015, p. 300), Heller showed that the autonomization of political decision-making in economic matters essentially equated to counteracting democratic processes, i.e., society's intervention in the state.

Numerous studies have shown that during the same years, the ordoliberals adopted Schmitt's diagnosis to explain the economic crisis and embraced his reflection on the need for a strong state with an anti-pluralist and anti-democratic nature, capable of depoliticizing the economy and depriving society of political energy. According to Bonefeld, for example, it is by echoing Schmitt and the problem of mass interests taking over the state that Röpke envisions democracy only as a democracy of friends (Bonefeld, 2017, p. 49-51). This relationship, according to Chamayou, is also due to the fact that, in repudiating *laissez-faire* liberalism, Schmitt only repudiates an obsolete form of economic liberalism, but not the neoliberalism later known as ordoliberalism, which attributes the origin of the crisis not to transformations in capitalism, but to the weak total state, i.e., democracy, the working classes, and their struggles, against which Schmitt advocates an authoritarian state (Chamayou, 2020, p. 36).

Evidently, from a theoretical standpoint, the Schmittian and neoliberal positions are quite different, and it is forced (although interesting) to call Schmitt a liberal, or the Schmittians neoliberals (Audier 2022). After all, as Dardot et al. have noted, following Michel Foucault's analyses, the specificity of neoliberalism is not so much the withdrawal of the state from the economy, but the legal, economic, social, and political interventionism aimed at extending economic logic to the state and to social relations (Dardot et al., 2021, p. 290-291). What seems unequivocal, however, is neoliberalism's use of a Schmittian strategy for governing society: Schmitt and the neoliberals, as observed, converge on the necessity for capitalism of "uno spazio che la politica continuamente ripulisce da ogni ostacolo, da ciò che non è 'conforme'" (Galli, 2019, p. 52).

Paradoxically, the concept of *authoritarian liberalism* has today acquired such breadth that it serves as a framework for understanding heterogeneous institutional and political realities, from post-Weimar Germany to liberal dictatorships such as the Chilean one, from the neoliberal offensive against democracy in the 1970s to the European political-economic constitution or current regressive nationalisms. Arguably, its best conceptualization has been offered by Grégoire Chamayou, who understands it as a concept suitable for indicating not only cases of liberal dictatorships but all situations where the limitation of political space by economic imperatives is accompanied by the restriction of subordinate means of pressure, if not their outright repression (Chamayou, 2018, p. 225-243).

Certainly, by identifying such heterogeneous historical, institutional and political realities, the notion of authoritarian liberalism perhaps creates more problems than it solves. However, as well-founded as the doubts about the usefulness of this notion may be, as well as the critiques of its identification with neoliberalism (Dardot et al., 2021, p. 73-78 and p. 269-298), the discourse on authoritarian liberalism has undoubtedly had the merit of foregrounding the authoritarian side of neoliberalism politically and drawing attention to the crisis of Weimarian democracy and theories about its inability to contain the overload of demands on the state.

This issue of *Soft Power* aims to answer a question of the current relevance of the concept of authoritarian liberalism, offering tools to understand the strategic reality of this notion, against whom neoliberalism is authoritarian, what kind of power it makes intelligible today, and what social struggles it delegitimizes and fights.

It is not only due to the plurality of historical concretizations of authoritarian liberalism that this issue has sought to decline the concept in plural terms, but also due to the plurality of positions within the current debate, which is highly articulated both in theoretical references and interpretative frameworks underlying historical reconstructions.

Given the heated debate and exposure to numerous misunderstandings, it is worth reflecting on the reasons that led us to compile this issue, not without first clarifying what we did not intend to do.

In order to avoid troublesome historical and theoretical short-circuits, we deemed it necessary to start from the premise that by asserting that the Schmittian strategy Heller labels as authoritarian liberalism is not identified with neoliberal political rationality, but is related to it, we do not intend to identify Schmitt with neoliberalism, whose specificity remains, in our view, as outlined by Michel Foucault: the extension of the economic grid of intelligibility to institutions and life, the multiplication of the enterprise form within the social body (Foucault, 2004, p. 154); nor do we intend to say that neoliberalism is totalitarianism or an advanced form of fascism, and consequently identify current authoritarian neoliberalism with historical fascism. However, the existence of links and relationships between these elements is undeniable, and their history and reasons must be investigated.

With that said, rather than delving into the depths of the current debate's articulation, which many of the contributions in this volume do from different perspectives, we consider it necessary to reflect generally on some points of the debate that seem more prone to misunderstanding and misinterpretation than others, but which we consider crucial, even though in a forum like as this one we can only discuss them in a limited manner.

These issues revolve around the relationship that the current debate has with Foucauldian research on neoliberalism, a topic investigated from different perspectives by several contributions in this issue, which this editorial does not aim to represent or exhaust.

Specifically, we find it interesting to question the supposedly alternative nature of the readings of neoliberalism based on the concept of authoritarian liberalism with the Foucauldian reading of neoliberalism, the theoretical novelty that the former represents compared to the latter, and the relationship between authoritarian neoliberalism and fascism.

Let us begin with the issues of the supposed alternative nature of the readings of neoliberalism based on the concept of authoritarian liberalism with the Foucauldian reading of neoliberalism, and the apparent theoretical novelty that the former represents compared to the latter.

Although it may seem secondary, this is actually an important issue because it is precisely from this element of novelty that the risk arises of creating an alternative between Foucauldian readings of neoliberalism and those based on authoritarian liberalism, that is to say, between two interpretations that correspond roughly to soft power and hard power that do not communicate, whereas a simple historical analysis would reveal that every form of neoliberalism has always materialized, to a greater or lesser extent depending on historical and geopolitical contexts, a co-implication of hard power and soft power, in the various forms these can take.

A bias-free and practical ambition-free interpretation should avert this risk, which seems genuinely present in the debate, in favor of a complementarity of analyses, aimed at showing how neoliberalism was constituted through the practical and theoretical struggle it waged against its enemies.

However, some uses of the concept of authoritarian liberalism, which trace the birth of neoliberalism to the crisis of the Weimar Republic, have accused the Foucauldian perspective of neglecting the authoritarian side, in the political sense, of neoliberalism. While Foucault, as is well known, characterized neoliberalism as founded on an apparent phobia of the state, in overcoming a model of power exercise based on state verticality and in an environmental nature of government aimed at reproducing competition in life and institutions, the concept of authoritarian liberalism would, on the contrary, precisely show the authoritarian and statist side of neoliberalism, and this aspect Foucault would have ignored or underestimated, which the current debate, by tracing back to the crisis of the Weimar Republic, would bring to light. This is the position defended, for example, by Streeck:

In anchoring ordoliberalism in the German state tradition and the politics of post-war and post-Nazi Germany, Foucault might have gone back further to Schmitt



and Heller, where he would have found the basic figure of thought that informed and informs liberal ideas of the economic role of state authority under capitalism the idea, in the words of the title of a 1980s book on Margaret Thatcher, of the need of a 'free economy' for a 'strong state'. (2015, p. 364)

Or by Chamayou, who accuses Foucault of not delving into the corpus of neoliberal writings from the 1930s, where he could have found his apologia for the authoritarian state (Chamayou, 2020, p. 77-79). In summary, Foucault would have only grasped one side of neoliberalism, without seeing how political authoritarianism produces a competitive society.

Although this thesis contains a truth, some reflections need to be made in order to avoid misunderstandings or controversies, and above all, to consider the two readings of neoliberalism as complementary rather than alternative. Moreover, if Foucault did not extol the authoritarian nature of neoliberalism, we doubt that Chamayou himself intends to absolutize it -in *La société ingouvernable* he does an exemplary work, in clear Foucauldian style, on the political productivity of neoliberal political technologies, to the extent that they have redefined individual micro-evaluations by inciting everyone to "suivre ses inclinations les plus insociables" (Chamayou, 2018, p. 248-261). Additionally, they have produced such an institutional and social fragmentation that favors a neo-populism making redistribution strategies against the popular classes acceptable.

Of course, the accusation against Foucault of not addressing or underestimating the regressive and authoritarian nature of neoliberalism is justified. But on the one hand, we should not underestimate that the specificity of neoliberal governmental rationality remains the same despite its more or less authoritarian manifestations. On the other hand, we must emphasize that Foucault was aware of the ambiguous role played by the state in neoliberal thought, as well as the relationship between many neoliberal arguments and the crisis of the Weimar Republic.

Although he does not delve into the issue, Foucault points out what he calls an ambiguity of neoliberalism, namely the need for social integration that, in a society where enterprises have multiplied, must be satisfied through a "cadre politique et moral", in which the state stands above competing enterprises and ensures a non-disintegrated community and a natural rootedness of individuals (Foucault, 2004, 248). He also notes that the highly inflated critical cliché in which neoliberalism has legitimized itself—namely, the "phobie d'État" (Foucault, 2004, 194)—pre-dates World War II. This critical cliché, as is well known, is based on the idea that "l'État possède en lui-même, et par son dynamisme propre, une sorte de puissance d'expansion, une tendance intrinsèque

à croître, un impérialisme endogène" that leads it to take over civil society, as well as on the idea that it exists

une parenté, une sorte de continuité génétique d'implication évolutive entre différentes formes d'État, l'État administratif, l'État-providence, l'État bureaucratique, l'État fasciste, l'État totalitaire, tout ceci étant, selon les analyses, peu importe, les rameaux successifs d'un seul et même arbre qui pousserait dans sa continuité et dans son unité et qui serait le grand arbre étatique. (Foucault 2004, p. 192-193)

It is this inflationary critique of the state that leads neoliberals to uniquely argue that totalitarianism originated from socialist tendencies, as in the case of Hayek, for whom "the rise of Fascism and Nazism was not a reaction against the socialist trends of the preceding period, but a necessary outcome of those tendencies" (Hayek, 2001, p. 4).

Now, it is true that when Foucault speaks of the use of these neoliberal arguments, he refers to the Beveridge plan, but immediately afterwards, although without making references, he argues that it is possible to find the neoliberal critique of the state and its tendency to take over the whole of civil society in 1939, 1933, and even earlier (Foucault, 2004, p. 196). Thus, it is possible to hypothesize, precisely in Schmitt's critique of Weimar social democracy, a total state of quantitative order that encompasses society and politicizes human existence as a whole, a state that, although it grows abnormally, remains weak because it is hostage to organized social interests.

If Foucault, therefore, did not delve deeply into or detect the elective affinity between neoliberalism and a strong state, and instead emphasized the anti-totalitarian justification with which neoliberalism has legitimized itself since the postwar period, it is perhaps because at the historical moment he was writing, that justification represented a strategically decisive argument in the intellectual and political field for redefining the modes of exercising power and the new techniques of governance. Hence, projecting the authoritarian traits of our present onto what Foucault said in 1979 to undermine its value does not seem to us to be a defensible theoretical position—as if, in hindsight, reading *The Birth of Biopolitics*, it was really possible to attribute to Foucault blindness to a trend of things that was impossible to foresee. From a historical point of view, moreover, even if he had been aware of neoliberal sympathies for fascism and Nazism, for authoritarianism and the strong state, perhaps these would not have been the characteristic elements of neoliberal governmentality that he deemed important to bring to light at the end of the 1970s.

In Foucauldian logic, it is not the various forms that authoritarianism of power can take that configure the specificity of a political rationality and the types of subjectivities

that correspond to it, but, among other things, the field of the positive technologies of power that produce the real and social normality and constitute the corresponding forms of subjectivity. This, *incidentally*, if it involved a theoretical critique of repressive theories of power, never implied a political disinterest in the repressive, coercive or authoritarian use of power (Tucci, 2015).

However, in the Foucauldian reading, neoliberal phobia of the state did not necessarily mean less state, or that neoliberalism was for Foucault truly anti-authoritarian, because it is the French philosopher himself who shows, on the contrary, that the state intervenes through a utilitarian and strategic use of law over society to constitute the conditions for the functioning of the market and extend the form of enterprise to society and individuals. Complementarily, the notion of authoritarian liberalism makes it clear that the neoliberal phobia towards the state is not a phobia towards the state as such, but only towards a totally interventionist state in the economy because it is the object of social demands, and therefore a phobia towards democracy. Consequently, it has been rightly asserted that neoliberalism is "intrinsèquement autoritaire en ce qu'il s'attaque à toute volonté démocratique de réguler l'économie de marché; c'est seulement dans les formes de l'usage de la force par l'État qu'il varie" (Dardot et al., 2021, p. 75).

## **We come to the issue of what is new in this debate**

We introduced this editorial by arguing that the debate around authoritarian liberalism is recent. But this reorientation of studies on neoliberalism should not be understood as a novelty in radical contrast to the Foucauldian reading, as it is sometimes presented; rather, the opposite is true. In fact, the recent and new thing is not the issue of liberal authoritarianism, but only the wave of studies produced on the subject, resulting from the economic crisis, the reforms imposed by the EU on the member states and, above all, of the new regressive nationalisms.

Regarding the publication of *Naissance de la biopolitique*, which dates back to 2004, both the hellerian-schmittian issue of authoritarian liberalism and the debate around the relationship between political authoritarianism and economic liberalism date back much earlier, even after World War II, when an article by Hellwig sparked a controversy about the relationship between the Freiburg School's competition policy and its complementarity with Nazi authoritarianism (Hellwig, 1955), which of course did not imply that it shared the typical authoritarian and anti-democratic tendencies of Nazism.<sup>1</sup>

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<sup>1</sup> On Hellwig's position and the debate it generated within neoliberal currents, see Köhler, Nientiedt (2017).

As for the debate on liberal authoritarianism, one must refer to the often-cited studies of Poulantzas (1978) and Hall, Critcher, Jefferson, Clarke and Roberts (1978). Regarding the relationship between Schmitt and neoliberalism, suffice it to think of the writings of Cristi (1984; 1998) and Haselbach (1991) in the 1980s and 1990s, or in the early 2000s, the works of Scheuerman (2002) on Schmitt and Hayek, of Ptak (2002) on the convergences between ordoliberalism, Schmitt and Nazism, or Somek (2003) on authoritarian constitutionalism. It is not often remembered that Harvey, in *A Brief History of Neoliberalism*, insisted a lot on the anti-democratic nature of neoliberalism and wrote, following in the wake of Polanyi, that there was no factual or legal incompatibility between neoliberalism and authoritarianism (Harvey, 2007). But it is undoubtedly after the 2008 crisis and with the rise of the current regressive movements that the literature explodes, and one struggles today to keep up. Just think of the works of Brown (2019), Briebricher (2020) or Wilkinson (2021a), the aforementioned works of Bonefeld, Chamayou, Streek, or Dardot et al., or the special issues on authoritarian liberalism of the *European Law Journal* (2015), *Globalization* (2019), or, more recently, the collective work edited by Grégoire and Miny (2022).

These are just a few examples, certainly among the most interesting, of a vast literature on the various forms of authoritarian liberalism. This literature does not include other works that have shown that the reality of neoliberalism was not so much less state as a different way of instrumentalizing the state. One need only consider Wacquant's analysis of the substitution of the welfare state with the penal state (Wacquant, 2009). Certainly, Wacquant can undoubtedly be counted among the researchers who, between the late 20th century and the early 2000s, highlighted the emergence of a "new penal common sense" which, in only apparent contradiction, characterizes Western neoliberal systems, from the United States to Europe. A new common sense that "rediscovers" the most authoritarian and repressive aspects of criminal law and grafts them onto post-Fordist neoliberal systems: zero tolerance and crime prevention through actuarial control practices aimed at defining risk, which arises from the potential, but not actual, dangerousness of individuals, defined based on their belonging to certain social groups, that 'exceed' the norm.

This reaffirmation of authoritarian neoliberalism is due not only to the progressive increase in social inequalities, precariousness and widespread social insecurity that the market dynamics have produced since the 1990s, but also to the economic and political crisis of the last two decades and the reactions to it. The neoliberal struggle against democratic influences in the economy has indeed produced what Robert Castel described as the return of precariousness and insecurity for the working classes. This return is

more intense in relation to the historical precariousness of these same classes because it follows a period of security and, therefore, is much more difficult to accept because state protection systems have been internalized by individuals, unlike when social insecurity was thought to be a common destiny and, therefore, an ineluctable characteristic of the popular condition (Castel, 2011).

The conviction of having been left out, exposed, and unable to control one's own future, explains the feeling of abandonment and resentment by those social groups and individuals who, once secure, now find themselves overexposed and weakened. But in the face of protest movements that have tried everywhere in the West to construct an opposition proposal, neoliberalism, in addition to riding on the cultural tensions linked to the depoliticization of society, has adopted blatantly authoritarian strategies aimed at manipulating the social anxiety of these groups and leading individuals to accept redistribution criteria contrary to their interests.

But let us return to the concern of avoiding a false opposition between Foucauldian readings of neoliberalism and those based on authoritarian liberalism. In the perspective of favoring their complementarity, it should be noted that Foucault perfectly understands that certain technologies of power can be recoded in an authoritarian or even totalitarian sense in a particularly strong crisis situation. Moreover, it is Foucault who writes that Nazism and Stalinism, despite their historical uniqueness, had "utilisé les idées et les procédés de notre rationalité politique" (Foucault, 2001c, p. 1043).

Foucault's intervention at a famous conference organized by Pierre Dommergues, Bernard Cassen and Michel Royer, held in March 1979 at the University Paris 8 Vincennes, *Le Nouvel Ordre intérieur*, in which the philosopher documents the establishment of a new social order that would characterize our lives for the next fifty years, and which other interventions interpret as a form of authoritarianism, is important from this perspective. Due to the oil crisis and the impossibility of continuing to live off the energy plundering of the rest of the world, Foucault argues, the state in the West no longer feels capable of functioning as a welfare state, managing the social and economic conflicts that this situation threatens to generate, that is, paying the economic and political cost of control. Therefore, he sees two possibilities. The first is fascism, which for Foucault represents party governmentality rather than state governmentality. But although he believes that fascism remains a possibility in the case of very severe tensions, he does not believe this to be the threat at that moment in history. The second possibility is that of a disinvestment by the state, actually only apparent, which corresponds to a change in the form and style of the internal order. It is through the withdrawal of the state from the economy, its disempowerment in relation to economic conflicts -in the sense that it

is up to the partners of the economic and social game to resolve their conflicts- that the apparent disinvestment of the state in the exercise of power is paid for. The latter is no longer characterized by an exhaustive and ubiquitous disciplinary power, but by a more subtle intervention with a greater margin of tolerance in relation to pluralism, irregularities or illegalities, consisting of the detection of zones of social danger through a control system linked to the development of information technologies and the profiling of individuals and populations, and in the control of consensus through the media, which significantly reduces the cost of exercising power, as it allows a kind of self-regulation of the social order (Foucault, 1979).

Economic non-interventionism corresponds to a new type of police interventionism in vulnerable/dangerous areas, as in the case of phenomena of political dissent or terrorism. This is what Foucault calls in other interventions of the time the *security state*, characterized by the preventive statistical calculation of risks, the exploitation of fear and "de la peur de la peur" (Foucault, 2001a, p. 390), to justify the intervention of power beyond the law. This was equivalent to instituting a justice that essentially had the function of protecting the state and "veiller sur une population plutôt que de respecter des sujets de droit" (Foucault, 2001b, p. 797).

It was not a new fascism that loomed on the horizon, nor was it authoritarianism in the classical sense, but a new form of power, if you will, differently authoritarian.

It was a form of "autoritarisme *new look*", as Dommergues explains, who echoing Foucault's analysis, writes: "Le nouvel ordre intérieur n'est pas synonyme de fascisme. Même si la voie fasciste n'est pas à exclure, la tendance est plutôt à la manière douce" (Dommergue, 1980, p. 10-11). Or as Julien explains, who argued that the new internal order after the crisis could not be conceived as a return to classic authoritarian regimes: "Une gauche qui sait que l'histoire ne se répète pas a cependant commis l'erreur de multiplier les appels à la vigilance contre on ne sait quelle renaissance du 'fascisme', monstrueux avatar d'un capitalisme en crise" (Julien, 1980, p. 15-16). Of course, as anticipated, many of the points highlighted by Foucault were seen as a new form of authoritarian statism (Poulantzas 1980, 140), but even by those attending the conference who regarded neoliberalism as a new form of authoritarianism, there was a clear awareness that it was quite incorrect to expect the fate of Weimar to be repeated in the societies of the time (Gisselbrecht, 1980, p. 250).

In any case, we are now almost at the 50-year mark referred to by Foucault, and we must surely agree with his prediction: the governmentality in which we have lived and are living is not a fascist-type governmentality.

This is not, however, a reason not to fight against the fascist tendencies that are present and increasing in our time. Consider the current right-wing populisms, which on

the one hand are an effect of authoritarian liberalism (Wilkinson, 2021b), and therefore of the neoliberal struggle against democracy, but on the other hand, merely reproduce neoliberalism on a national scale. Here too, the literature is abundant, but consider contemporary Italy, which vividly represents a combination of forms of political authoritarianism and economic liberalism.

The current government, while opposing liberalism with various words, maintains the characteristics of neoliberal economic policy and interprets politics from an economic rationality. As it would have been said not long ago, it leaves power relations and modes of production intact; moreover, it tends to accentuate them. Regardless of any parameters established by the European Union, the current Italian Government has changed the name of the Ministry of Education, now called the Ministry of Education and Merit, abolished the basic income, is privatizing the Italian postal service, and intends to give an authoritarian turn to the Constitution through the premiership, etc. At the same time, it attempts to refound the identity of the people by insisting on identity polarizations, using criminal law to solve social problems, promoting identification with leaders and thus giving social unhappiness an imaginary compensation, allowing the penultimate to fight against the last ones. Although there is a widespread nostalgia for fascism, for a strong leader, for the normal/abnormal partition, and an attempt to refound Italian society on a mythical hyper-identity, the current government's practice has almost nothing of historical fascism. Enzo Traverso is not wrong when he states that:

La meritocrazia formulata in termini neoliberali, cioè società di mercato e liberal-darwinismo, non rientra nel codice culturale del fascismo: statalista, autoritario, xenofobo, nazionalista e razzista anche nell'idea del Welfare. Oggi però il governo Meloni è l'espressione più vistosa di una tendenza verso il neo-liberalismo autoritario che permette la convergenza tra la democrazia liberale classica e il post-fascismo. (Traverso, 2022)

Such regressive positions also belong to those self-proclaimed anarcho-capitalist positions, which aim to abolish the state, its elites and the minorities protected by welfare systems. Just think of Hans-Hermann Hoppe, a disciple of Rothbard, who not only represents a reference for the Dark Enlightenment (Land, 2014), but is especially favored by the extreme wing of the Italian party Lega. In an attempt to provide a political strategy in dialogue with the American Alt-Right, Hoppe believes that libertarianism can only be based on social homogeneity, values and what is natural, on social bonds and institutions such as families, communities, ethnic groups and nations. He

postulates, therefore, that the only way to save liberalism is through a belligerent and aggressive populism based on the elimination of what he calls the "bad neighbor", in order to protect individuals now subjected to minorities of all kinds, namely white, heterosexual, Christian males, especially if they are married and have children. The creation of a private law society, that is, a society without politics that subjects all interpersonal relations and conflicts to private law and civil law procedures, entails the need to ostracize and physically eliminate through violence not only those who are alien to the cultural identity, but all socialists, communists, and democrats who virtually threaten private property. The Hayekian strategy of producing a liberal society from the top down, he argues, must be considered unrealistic, and a populist strategy appealing directly to the masses must be implemented (Hoppe, 2017). However, by postponing to the future an unachievable private law society for the time being, the real goal, in line with neoliberal policies, can only be the dismantling of any social policy and the preservation of the state's repressive functions. Libertarian populism de facto becomes regressive neoliberal populism.

These considerations lead us to a final aspect we wish to highlight to close this editorial, namely, the relationship between authoritarian liberalism and fascism.

Certainly, there is abundant literature on neoliberal support for the liberal dictatorships of the 20th century, whose specificity, however, cannot be reduced to fascism. However, many studies have also been conducted on the relationship between neoliberalism with fascism, starting with Mises' judgment that

Es kann nicht geleugnet werden, daß der Faschismus und alle ähnlichen Diktaturbestrebungen voll von den besten Absichten sind und daß ihr Eingreifen für den Augenblick die europäische Gesittung gerettet hat. Das Verdienst, das sich der Faschismus damit erworben hat, wird in der Geschichte ewig fortleben. (Mises, 1927, p. 45)

But to arrive to a more recent example, consider Rothbard's judgment, who, on the occasion of Berlusconi's first government, praised the economic policy of early Fascism and wrote: "The militant Fascist movement succeeded in saving Italy from two monstrous evils: revolutionary Communism and revolutionary anarcho-syndicalism. This preservation and defense were its great achievement" (Rothbard, 1994, p. 8).

Although it is a widely studied topic, this issue also requires a deeper analysis, not only concerning the use of the notion of fascism, understood in a broad or strict sense, but also concerning the relationship between authoritarian liberalism and historical fascism.



Just think of an often-undervalued author, not particularly present in the current debate, with some exceptions (Wilkinson, 2021a),<sup>2</sup> namely, Franz Neumann, who after experiencing the failure of his legal-political proposal, centered on a type of economic constitution opposed to both authoritarian liberalism and neoliberalism, interpreted the Weimar liberal authoritarianism of the 1920s and early 1930s as a path towards fascism (Brindisi, 2024). It is true that Neumann reads Schmitt's 1932 text retrospectively, after the victory of Nazism, and also misinterprets it, but he points out some important points that should be given more attention: the combination of political authoritarianism and economic liberalism proposed by Schmitt in *Starker Staat und gesunde Wirtschaft*, was functional to give a "legal expression to the unity between National Socialism and monopoly capitalism", and was indeed a path to fascism, not forward, but backward. Although this combination influenced Hitler's speech in the Reichstag on March 23, 1933, regarding the maximum promotion of private initiative and the recognition of property rights, it was not at all a novelty, as it merely reproduced what had been the first fascist economic policy influenced by Pareto (Neumann, 1942, p. 48 and Neumann 1986, p. 291-292).

If authoritarian liberalism was a path to fascism, it should not be overlooked that neoliberalism now coexists perfectly with the political, economic, identity and gender regression that has been sweeping through the West for many years, and that above all the transhistorical reflection of the late Neumann on political anxiety is capable of making perfectly intelligible (Neumann, 1957).

The governance of fear and political anxiety remains decisive in what Dardot et al. (2021) have called neoliberal strategies of civil war.

We hope that the arguments presented shows the futility of false theoretical oppositions and the need for an expansion of the debate in a plurality of directions, to which this issue intends to contribute through works aimed at deciphering authoritarian liberalisms from multiple perspectives.

The issue is divided into three problematizing cores intended, first of all, to define the current relevance of the problem, investigating the different modes of governance of contemporary authoritarian neoliberalisms (Dardot), the political strategies with which they try to impose themselves in a critical phase (Bazzicalupo), the problematic nature of authoritarian neoliberalism as a theoretical notion (Lazzarato), the relationship between neoliberalism and contemporary neo-fascisms (Arancibia Carrizo), European

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<sup>2</sup> However, Wilkinson does not take into account the occasions when Neumann commented on Schmitt's *Starker Staat und gesunde Wirtschaft*.

authoritarian liberalism (Atzeni), authoritarian neoliberal governance and resistance to it (Giachetti). To make the transformations of the present intelligible, the issue offers a historiographical reconstruction of the notion of authoritarian liberalism and its neoliberal extensions, analyzing the relationship between Schmitt and Heller (Pomarici) and between Schmitt and Austrian neoliberalism (Jacobsen Gloeckner, Ferraro, Jobim do Amaral), the relationship between state and society in the neoliberal galaxy (Malatesta), Hayek's critique of Keynesian liberal democracy (Scanga) and, finally, the historical affirmation of neoliberal authoritarianism in political realities so far little considered (Ciolli). Finally, neoliberal authoritarianism becomes the object of study with regards to the relationship between freedom and security in Foucault and Marcuse (Del Vecchio) and between authoritarian statism and the decline of democracy in the reflection of Poulantzas (Pullano).

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# LES NEOLIBERALISMES AUTORITAIRES\*

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## THE AUTHORITARIAN NEOLIBERALISM

### Abstract

Le titre « néolibéralismes autoritaires » semble démarqué de l'expression de « libéralisme autoritaire ». Cette impression est trompeuse: d'abord, parce que le néolibéralisme n'est pas un prolongement du libéralisme, mais relève d'une autre logique ; ensuite, parce que dans le titre « autoritaires » ne vient pas s'ajouter à « néolibéralismes » comme le politique à l'économique; enfin, parce qu'il est question de *plusieurs* néolibéralismes autoritaires de leur unité au-delà de leurs divergences.

De ce point de vue, la recherche d'un hypothétique régime politique propre au néolibéralisme et partagé par toutes ses variantes se révèle une impasse. La classification traditionnelle des formes de gouvernement par le nombre de gouvernants (monarchie, aristocratie, démocratie) tout comme l'alternative entre républicanisme (ou gouvernement constitutionnel) et despotisme ne sont pas d'un grand secours.

Le plus fécond est de problématiser le rapport entre la manière de gouverner et la Constitution existante : les néolibéralismes autoritaires au gouvernement ne peuvent abroger la Constitution existante (comme Pinochet l'avait fait), ils cherchent à modifier cette Constitution dans un sens autoritaire en remettant en cause la séparation des pouvoirs par leur *manière de gouverner*.

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## **Mots clés**

libéralisme (autoritaire); néolibéralisme (autoritaire); régime politique (autoritaire); formes de gouvernement; gouvernement constitutionnel; manière de gouverner; extrême-droite néolibérale

## **Abstract**

The title «authoritarian neoliberalism» appears to be distinct from the expression «authoritarian liberalism». This impression is misleading: firstly, because neoliberalism is not an extension of liberalism, but stems from a different logic; secondly, because in the title «authoritarian» is not added to «neoliberalism» like politics to economics; thirdly, because it is a question of several authoritarian neoliberalisms and their unity beyond their divergences.

From this point of view, the search for a hypothetical political regime specific to neoliberalism and shared by all its variants proves to be a dead end. The traditional classification of forms of government by the number of rulers (monarchy, aristocracy, democracy) and the alternative between republicanism (or constitutional government) and despotism are of little help.

What is more fruitful is to problematise the relationship between the manner of governing and the existing Constitution: authoritarian neoliberalisms in government cannot abrogate the existing Constitution (as Pinochet did), they seek to modify this Constitution in an authoritarian direction by calling into question the separation of powers through their manner of governing.

## **Keywords**

liberalism (authoritarian); neoliberalism (authoritarian); political regime (authoritarian); forms of government; constitutional government; way of governing; neoliberal far right



Pourquoi parler de « néolibéralisme autoritaire » ? Ensuite, à supposer que cette notion soit pertinente pour qualifier certaines des formes prises par le néolibéralisme contemporain, pourquoi la pluraliser en parlant *des* néolibéralismes autoritaires ? La dénomination de « libéralisme autoritaire », élaborée par Hermann Heller dans un célèbre article de 1933, fait ici figure de précédent théorique pour beaucoup. Certains auteurs n'ont d'ailleurs pas hésité à rattacher directement le néolibéralisme contemporain au « libéralisme autoritaire » de Heller, d'autres ont jugé bon d'appliquer imprudemment cette dénomination à certaines formes d'extrême-droite de ce même néolibéralisme<sup>1</sup>. L'expression de « néolibéralisme autoritaire » est obtenue par l'adjonction du préfixe « néo » à la dénomination de « libéralisme autoritaire » utilisé alors par Heller. Mais cette adjonction n'est-elle pas justement très problématique ? Elle prétend rendre compte des nouvelles formes du néolibéralisme qui ont émergé à partir de 2016 avec l'élection de Trump et le référendum sur le Brexit à partir d'une caractérisation forgée au début des années 30 en Allemagne pour rendre compte d'une rupture dans l'histoire du conservatisme allemand. Ne présuppose-t-elle pas ce qu'il faudrait commencer par établir, à savoir que le néolibéralisme autoritaire se laisserait comprendre comme un prolongement des caractéristiques prêtées au libéralisme autoritaire, de telle sorte que la relation entre le sujet et le prédicat (« autoritaire ») serait identique pour les deux sujets (« libéralisme » et « néolibéralisme ») en dépit de leur différence ? Mais présupposer que le néolibéralisme autoritaire est autoritaire de la *même façon* que le libéralisme autoritaire ne va nullement de soi. En outre, et en second lieu, ce qui est au moins aussi problématique, cette formulation n'implique-t-elle pas une partition à l'intérieur même du néolibéralisme entre un (ou des) néolibéralisme autoritaire et un (ou des) néolibéralisme *non* autoritaire ? Enfin, en troisième lieu, si on admet une pluralité à l'intérieur même du néolibéralisme autoritaire, quelle peut en être la nature ? Est-elle exclusive de toute unité stratégique ?

### **Libéralisme économique et autoritarisme politique ?**

Dans la formule de Heller c'est le prédicat « autoritaire » qui fait toute la différence à l'intérieur du libéralisme entre le libéralisme autoritaire et le libéralisme antérieur. Dans la formule du *néolibéralisme* autoritaire, c'est ce même prédicat qui porte toute la différence à l'intérieur du néolibéralisme entre deux variétés supposées du néolibéralisme. Mais peut-on pousser la symétrie entre les deux formules jusque-là ? Ce qui est en cause, c'est l'articulation des deux sphères, celle de l'économie et celle de la politique.

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<sup>1</sup> Cf. Grégoire Chamayou fait ainsi remonter la naissance du néolibéralisme à 1932, (Chamayou, 2020). De son côté, Bruno Susani interprète le « libéralisme » de Milei dans les termes d'un « néolibéralisme autoritaire » : (Susani, 2024).

Reconsidérons attentivement la formule de Heller. Selon ce dernier, c'est « la question de l'ordre économique » qui justifie la nouvelle dénomination : les nouveaux conservateurs se déclarent partisans de la « liberté de l'économie par rapport à l'Etat », liberté qui a pour corollaire un complet « retrait de l'Etat hors de l'économie ». Ils ont renoncé à leur ancienne critique du capitalisme, celle qu'ils portaient encore au XIXe sc., et se mettent à ressembler aux vieux « hommes de Manchester » par leur plaidoyer en faveur de la liberté de l'économie. Cependant, ils s'en séparent en ce qu'ils ne se satisfont pas d'un Etat réduit au rôle de « veilleur de nuit » (protecteur des personnes et des propriétés). Leur originalité est de combiner un libéralisme *économique* d'inspiration manchestérienne et un autoritarisme *politique* hérité de l'Empire wilhelmien-bismarckien. Le libéralisme s'entend ici de la même manière que chez les manchestériens, celui de la liberté de l'économie à l'égard de l'Etat. Ce n'est pas donc par leur libéralisme économique que les nouveaux conservateurs se distinguent des vieux manchestériens, c'est exclusivement par leur attitude à l'égard de l'Etat : ils se font les avocats d'un Etat fort et autoritaire alors que les manchestériens se contentaient d'un Etat « veilleur de nuit » (Dardot et al., 2021, p. 280). On vérifie par-là que c'est le prédicat « autoritaire » qui fait toute la différence, le sujet « libéralisme » restant quant à lui inchangé en tant qu'il est fondamentalement de nature économique. Le lien entre l'autoritarisme et le libéralisme reste extrinsèque : l'autoritarisme est « politique » mais le libéralisme est « économique ». Or c'est justement cette réduction du libéralisme à l'économique qui autorise la réduction corrélative de l'« autoritarisme » à l'intervention de l'Etat : c'est à l'Etat qu'il revient d'imposer la liberté de l'économie par les politiques qu'il conduit autoritairement de l'extérieur de l'économie. Ainsi compris le néolibéralisme se laisse réduire à une ou des politiques économiques comprises avant tout en termes négatifs.

On le vérifie en examinant le vocabulaire de Heller : « retrait de l'Etat autoritaire », « désétatisation de l'économie », « démantèlement autoritaire de la politique sociale ». S'inspirant directement de Heller, G. Bruno Susani (2024) interprète le « libéralisme » de Javier Milei en Argentine dans les termes d'un « retrait de l'Etat », ce qui est pour le moins unilatéral (Susani, 2024). Certes, G. Chamayou adjoint à ces expressions négatives des traits plus positifs : subventions aux grandes entreprises, politiques austéritaires ou déflationnistes. Le problème est que de telles politiques n'ont rien de spécifiquement néolibérales, elles ont précédé le néolibéralisme, elles peuvent fort bien compléter un arsenal de mesures néolibérales, elles ne sont pas en elles-mêmes de nature néolibérale. De leur côté, certains analystes parient sur le remplacement du néolibéralisme par un « libertarianisme autoritaire » tout en étendant la même logique définitionnelle d'un objet à l'autre puisque ce nouveau projet politique, né dans les rangs de la nouvelle

finance (fonds de capital-investissement et *hedge funds*), serait tout à la fois « libertarien » sur le plan économique et « autoritaire » sur le plan politique (voir Benquet & Bourgeron, 2021 ; et aussi Dardot & Laval, 2022).

Il y a indiscutablement dans cette caractérisation par une combinaison singulière de l'économique et du politique quelque chose de séduisant qui explique le succès de cette dénomination. Elle présente l'avantage de maintenir une certaine continuité avec ce qui a précédé tout en rendant compte d'un changement notable, à la différence des analyses qui diagnostiquaient au même moment la mort du néolibéralisme et l'émergence d'un populisme d'extrême-droite ayant rompu avec le néolibéralisme (Biebricher, 2020). Mais elle fait en même temps écran à la perception de ce qui fait la nouveauté du néolibéralisme. Celle-ci nous paraît résider dans la façon dont l'Etat réalise non son retrait hors de l'économie, mais l'extension hors du marché de la logique de l'économie, qui est celle du marché, aussi bien l'extension de cette logique à lui-même en interne (comme le montre le succès du New Public Management) qu'à toutes les relations sociales (comme on peut le vérifier avec le champ d'application du concept de « capital humain »). Les néolibéralismes autoritaires ne font nullement exception à cette règle.

## La question du régime politique

Pour accéder à cette compréhension, il faut s'affranchir du dogme de la primauté de l'économique sur le politique comme de la réduction corrélatrice du néolibéralisme à une politique économique définie en termes exclusivement négatifs. La notion de régime politique offre-t-elle à cet égard une ressource conceptuelle plus éclairante ? En tout cas elle excède très largement le champ des politiques économiques et sociales conduites par un ou plusieurs gouvernements. Le néolibéralisme autoritaire s'identifie-t-il alors à un type de régime politique, original et non réductible aux différents types répertoriés par la plupart des classifications historiques et politiques ? La question est alors de déterminer précisément ce qu'il faut entendre par « régime politique ». La notion de « régime », qui renvoie originellement à l'action de diriger<sup>2</sup>, en vient à signifier, à la fin du XVIII<sup>e</sup> siècle, l'organisation d'un Etat. C'est cette acception qui s'impose encore aujourd'hui.

Dans un texte de 1953 intitulé « La grande tradition », Hannah Arendt observe que le rapport entre la loi et le pouvoir, dont la compréhension a très longtemps présidé à la

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<sup>2</sup> « *Regimen* » vient de « *rego, regere* », qui signifie diriger, guider, conduire.

classification des différents types de gouvernement, a donné lieu à deux images « totalement différentes », auxquelles la plupart des théoriciens politiques ont eu recours sans pour autant s' aviser de la nature de cette différence (2024a, p. 13). Selon la première image, le pouvoir a pour unique fonction d' appliquer la loi, il apparaît donc comme un « instrument pour faire appliquer la loi ». Selon la seconde image, la loi est comprise comme la limite et la frontière du pouvoir, de sorte que c' est la loi qui apparaît maintenant comme un « instrument pour contenir le pouvoir ».

La première image emporte pour conséquence que le nombre de ceux qui exercent le pouvoir est indifférent: puisque seule importe le rapport du pouvoir à la loi, la seule différence pertinente est la différence entre le gouvernement qui fait exécuter la loi (au sens constitutionnel) et le gouvernement qui n' obéit qu' à ses désirs et non à la loi, soit entre le gouvernement constitutionnel et le gouvernement despotique. L' opposition directe entre ces deux types de gouvernement remplace la classification traditionnelle des trois formes de gouvernement établie en fonction du critère du nombre (monarchie, aristocratie, démocratie). La meilleure formulation de cette substitution figure dans le texte de Kant intitulé *Vers la paix perpétuelle* (1795). On peut diviser les formes d' un Etat soit selon la différence des personnes qui exercent le pouvoir suprême de l' Etat, soit selon le mode de gouverner, c' est-à-dire la manière dont le chef gouverne le peuple (Kant, 1991). Si l' on retient la différence du nombre, on obtiendra trois formes possibles de domination ou de souveraineté (*forma imperii*) : autocratie (un seul), aristocratie (quelques-uns liés entre eux), démocratie (tous les citoyens ensemble). Le suffixe commun en « -cratie » (« autocratie » se substituant significativement à « monarchie ») signifie en lui-même que toutes ces formes sont des formes de domination et pas seulement des formes de gouvernement. Si l' on retient la différence relative au mode de gouverner dans son rapport à la constitution, on ramènera cette différence à deux formes de gouvernement (*forma regiminis*) : soit le républicanisme qui est proprement le régime de la séparation du législatif et de l' exécutif, soit le despotisme qui est le régime dans lequel le souverain exécute les lois qu' il a lui-même édictées. Pour Kant, la séparation implique que le régime soit représentatif : l' exécutif représente le législatif, sans se confondre avec lui (1991)<sup>3</sup>. Si maintenant l' on confronte cette alternative aux trois formes de domination résultant de la différence du nombre, il faut en inférer que la démocratie est nécessairement un

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<sup>3</sup> Rien n' est plus significatif que la façon dont Montesquieu scinde le gouvernement d' un seul en deux formes : la monarchie et le despotisme en fonction de la présence ou de l' absence de lois. Dans la *Doctrine du droit*, Kant reprend à son compte la découverte de Montesquieu sur la division des trois branches du gouvernement en la présentant en ces termes : le pouvoir souverain, celui du législatif, le pouvoir exécutif, celui du gouvernement, le pouvoir judiciaire, celui du juge (Kant, 1994, p. 128).

despotisme puisqu' en elle l' exécutif et le législatif se confondent<sup>4</sup>. Selon Kant, la manière de gouverner relativement à la constitution importe bien plus au peuple que la forme de l' Etat définie par le nombre de (Kant, 1991). Considérées sous cet angle, les « prétendues anciennes républiques », celles de l' Antiquité, sont autant de « formes de domination » incompatibles avec le « républicanisme », entendu au sens de la séparation des pouvoirs, qui ont dû par suite se résoudre nécessairement en despotisme.

Mais ce raisonnement ne vaut que si l' on s' en tient à la première image du rapport entre loi et pouvoir, celle du pouvoir comme instrument d' application de la loi. Si l' on se tourne maintenant vers la seconde image de ce rapport, celle de la loi « vue comme une limite ou un mur entourant des hommes puissants qui en l' absence de cette limite pourraient abuser de leur force », alors les différences entre les trois formes de gouvernement (monarchie, aristocratie, démocratie)<sup>5</sup>, loin d' être secondaires, retrouvent toute leur importance, car la question est maintenant de savoir *qui* doit être autorisé à exercer le pouvoir dans les limites de la loi: un seul, quelques-uns ou le peuple, c' est-à-dire tous les citoyens. Le régime ou la constitution (*politeia*) désigne non pas un texte écrit qui fixe a priori la « loi fondamentale » de l' Etat, ce qui est son sens moderne, mais une « organisation des diverses magistratures » (Aristote), soit la manière dont le pouvoir de la *polis* est assuré collectivement et distribué entre diverses instances. Arendt note que dans cette seconde image, celle de la loi comme limite ou frontière destinée à empêcher l' abus de la puissance, le nombre des gouvernants devient déterminant, de telle sorte que « la démocratie doit être considérée comme la meilleure forme de gouvernement » parce que « seule la démocratie peut être considérée comme un gouvernement libre » (Arendt, 2024a, p. 15). Mais comment entendre cette proposition un peu déconcertante ? En quoi le fait que le nombre, ici la masse des citoyens (*to plêthos tôn politôn*), gouverne fait-il un « gouvernement libre » ? On sait que le critère du nombre intervient dans cette classification des régimes, mais il convient de préciser que ce critère ne se suffit pas à lui-même puisqu' il faut le croiser avec un critère normatif relatif à la fin poursuivie par les gouvernants: s' ils gouvernent en vue de l' avantage commun, on obtient trois régimes droits, la royauté, l' aristocratie, la *politeia*; s' ils gouvernent en vue de leur avantage propre, on obtient trois déviations, la tyrannie, l' oligarchie et la démocratie. Mais eu égard au seul critère du nombre, la première forme prend le nom de « monarchie » parce qu' un seul gouverne: la forme droite se nomme royauté, la forme déviée se nomme

<sup>4</sup> Kant reste à cet égard fidèle à Rousseau qui définit dans *Du contrat social* (III, chapitre IV) la démocratie par l' identité dans la même personne du prince (l' exécutif) et du souverain (le législatif).

<sup>5</sup> Arendt fait référence à la classification traditionnelle héritée des Grecs et surtout d' Aristote, bien que ces désignations soient approximatives, comme on va le voir maintenant.

tyrannie. Le problème est que la forme droite du gouvernement du grand nombre n' a pas de nom propre, elle est appelée du nom qui signifie « régime » ou « constitution », elle est dite *politeia* tout court, comme si elle constituait non pas un régime particulier à côté des autres, mais le régime politique par excellence<sup>6</sup>. Ce qui signifie que l' essence du régime politique s' accomplit dans une forme qui repose sur la participation de tous les citoyens au pouvoir, sinon exécutif, du moins délibératif et judiciaire. En effet, c' est le mélange que réalise la masse assemblée qui confère au jugement collectif issu de sa délibération son irremplaçable qualité. L' expérience fondamentale des Grecs en matière de participation à l' activité politique (*politeusesthai*) fut non celle de l' action, mais celle « des délibérations constantes sur toutes les choses humaines » (Arendt, 2024a, p. 60). Seule l' exercice collectif de ce droit à la participation des citoyens pouvait garantir des abus de la puissance, c' est-à-dire prémunir contre les démagogues et les tyrans. Un gouvernement libre est non un gouvernement libre à l' égard de ses citoyens, mais au contraire un gouvernement qui garantit à tous la liberté. C' est pourquoi la « démocratie » comprise comme l' exercice de la « souveraineté de la masse » dans les limites de la loi est pour Aristote le meilleur des régimes.

### **Le détournement néolibéral du « gouvernement constitutionnel »**

En quoi cette dualité de points de vue sur le rapport de la loi et du pouvoir est-il susceptible de nous aider à comprendre les différentes formes du néolibéralisme autoritaire ? La seule définition de la liberté admise par les néolibéraux est purement négative: l' absence de coercition exercée par autrui. Il n' est donc guère étonnant que la conception de la liberté politique comme participation des hommes au choix du gouvernement ou à l' élaboration de la législation, comme c' est le cas chez Aristote, fasse l' objet d' une condamnation de principe de la part d' un théoricien comme Hayek. D' une part, parce que cette conception repose sur une « transposition du concept de liberté individuelle à des groupes d' hommes considérés comme un tout », transposition induite car un « peuple libre » (pris en tant que tout) n' est pas nécessairement un « peuple d' hommes libres » (considérés individuellement) (Hayek, 1994, p. 13). D' autre part, parce que la valorisation de la liberté comme droit du citoyen à la participation politique est à ses yeux indissociable de la menace d' une « souveraineté populaire » qui représente le plus grand danger et contre laquelle il faut se prémunir.

Le meilleur rempart contre ce danger, juge Hayek, est le « constitutionnalisme ». Il pourrait sembler que le néolibéralisme rejoint là la première des deux manières de

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<sup>6</sup> Entrée « Peuple », encadré 7, in *Vocabulaire européen des philosophies*, sous la direction de Barbara Cassin, Seuil Le Robert, p. 928.

concevoir le rapport de la loi au pouvoir examinées plus haut: si l' on identifie la loi à la loi constitutionnelle, alors l' alternative est gouvernement constitutionnel *ou* despotisme. L' application de la loi devient le premier devoir du gouvernement, quel que soit le nombre de ceux qui gouvernent, si bien que « le gouvernement constitutionnel est un gouvernement où les lois elles-mêmes dirigent et où le gouvernant se borne à les appliquer et à leur obéir. (Arendt, 2024a, p. 29) ». L' idéal d' une souveraineté des lois est un idéal très ancien qui remonte à l' Antiquité grecque. Aristote affirme ainsi : « il faut que ce soit les lois qui soient souveraines si elles sont correctement établies, et que le magistrat, qu' il y en ait un ou plusieurs, soit souverain dans les domaines où les lois sont absolument incapables de se prononcer du fait qu' il n' est pas facile de définir une règle universelle dans tous les domaines » (Aristote, 2015, pp. 244-245). On doit distinguer la constitution, le gouvernement et les lois: c' est la composition du gouvernement qui caractérise la constitution et lui donne son nom (d' où la formule « la constitution c' est le gouvernement ») (Aristote, 2015, p. 225), et les lois décidées collectivement par l' ecclésiastie ne sont pas la constitution mais doivent s' accorder avec la constitution, et non l' inverse. La différence avec l' approche kantienne reprise par Arendt est frappante : dans ce dernier cas, les lois sont les seules lois constitutionnelles et ce n' est pas la composition du gouvernement qui caractérise la constitution (le nombre de gouvernants est indifférent), mais la séparation du pouvoir exécutif et du pouvoir législatif.

Qu' en est-il sous ce rapport du « gouvernement constitutionnel » préconisé par Hayek ? On trouve dans *Droit, Législation, Liberté* la définition suivante du constitutionnalisme : « Constitutionnalisme veut dire gouvernement contenu dans des limites » (Hayek, 2020, p. 56). Cependant, même si la fonction de la loi constitutionnelle semble être la même que celle qui est signifiée par la seconde des deux images analysées par Arendt, à savoir « contenir » le gouvernement pour prévenir d' éventuels abus, on voit que cette fonction se trouve ici complètement dissociée du nombre des gouvernants. Mieux, cette même fonction est rattachée à la première des deux images, celle de la limite ou de la frontière qu' il est interdit de transgresser. La distinction des deux images tend alors à se brouiller: le gouvernement doit se borner à appliquer (1ère image) les lois et celles-ci constituent relativement à son action une limite infranchissable (2ème image). Le pouvoir est un instrument pour faire appliquer la loi, ce qui aurait pour conséquence, si l' on suit Arendt, que la question du nombre des gouvernants serait sans intérêt, et, en même temps, la loi est un instrument pour contenir le pouvoir, ce qui aurait pour conséquence, toujours selon Arendt, que seule la démocratie serait un gouvernement libre. Mais de *quelle sorte* de « loi » s' agit-il alors ? Distinguer la loi au sens de la « loi fondamentale » instituant la séparation des pouvoirs (la constitution

au sens moderne) et la loi promulguée par l'instance délibérative à l'intérieur d'une constitution (*politeia*) déterminée par le nombre des gouvernants et la fin qu'ils poursuivent devient alors indispensable. Mais la loi telle que Hayek l'entend relève-t-elle de l'une de ces deux acceptions ?

Une indication peut nous mettre sur la voie. Hayek déduit du caractère limité du gouvernement constitutionnel l'impossibilité d'admettre une quelconque forme de pouvoir souverain: « Le gouvernement constitutionnel étant un gouvernement limité, il ne peut y avoir de place dans ce système pour un organe souverain si la souveraineté est définie comme pouvoir illimité » (Hayek, 2020, p. 822). Cette exclusion de tout pouvoir souverain vise bien sûr Rousseau qui entendait « mettre la loi au-dessus de l'homme » et « substituer la loi à l'homme » tout en ramenant la loi à un acte du souverain, c'est-à-dire du peuple. Mais elle atteint tout autant les prétentions du pouvoir législatif tel qu'il s'exerce dans les parlements à travers la volonté des représentants. Selon Hayek, la notion de loi a fini par perdre son sens véritable pour s'identifier à la décision de la majorité parlementaire. Car si le gouvernement par les lois doit se substituer au gouvernement par les hommes, c'est en tant que les lois ne procèdent pas de la volonté d'un quelconque législateur parce qu'elles sont le droit lui-même et que « la suprématie du Droit et la souveraineté d'un Parlement sans freins sont deux conceptions inconciliables » (Hayek, 2020, p. 788). Par suite, le véritable constitutionnalisme, qui consacre la « suprématie » ou encore la « souveraineté » du Droit, s'oppose par principe à la souveraineté du Parlement. Mais la même question revient toujours: de *quel* droit parle Hayek et quel rapport ce droit entretient-il avec les lois ?

Chez lui, la « Constitution » n'est pas une « loi fondamentale » et n'énonce pas de droits fondamentaux opposables par les individus aux différents pouvoirs qu'elle institue, elle se borne à définir formellement les trois attributs que doit posséder une loi pour valoir effectivement comme loi: la généralité, qui interdit de se référer à une personne ou de viser une fin particulière, la certitude, qui garantit la prévisibilité de l'action de l'Etat pour les particuliers, l'égalité, qui signifie l'égale applicabilité des lois à tous. Elle n'a pas pour tâche d'élaborer le contenu du droit, laissant ce soin au législatif et au judiciaire. C'est à une Assemblée législative qu'il revient de modifier et d'améliorer graduellement les « lois » que Hayek dénomme les « règles de juste conduite ». Enfin, c'est à une Assemblée gouvernementale, dont le gouvernement est en quelque sorte le comité exécutif, qu'il appartient de gérer au quotidien l'administration. Ce sont ces règles de juste conduite qui sont en fait les véritables lois constitutionnelles, non pas parce qu'elles sont inscrites dans le texte de la Constitution, mais parce qu'elles précèdent ce texte : antérieurement à toutes les lois « faites » par un pouvoir, il y a des règles qui n'



ont pas été faites parce qu'elles sont des « règles de long usage » issues d'une sélection inconsciente et non d'une quelconque volonté humaine. Ce sont les règles du droit privé qui ne sont pas créées par le « législatif » (au sens du Parlement chargé de faire les lois) mais seulement entérinées ou sanctionnées par le « législateur » (l'Assemblée législative au sens de Hayek). Dans cette perspective, les lois ayant valeur constitutionnelle *précèdent* la Constitution au lieu de *procéder* d'un pouvoir institué par elle.

Les ordolibéraux allemands ont une conception bien différente du rapport des règles du droit privé à la « constitution » parce qu'ils accordent une place centrale à ce qu'ils appellent la « constitution économique », indépendamment de toute inscription dans la constitution politique étatique. De leur point de vue, une telle constitution doit seulement être conçue par analogie avec une constitution politique: l'engagement à garantir la stabilité monétaire doit être inscrit dans la constitution économique de manière à être rendu indépendant des échéances électorales. La Banque centrale incarne le principe de la séparation des pouvoirs. Cette indépendance de la banque centrale vaut tant à l'égard du pouvoir exécutif qu'à celui de l'expression de la majorité électorale. Mais ce qui fait consensus entre ces deux branches du néolibéralisme c'est bien l'idéal d'une « société de droit privé » (*Privatrechtsgesellschaft*) selon les termes de Franz Böhm repris par Hayek lui-même. Dans un ordre libéral un individu ne peut être contraint d'obéir qu'aux règles de conduite codifiées dans le « droit privé et pénal ». On comprend mieux en quoi consiste le détournement néolibéral de l'idéal du gouvernement constitutionnel : le gouvernement s'applique à lui-même les règles du droit privé dont il est l'inflexible gardien. L'ambiguïté identifiée par Arendt concernant le rapport du pouvoir et de la loi disparaît purement et simplement: la seule chose qu'ait à faire le gouvernement est d'appliquer la loi, ce qui est incompatible avec la démocratie comme pouvoir exercé soit directement, soit indirectement, par les nombreux (*hoi polloi*). En définitive, la loi du droit privé a pour unique fonction de *protéger la société des « abus de la démocratie »*, et en aucun cas de protéger la masse des citoyens des abus des puissants (comme la loi dans la seconde image proposée par Arendt).

## Modifier la Constitution par la manière de gouverner

Ce qui ressort de cette analyse, c'est que le néolibéralisme, quelles qu'en soient les formes, procède d'une décision fondatrice, celle de restreindre par avance le *champ du délibérable* pour conjurer la menace d'une « politisation de l'économie »: les orientations de la politique économique et sociale doivent être soustraites à la sphère de la délibération collective pour relever exclusivement de la compétence des experts. La constitutionnalisation prend différentes formes en fonction des rapports de forces nationaux et

internationaux. Considérons brièvement trois exemples. Dans le cas du Chili de 1973, c' est la « table rase » juridique créée par la dictature avec l' abrogation de la Constitution de 1925 qui a rendu possible une forme aussi radicale que celle de la nouvelle Constitution de 1980. Dans le cas du Brésil, c' est le coup d' Etat institutionnel de 2016 et ses prolongements politiques qui ont rendu possibles les amendements à la Constitution de 1988 visant au gel des dépenses publiques et à la réforme des retraites. Dans le cas de l' UE, c' est la marche même de la construction européenne avec son empilement de normes qui a abouti au Traité de Lisbonne signée en 2007. Le rapport à la Constitution existante ou à son absence acquiert ici une importance déterminante.

Faut-il dès lors en conclure que le régime politique propre au néolibéralisme est le régime autoritaire ? L' insuffisance de la classification traditionnelle des trois formes de gouvernement répertoriées plus haut est apparue très tôt à Arendt. Dans un texte de 1956 intitulé « L' autorité au XXe siècle » (2024b), cette dernière note que les tyrannies et les formes autoritaires de gouvernement sont très anciennes, les premières remontant à l' Antiquité grecque et les secondes à la République romaine, et que seule la domination totalitaire est nouvelle (Arendt, 2024). Elle reproche au libéralisme de négliger cette nouveauté en identifiant le totalitarisme à l' autoritarisme. Elle propose trois images visant à faciliter la compréhension des différences de principe entre trois types de gouvernement: le gouvernement autoritaire, le gouvernement tyrannique et le gouvernement totalitaire. Pour le gouvernement autoritaire, elle propose l' image de la pyramide ; pour le gouvernement tyrannique, elle propose l' image d' un sommet suspendu au-dessus d' une masse d' individus isolés, atomisés et totalement égaux ; enfin, pour le gouvernement totalitaire, la meilleure image est à son avis la structure de l' oignon, parce qu' elle ménage en son centre un espace vide dans lequel se tient le leader et qui est entouré de couches concentriques (Hayek, 2020, p. 88-90). Le gouvernement ou régime autoritaire serait caractérisé par « la restriction de la liberté », les tyrannies et les dictatures par « l' abolition de la liberté politique », les régimes totalitaires par « l' élimination totale de la spontanéité elle-même, c' est-à-dire de la manifestation la plus générale et la plus élémentaire de la liberté humaine » (Arendt, 1972).

Le problème est que cette tripartition est avant tout commandée par le souci de faire apparaître la radicale nouveauté du totalitarisme relativement aux deux autres gouvernements ou régimes: les notions de tyrannie et de dictature sont par contre-coup rabattues sur le sens qu' elles tiraient de l' expérience antique et celle de régime autoritaire n' est pas poussée très loin, pas suffisamment en tout cas pour éclairer notre présent. L' exemple du régime de Pinochet rend manifeste cette insuffisance. Il est manifeste que le qualifier de « régime autoritaire » au sens arendtien est une forme de concession

inacceptable. Nombreux sont au Chili même ceux qui à droite, et pas seulement à l'extrême droite, rejettent aujourd'hui la dénomination de « dictature » et lui substituent l'étiquette révisionniste de « gouvernement militaire ». Il ne suffit pas pour les tenir en échec de rappeler que ce régime fut effectivement une dictature, impliquant la suppression de toutes les libertés. La dictature fut instaurée dès le coup d'Etat. Pourtant le tournant néolibéral ne fut pris qu'en 1975 et la Constitution qui le consacra juridiquement ne fut promulguée qu'en 1980. Comment caractériser un tel régime ? Parler de « dictature néolibérale » est très insatisfaisant et tombe sous le coup du reproche énoncé au début de cette étude: le sujet « dictature » renvoie à la sphère politique et le prédicat « néolibérale » à celle de l'économie. C'est méconnaître l'essentiel du projet qui a porté la dictature pendant 17ans: transformer de fond en comble *toutes* les relations sociales en les soumettant à la logique du capital, ce qui va bien au-delà d'une politique économique imposée d'en haut à une société qui aurait trouvé en elle l'énergie suffisante pour s'en préserver.

On peut tourner tant que l'on veut autour de la question du régime politique, on pourra difficilement éviter cette conclusion : le néolibéralisme ne peut se définir par un *régime politique spécifique*, et s'il est vrai qu'il lui est essentiel de s'attaquer à la « démocratie sans limites », cela n'implique aucunement qu'il y ait un régime politique proprement néolibéral.

Plutôt que de se laisser hypnotiser par la question du régime politique, on gagnerait à se tourner vers les *stratégies* mises en œuvre par les néolibéralismes autoritaires. Si l'on considère les émeutes du Capitole et ses suites judiciaires et politiques on s'aperçoit qu'elles n'ont rien changé à la stratégie de Trump, bien au contraire. Les récentes déclarations de l'ex-président au lendemain de sa condamnation à New York pour 34 chefs d'accusation relatifs à la falsification de dossiers commerciaux ont jeté une lumière crue sur ses intentions et sur la continuité jamais démentie de son action politique. Au cœur de ses projets il y a une offensive dirigée contre le système judiciaire américain avec l'objectif d'imposer sa volonté sur les décisions individuelles en matière de poursuites par le ministère de la Justice. S'il aboutissait cet objectif mettrait fin à une norme restée stable durant un demi-siècle, depuis les abus commis par Nixon à l'époque du Watergate, qui empêche les présidents d'intervenir dans des cas individuels pour influencer des décisions de justice. Cela permettrait à Trump lors de son second mandat d'en finir une fois pour toutes avec les poursuites fédérales engagées contre lui et les émeutiers du 6 janvier 2020. Cela lui permettrait également d'engager des enquêtes judiciaires en guise de vengeance contre ses ennemis politiques présumés (notamment Joe Biden et sa famille) (Pilkington, 2024). Les groupes de réflexion chargés à droite de préparer une

nouvelle présidence argumentent en faveur d' un pouvoir absolu du président sur les décisions juridiques fédérales et rejettent la pratique de l' indépendance du Department of Justice (DoJ) qui a prévalu depuis Carter. La doctrine qui a ainsi été élaborée porte le nom de « théorie de l' exécutif unitaire » et postule un pouvoir exclusif du président sur toutes les affaires relevant du gouvernement fédéral (Pilkington, 2024). Il faut voir là une leçon tirée par Trump de son premier mandat : il aspirait déjà au contrôle total du DoJ mais s' était heurté à la résistance des hauts responsables de la justice. Instruit par ce précédent, il entend se prémunir contre ce danger et va jusqu' à menacer de poursuites non seulement ses ennemis démocrates mais aussi des personnalités de sa première administration. Même si la structure du système de justice pénale ferait par elle-même obstacle à ce contrôle total, on peut craindre une perte de confiance dans le système juridique qui finirait à la longue par le rendre inutile, ainsi que cela se passe dans les Etats autoritaires (Pilkington, 2024).

Les émeutes du Capitole le 6 janvier 2020 et celles de Brasilia le 8 janvier 2023 montrent à quel point l' Etat de droit peut être menacé par des tentatives de coup d' Etat émanant du pouvoir exécutif. Des perquisitions menées au Brésil par la police fédérale et ordonnées par le ministère de la Justice sur mandat du Tribunal fédéral (STF) à la suite de l' arrestation et de l' emprisonnement préventif d' un aide de camp de Bolsonaro ont permis de retrouver le brouillon d' un décret instituant le coup d' Etat et ordonnant l' emprisonnement d' un juge de la Cour suprême. Dans les conditions d' une majorité de droite au Congrès et d' un exécutif d' extrême-droite, l' offensive s' est concentrée dans ces deux pays sur l' indépendance du pouvoir judiciaire perçue comme un obstacle.

Ce qui se dessine au-delà des cas de Trump et de Bolsonaro, c' est une stratégie d' ensemble qui mise sur les vertus transformatrices du mode de gouvernement plutôt que sur le changement direct de la forme de l' Etat. On l' a vu plus haut, Kant avait affirmé la primauté du gouvernement constitutionnel sur les formes de gouvernement déterminées par le nombre et, par là-même, la primauté de la manière de gouverner sur la forme de l' Etat. Le détournement néolibéral de l' idée du gouvernement constitutionnel change bien sûr tout puisqu' il est destiné à miner les bases de la démocratie comme forme de gouvernement. Cependant, cette primauté revient sous une forme pervertie, non sur le terrain de la théorie mais sur celui de la stratégie : les différentes variétés de néolibéralisme autoritaire ont bien conscience de l' impossibilité d' un changement brutal de Constitution. En conséquence, leur stratégie consiste à *modifier la Constitution par la manière de gouverner à défaut de pouvoir l' abroger*. En somme, modifier la Constitution plutôt que changer de Constitution et faire accepter cette modification comme indolore et inoffensive. La situation de l' Italie est très révélatrice. Fratelli d' Italia n' a pas réalisé de

véritable progrès électoral, l' abstention a atteint le chiffre record de 50 % et Meloni subit plutôt qu' elle ne porte un projet dit d' « autonomie différenciée » d' inspiration fédéraliste venu de la Lega de Salvini qui lui a été imposé par un accord avec ce dernier il y a deux ans et qui vise à créer trois grandes régions. Mais elle a saisi l' occasion de proposer un projet visant à modifier la Constitution sur un point majeur : l' élection directe du chef du gouvernement au suffrage universel en lieu et place de son élection par la Chambre des députés. Formellement, une telle modification est compatible avec la Constitution de 1948 dans la mesure où celle-ci ne dit mot des formes de gouvernement : elle établit seulement que le Président de la République, dont les fonctions sont en grande partie honorifiques est élu pour 7 ans au suffrage indirect et secret par les deux chambres du Parlement auxquels s' adjoignent des délégués des régions d' Italie. Avec la réforme proposée par Meloni le premier ministre aurait une légitimité supérieure à celle du Président de la République, ce qui introduirait un déplacement considérable dans les relations entre les pouvoirs au profit du premier ministre. Bien entendu les juristes au service de Meloni ont veillé à sauvegarder les apparences en prenant soin de ne pas priver le Président de ses prérogatives, mais l' objectif politique est bien de *modifier la Constitution dans un sens autoritaire*.

Cette stratégie peut prendre des formes très différentes selon les traditions nationales et la logique des rapports de forces. Orban s' est ainsi attaqué frontalement à l' Etat de droit en se faisant octroyer les pleins pouvoirs grâce à une modification de la Constitution hongroise. Le programme du Rassemblement National (RN) de Marine Le Pen vise aussi directement l' Etat de droit à travers la remise en cause du principe constitutionnel de l' égalité des citoyens inscrit dans la Déclaration des droits figurant en préambule de la Constitution de 1958 : certes, le RN a renoncé à priver de la nationalité française tout Français binational (ayant une deuxième nationalité en plus de la nationalité française), mais il l' exclut des emplois publics, donc le prive d' un droit reconnu aux autres citoyens français. De cette manière, ce serait toute la hiérarchie des normes qui serait renversée, puisque celle-ci repose sur la primauté de la Déclaration des droits de l' homme et du citoyen.

## **Le raidissement autoritaire du macronisme**

L' émergence des néolibéralismes autoritaires ne concerne pas seulement la version nationaliste-concurrentialiste du néolibéralisme. Ce n' est pas parce tout que les deux versions du néolibéralisme (« progressiste » et nationaliste) tendent désormais à saturer l' espace politique que les formes de néolibéralisme autoritaire sont l' apanage exclusif de la version nationaliste. Ce phénomène n' a pas manqué de produire des effets profonds sur certaines formes de la version « libérale-progressiste » qui tendent parfois à durcir

leurs traits autoritaires pour tenir tête à la pression exercée par l'extrême-droite. La trajectoire de Macron est à cet égard très différente de celle de Justin Trudeau et en cela même assez exemplaire.

Car ceux qui ont interprété le néolibéralisme macronien comme une troisième voie modérée, à distance de l'« ultralibéralisme » et du « socialisme », se sont lourdement trompés. En 2019, Edouard Philippe, premier ministre de Macron, rendait hommage devant l'Autorité de la concurrence à l'un des principaux fondateurs du néolibéralisme, Friedrich Hayek, et à sa conception de l'État comme gardien juridique de la concurrence économique efficace. Et ceux qui ont cru y voir une alternative à l'extrême droite ont porté l'illusion à son comble. A cet égard, le macronisme n'est pas un rempart, mais un tremplin, pour une double raison : parce qu'il accentue et élargit le ressentiment contre les élites et les institutions ; parce qu'il utilise des méthodes, notamment les violences policières, qui ne dépareraient pas dans le tableau de ce qu'on appelle pudiquement « l'illibéralisme ».

Le recours de plus en plus systématique à ces méthodes est bien antérieur au second mandat (2022). Il intervient pendant la crise des Gilets jaunes avec la dénonciation de la « foule haineuse », assimilée aux ligues fascistes de 1934. Macron a rejoué cette dramatisation rhétorique pendant le mouvement contre la réforme des retraites en 2023. Se posant en défenseur de « l'ordre républicain », il croit malin de comparer les manifestants contre la réforme des retraites à l'extrême droite trumpiste à l'assaut du Capitole ou à opposer les « émeutes » de la « foule » à la « légitimité du peuple qui s'exprime via ses élus ». Dénoncer « les factions et les factieux » comme il l'a fait n'a d'autre sens que de *fabriquer de l'ennemi* à l'intérieur même de la société selon une tradition bien établie des auteurs néolibéraux. C'est là un aspect et un ressort essentiel de toute guerre civile. Avec le néolibéralisme contemporain, cette *ennemisation* vise toutes celles et ceux qui, à travers leurs pratiques, leurs formes de vie ou leurs luttes, paraissent aujourd'hui menacer la logique normative du marché ou la supposée unité indivisible de l'État. Dans le cours chaotique du macronisme, on a assisté à l'invention continue de catégories d'ennemis en fonction des circonstances, qu'il s'agisse du « populisme », de l'« islamogauchisme », de la non-mixité, de la théorie du genre, du « séparatisme », du « communautarisme », du « postcolonialisme », du « wokisme », du « déconstructionnisme » ou du « terrorisme intellectuel ». Avec la décision de dissoudre « Les Soulèvements de la Terre » au lendemain de la manifestation de Sainte Soline (23 mars 2023), décision annulée par le Conseil d'Etat, ce sont maintenant les termes d'« écoterrorisme » et d'« ultra-gauche » qui sont systématiquement utilisés pour neutraliser toute critique de l'écologisme néolibéral de Macron. Les avantages d'un tel vertige dénonciateur ne

sauraient être sous-estimés. Il présente l'immense intérêt de constituer celles et ceux qui dénoncent les diverses formes d'inégalité et de prédation en ennemis de la République, et de maintenir par-là la croyance en la fonction pacificatrice de l'État, niant précisément par cette opération la guerre menée par ce même État contre les adversaires de l'ordre néolibéral.

La réforme des retraites imposée en 2023 est très significative de la façon dont le gouvernement Macron un cours de plus en plus autoritaire pour parvenir à ses fins. Depuis la réélection de Macron, il n'y a plus de négociation avec les « partenaires sociaux », en particulier avec les syndicats : l'exécutif a pris l'habitude de convoquer ces derniers, le plus souvent un par un et non collectivement, pour les consulter sur les « réformes », en aucun cas pour discuter avec eux de leur contenu en vue de l'améliorer. Le cas des retraites est emblématique de cette façon de procéder. On a tout d'abord le cadre général qui relève l'âge légal de la retraite de 62 à 64 ans au nom de la préservation de l'équilibre financier du système. On a en second lieu la méthode mise en œuvre pour imposer ce cadre général qui procède de la logique de la souveraineté de l'Etat : non seulement l'article 49.3 de la Constitution qui donne la possibilité au chef de l'Etat de passer outre l'avis du Parlement, mais aussi l'article 47.1 qui impose une limite de temps de 50 jours pour l'aller-retour entre l'Assemblée nationale et le Sénat, et également l'article 44.3 qui légitime le vote bloqué sur l'ensemble du projet en supprimant la possibilité d'amendement de manière à tenir les délais prescrits (cela a été imposé au Sénat). Il faut relever que jamais un gouvernement n'avait été aussi loin dans le recours répété aux procédés discrétionnaires de la Constitution gaulliste de 1958, pas même les gouvernements mis en place du vivant de De Gaulle. Enfin, à l'intérieur de ce cadre général, l'individualisation la plus extrême : pour tous ceux qui présentent des facteurs de risque (par exemple, parce qu'exposés trop longtemps à l'amiante), la réforme prévoit une visite médicale obligatoire à 61 ans auprès du médecin du travail qui peut conclure soit à l'invalidité, soit à une reconversion pour continuer à travailler jusqu'à 64 ans (ou 67 ans sans décote pour ceux qui n'ont pas cotisé pendant 43 ans, ce qui atteint de plein fouet les femmes ayant pris des congés de maternité). De ce point de vue l'attitude de Macron atteint au paroxysme de *l'usage hyperautoritaire d'une Constitution en elle-même autoritaire* (dont Mitterrand, alors opposant au gaullisme, avait dit justement qu'elle est un « coup d'Etat permanent »).

Il faut ajouter à cela la loi immigration promulguée le 26 janvier 2024 qui est l'une des plus répressives de ces 40 dernières années et porte indéniablement la marque de l'extrême droite au point que Sophie Binet, la nouvelle secrétaire de la CGT, a pu la qualifier de « loi d'extrême droite votée par une majorité d'extrême droite », ce qui

incluait non seulement les élus RN et de droite, mais également ceux de Renaissance, le parti macroniste. Sans oublier le coup de force que représente la modification arbitraire de la composition du corps électoral en Nouvelle-Calédonie qui avantage la population blanche descendante des colons au détriment des Kanaks, le peuple autochtone de l'archipel, ce qui a provoqué des émeutes et des barrages sur les routes plusieurs semaines durant. Macron a alors pris personnellement fait et cause pour les Caldoches encourageant la répression des meneurs Kanaks et faisant resurgir le vif du refoulé colonial par la remise en cause des accords de Nouméa de 1998.

Dans ce contexte, la dissolution prononcée le soir du 9 juin après l'annonce de la victoire du RN aux élections européennes est un sommet inégalé dans la légitimation politique de l'extrême droite comme seule alternative au macronisme : voulant prendre de court la gauche qui ne dispose que d'une semaine pour tenter de s'accorder sur des listes communes aux législatives du 30 juin, il joue une fois de plus la carte « C'est Moi ou l'extrême droite », mais dans des conditions nouvelles marquées par le score sans précédent du RN (31 %). Ce jeu criminel pourrait bien avoir pour conséquence que l'on ait Macron et l'extrême droite : ce qui se profile en cas de victoire de cette dernière serait une cohabitation très risquée Macron-Bardella. Il est possible que Macron, qui avait déjà dit tout le mal qu'il pensait de l'impossibilité constitutionnelle d'une troisième présidence, ait envisagé la possibilité d'une démission en cas de victoire du RN aux législatives : en ce cas le président du Sénat aurait assuré la présidence par intérim et permettrait à Macron de se présenter de nouveau comme candidat à la prochaine présidentielle, la présidence par intérim pouvant apparaître comme une présidence à part entière interrompant la continuité des présidences exercées par Macron. Il se serait agi en réalité d'une tentative de coup d'Etat<sup>7</sup>, une sorte de coup d'Etat dans le coup d'Etat permanent de la Ve République.

On le sait, ce scénario ne s'est pas réalisé. Au soir du second tour, le 7 juillet, le Nouveau Front Populaire (NFP), coalition de partis de gauche née tout de suite après le premier tour, est arrivée en tête devant la liste macroniste renommée « Ensemble » et l'extrême droite du RN. Après trois jours de silence, le président a rendu publique une lettre ouverte aux Français qui repose sur un violent déni de démocratie : « Personne ne l'a emporté dimanche », et en appelle à une discussion entre partis comme préalable à la nomination d'un premier ministre tout en excluant par avance une composante entière de la gauche, la LFI. En attendant, c'est toujours le gouvernement Attal en place avant la dissolution qui continue d'« expédier les affaires courantes ». Macron joue sur le

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<sup>8</sup> L'article 6 alinéa 2 de la Constitution de 1958 stipule que nul ne peut exercer plus de deux mandats consécutifs en tant que président de la République.



pourrissement en espérant provoquer une fracture au sein du NFP. La situation est devenue littéralement ingouvernable : tout projet de budget s'expose à une motion de censure qui, en l'absence d'une majorité à l'Assemblée nationale, entraînerait la chute du gouvernement. La seule issue serait alors de recourir une nouvelle fois aux articles 49-3 et 47 ou, plus grave encore, d'appliquer l'article 16 qui autorise en cas de menace « grave et immédiate » à gouverner par des ordonnances présidentielles.<sup>8</sup> Le pire serait un blocage d'un an empêchant d'un nouveau gouvernement avec des députés macronistes faisant fonction de ministres<sup>9</sup> jusqu'à une seconde dissolution, ce qui peut parfaitement entrer dans les calculs de Macron.

### La radicalisation à droite du néolibéralisme: le cas Milei

En décembre dernier, Macron avait provoqué l'indignation et la stupeur en posant avec le maillot du club de foot Boca Juniors dédicacé à son intention par Javier Milei. Ce geste en dit long sur la complaisance politique du président français à l'égard de son homologue argentin. Cette attitude n'est pas de pure circonstance, elle révèle un accord sur la logique du néolibéralisme de gouvernement, au-delà des espoirs bien réels d'obtenir pour les grandes entreprises françaises une place avantageuse dans la course à l'exploitation des gisements de lithium du sous-sol argentin. Comme on l'a vu, pour comprendre cette logique, il faut distinguer la *constitutionnalisation* du droit privé et pénal, elle-même susceptible de prendre des formes très diverses en fonction du rapport des forces, le *régime* autoritaire et le *mode de gouvernement* autoritaire. La Ley Bases<sup>10</sup> est un premier pas sur la voie de cette constitutionnalisation, le recours à l'arme des décrets (le DNU<sup>11</sup>) relève indiscutablement d'un mode de gouvernement autoritaire et le régime constitutionnel (celui de la Constitution fédérale de 1853) est aujourd'hui menacé comme il ne l'a jamais été, y compris sous la dictature issue du coup d'Etat de 1976. Le refus du gouvernement national de redistribuer aux provinces l'argent collecté par le fisc a ouvert une crise profonde dans les relations avec les gouverneurs qui bloque le financement des écoles, des transports publics, et les travaux d'infrastructures engagés et menace directement la structure fédérale de l'Etat argentin: Milei voudrait gouverner

<sup>8</sup> Cet article ne fut appliqué qu'une seule fois, lors du putsch de 1961 dirigé contre le gouvernement gaulliste par les généraux d'Alger.

<sup>9</sup> Les ministres de plein exercice ne peuvent être en même temps députés en vertu de la séparation entre législatif et exécutif, mais des députés nouvellement élus (comme Gabriel Attal) pourraient en faire office, jouant ainsi le rôle de « ministres zombies », selon la formule plaisante d'un constitutionnaliste français.

<sup>10</sup> C'est le nom donné à une version réduite du projet de loi initial (dit Ley omnibus) : elle prévoit une délégation des pouvoirs législatif et judiciaire au pouvoir exécutif (le président lui-même) pendant une durée d'un an.

<sup>11</sup> Décret de Nécessité et d'Urgence : par ce décret Milei a abrogé en une seule fois quelques 300 mesures et lois de protection sociale.

l'Etat fédéral comme un Etat unitaire centralisé. Certes, dans l'état actuel des choses, la délégation des pouvoirs à l'exécutif ne vaut que pour un an, mais aucune limitation n'a été introduite concernant la possibilité de son renouvellement et cette indétermination menace en elle-même le régime constitutionnel puisqu'elle représente une atteinte directe au principe de la séparation des pouvoirs. Si elle devait être consacrée dans la durée<sup>12</sup>, elle équivaudrait à un changement de régime qui ne dit pas son nom, c'est-à-dire à une sorte de coup d'Etat à froid.

Mais jusqu'à quel point devons-nous rattacher Milei au « néolibéralisme » ? N'est-ce pas faire violence à la manière dont il se définit lui-même ? D'un autre côté, on ne peut non plus prendre pour argent comptant sa profession de foi libertarienne. Dans un article de la revue financière française *La Tribune* (Janson, Wenzel, 2023), deux journalistes lavent Milei de l'accusation d'être d'extrême droite en dénonçant l'« inculture » de journaux comme le *New York Times* et le *Monde* qui reprennent à leur compte cette accusation. Leur argument se résume à ceci : Milei n'est pas d'extrême droite *parce qu'* il est anarcho-capitaliste et qu'un anarcho-capitaliste ne peut être d'extrême droite. Examinant ensuite la politique suivie par Milei depuis sa prise de fonction, les deux journalistes lui prodiguent un conseil : ayant renoncé à la suppression de la Banque centrale et à la dollarisation de l'économie, deux promesses de campagne, il ferait mieux d'abolir le cours légal du peso et le contrôle des capitaux et de mettre fin au monopole de l'émission de la Banque centrale<sup>13</sup>. Il n'est pas *l'anarcho-capitaliste* qu'il a prétendu être durant sa campagne mais il peut se contenter d'être un libéral au sens classique du terme « en remettant l'Etat à sa juste place ». La différence est de taille et indique à quel point Milei a dû en rabattre de ses prétentions initiales puisque « anarcho-capitalisme » et « libéralisme » forment les deux extrémités du spectre politique dessiné par les deux auteurs. Afin d'étayer leur jugement, les deux journalistes entreprennent de présenter méthodiquement les trois écoles que comprendrait la « grande famille libérale », sous la forme d'un spectre politique présentant deux extrémités (2006) :

- à la première extrémité, le *libéralisme* préconise un rôle encadré et limité de l'Etat pour remédier aux défaillances du marché : il peut ainsi protéger la concurrence en luttant contre les monopoles ou forcer l'épargne pour financer la retraite par capitalisation. C'est là la position du libéralisme rénové ou refondé à la fin des années 1930, qu'il est devenu habituel de dénommer

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<sup>12</sup> Le 14 juin, le Sénat a voté la version amendée de la Ley Bases grâce à la voix prépondérante de Villarruel, la vice-présidente de la Nation. Le projet de loi doit maintenant repasser devant la Chambre des députés en vue de son adoption définitive.

<sup>13</sup> On reconnaît là au passage une mesure préconisée en son temps par Hayek.

« néolibéralisme » malgré le refus de cette étiquette par la plupart des néolibéraux qui la jugent péjorative.

- à l' autre extrémité, l' *anarcho-capitalisme* qui affirme que l' Etat incarne la violence, qu' il est immoral et inutile, que le marché suffit à résoudre tous les problèmes de l' organisation sociale, et que l' Etat doit donc être aboli. Dans sa version aboutie, cette doctrine a été défendue notamment par David Friedman et par Murray Rothbard.
- entre les deux extrêmes, le *libertarianisme* restreint les fonctions de l' Etat à la seule protection des droits individuels, ce qui implique de conserver la police, l' armée et la justice pénale (les tribunaux). C' est à peu de choses près la position de Robert Nozick dans *Anarchy, State, Utopia* et de tous ceux qu' on appelle les « minarchistes » ou partisans d' un Etat minimal (du grec *archè* qui signifie « commandement »). A cet égard il est utile de rappeler que le terme de « *libertarian* » fut exhumé et récupéré en 1947 par Leonard Read, l' initiateur de la Fondation for Economic Education (FEE), pour résoudre un problème de label et se démarquer du terme de *liberalism* par lequel se désignait une certaine gauche américaine partisane de l' intervention de l' Etat. En dépit de cette commodité lexicale, cette dénomination fut écartée par Mises, Friedmann ou Hayek qui répugnaient à recourir à un terme évoquant (Laurent, 2006).

On remarquera que cette classification est en définitive commandée par un seul critère, le degré d' intervention de l' Etat dans l' économie : tout d' abord, une intervention limitée et encadrée, justifiée par l' existence de défaillances du marché (le « libéralisme », en fait le néolibéralisme), ensuite, une intervention destinée exclusivement à protéger les droits de propriété des individus par le droit pénal et la répression (le libertarianisme), enfin, la suppression pure et simple de l' Etat dans une société de marché (l' anarcho-capitalisme). Ce qui donnerait sans l' ordre la « gradation » suivante : néolibéralisme, libertarianisme et anarcho-capitalisme.

Où situer exactement Milei ? Qu' en est-il au vrai de ses références intellectuelles ? En quoi sont-elles éclairantes pour identifier sa position et plus encore sa politique ? Il faut éviter en la matière deux écueils. Le premier est de se satisfaire de sa profession de foi du « candidat » Milei en partant du principe que toute la politique du « président »

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<sup>14</sup> Une mise au point s' impose ici : il faut absolument s' interdire de créditer Milei de toute forme de « libertarisme » et lui appliquer uniquement le terme de « libertarianisme ». Le terme « libertarien » renvoie à une position « libérale », ce qui, dans le cas de Milei, relève de l' usurpation et de l' imposture pure et simple: un vrai « libéral » veut remplacer l' Etat par l' auto-organisation des communes (comme le voulaient les anarchistes pendant la guerre civile espagnole), un « libertarien » a pour objectif sinon de dissoudre l' Etat dans le marché (comme un anarcho-capitaliste), du moins de réduire l' Etat à ses seules fonctions répressives. Milei est peut-être un *libertarien*, dans certaines limites comme nous allons le voir, il est l' opposé d' un *libéral*.

Milei se laisse comprendre comme la stricte application de cette profession, de sorte que son présumé libertarianisme<sup>14</sup> suffirait à décider du caractère libertarien de sa politique. Le second est de réduire cette profession à une simple « couverture idéologique » d'intérêts de classe, selon la grille de lecture à laquelle un certain marxisme nous a habitués depuis les années 70 : cette fonction d'occultation/légitimation interdirait de prendre son discours au mot. Ces deux écueils qui isolent l'idéologie de Milei font écran à la seule question qui vaille : en quoi les références anarcho-capitalistes ou libertariennes de Milei aident-elles à comprendre sa politique en tant que président ?

On sait que ce dernier s'est volontiers réclamé du libertarianisme et de l'anarcho-capitalisme mais non du « libéralisme » compris au sens du néolibéralisme. Au contraire il n'hésite pas à s'en prendre violemment à l'orthodoxie néoclassique revendiquée par tout un courant du néolibéralisme. Prenons le discours prononcé par le président argentin au Forum économique mondial de Davos. Rappelons que ce discours est prononcé à l'occasion du premier voyage de Milei à l'étranger depuis son élection. Outre les formules convenues et mille fois ressassées sur la supériorité du capitalisme de libre marché, appuyées sur une relecture de « l'histoire du progrès économique », outre l'affirmation répétée comme un mantra que « l'Occident est en danger », outre la reprise de la critique par Hayek de l'idée de « justice sociale », il en vient au « libertarianisme ». Ses principes fondamentaux sont, dit-il, « la défense de la vie, de la liberté et de la propriété » et c'est un modèle fondé sur ces principes que « nous proposons pour l'Argentine du futur ». Puis, de manière assez surprenante, il en vient alors aux dirigeants, penseurs et universitaires restent prisonniers d'un « cadre théorique erroné », celui de la théorie économique néoclassique qui repose sur l'idée de prétendues défaillances de marché. Ces défaillances sont en réalité, nous assure-t-il, dues à la seule interférence de l'Etat : car dans un système où les transactions sont volontaires et non contraintes, la défaillance du marché « n'existe pas ».

Lorsqu'il en peine d'explications, Milei attribue bon nombre des déficiences de marché non à un excès de propriété mais à son défaut. Par exemple, lorsqu'il évoque le problème de la pollution des rivières, il souligne que le problème n'est pas le comportement des entreprises qui déversent leurs déchets dans les cours d'eau plutôt que d'assumer le coût de leur traitement. Selon lui le problème réside en réalité dans l'absence de droits de propriété sur les cours d'eau.

Si les cours d'eau étaient privatisés, leurs propriétaires auraient un intérêt clair à les protéger et à faire payer les pollueurs. La solution est donc de les privatiser afin de laisser les logiques de marché produire leurs effets bénéfiques. Cette violente charge contre la théorie néoclassique, qui a des accents quasi-religieux, a quelque chose d'étrange. En

fait, la découverte du libertarianisme par Milei est assez récente puisque, de son propre aveu, elle ne date que de 2013. C' est en lisant Murray Rothbard qu' il s' enthousiasme pour le libertarianisme et en vient à reconsidérer la théorie économique néoclassique qu' il enseignait jusqu' alors. La charge polémique contre la théorie néoclassique s' explique en partie par son zèle de néophyte récemment converti au libertarianisme.

Ce qui est certain, c' est que les références intellectuelles de Milei sont assez brouillonnes et fort peu cohérentes. On y trouve des emprunts au néolibéralisme de Hayek (la critique de l' idée de justice sociale) et au libertarianisme de Nozick et de Murray Rothbard (l' axiome de non-agression), mais dépourvus de la cohérence doctrinale qui font toute leur intérêt chez ces auteurs (particulièrement chez Nozick). On pourrait reprendre la qualification de « *libéral-libertarien* » utilisée par Pablo Stefanoni dans sa présentation du discours de Davos afin de faire ressortir caractère mixte de la définition par Milei de sa propre place (à comprendre au sens de « *néolibéral-libertarien* »), mais à la condition d' aller encore plus loin dans l' explicitation de la logique des emprunts faits par Milei dans son autodéfinition.

Cela n' est possible que si l' on se demande quelle est la politique suivie par Milei depuis son accession au pouvoir de manière à pouvoir éclairer cette politique à la lumière des emprunts intellectuels par lesquels il s' est fabriqué une identité lui permettant de se démarquer de la « caste ». Le président qui prononce son discours à Davos a déjà à son actif le DNU et un projet de Loi (Ley omnibus rebaptisée Ley Bases) qui ambitionne de changer le fonctionnement de l' Etat. De fait, pour peu qu' on l' examine attentivement, ce programme n' a rien de spécifiquement libertarien et évoque davantage les recommandations néolibérales classiques.

Ce qui intéresse avant tout Milei c' est le *versant négatif*<sup>15</sup> du libertarianisme, sa critique de l' Etat menée à partir de l' idée que le droit de propriété est un droit absolu. Transparaît alors un usage passablement opportuniste du libertarianisme. Interrogé sur la mise en pratique des idéaux libertariens (une société de marché où l' Etat a été aboli), il reconnaît que cet idéal est impraticable dans l' immédiat. Il ne s' agit pas tant de poser les fondations d' une société libertarienne (celle dont rêvaient Murray Rothbard, Robert Nozick ou Davide Friedman) que de *se servir de toute la puissance concentrée de l' Etat pour démanteler l' Etat social*. La priorité donnée au versant négatif du programme libertarien explique le soutien des grandes entreprises, du FMI et du patronat argentin à des mesures dont on ne saurait dire si elles ont libertariennes ou néolibérales. La mise

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<sup>15</sup> La distinction entre le « versant négatif » du libertarianisme et son « versant positif » est fort utilement introduite par le philosophe Eric Fabri dans un article intitulé « Le libertarianisme opportuniste de Javier Milei » (Fabri, 2024).

en œuvre du *versant positif* (l'expérimentation d'une société de marché sans Etat) est renvoyée à un futur très lointain en raison de son caractère inapplicable, comme Milei l'a lui-même reconnu dans plusieurs interviews, ce qui revient de facto à l'abandonner.

Cet usage intéressé et sélectif du programme libertarien est également manifeste sur la question du droit à l'avortement. Historiquement, le libertarianisme avait brouillé les lignes de la démarcation gauche-droite en assumant simultanément la défense des politiques économiques très libérales et une série de conséquences logiques de la propriété de soi, comme l'usage récréatif des drogues ou le droit à l'avortement. Milei fait marche arrière sur les aspects progressistes du libertarianisme de droite et se raccroche à sa version conservatrice (le fameux « paléolibertarianisme » défendue à la fin de sa vie par Murray Rothbard), ce qui permet de comprendre l'alliance avec les conservateurs qui n'ont rien de libertarien. La priorité donnée à la propriété comprise comme droit absolu justifie ainsi les coupes drastiques dans les budgets sociaux et l'extension maximale de la privatisation et de la logique marchande, mais pas le droit à l'avortement auquel la propriété de soi devrait pourtant logiquement aboutir. De ce point de vue, Milei n'est pas un libertarien très cohérent (Fabri, 2024).

En définitive, on a affaire à un programme très simplifié mis au service d'une entreprise de destruction des institutions de l'Etat social, davantage qu'à la doctrine libertarienne stricto sensu. C'est cette version simplifiée que reprend Milei celle qui fait de la propriété de soi de la personne un droit de maîtrise absolu (*self-ownership*) totalement affranchi des limitations introduites par Locke au droit d'appropriation privée : qu'il y ait un reste suffisant pour les autres et que le propriétaire ne gaspille pas les fruits de son travail). Le concept d'agression, que reprend Milei dans son discours de Davos, est ainsi élargi de manière à comprendre non seulement les contraintes physiques directes mais aussi les menaces d'usage de la force pour obliger à payer une taxe à laquelle l'individu n'aurait pas consenti. Le libertarianisme de droite peut ainsi condamner toute forme de taxation au nom de la devise « la taxation c'est du vol » (*Taxation is theft*). On le voit, le libertarianisme revendiqué par Milei ne se réduit pas à un simple déguisement idéologique : par son caractère essentiellement critique et négatif, il est un ingrédient indispensable du « miléisme » en ce qu'il procède d'une *radicalisation à droite du néolibéralisme* plutôt que d'un dépassement de ce dernier dans une *mise en œuvre du libertarianisme*.

## **La portée internationale du miléisme**

On ne peut donc se satisfaire de l'étiquette de « populisme de droite ». On peut certes déceler des parentés entre ces pratiques de Milei et celles auxquelles avaient déjà eu recours Trump et Bolsonaro en leur temps. Mais parler de « populisme de droite » risque

fort d'occulter des différences qui importent du point de vue de la stratégie politique. Ainsi, l'attitude de Milei sur la question de la souveraineté nationale diffère profondément de la posture adoptée par les présidents américain et brésilien. Tout en reprenant le « Make America great again » de Trump pour l'appliquer à son propre pays, le président argentin n'a pas hésité à afficher une photo de Margaret Thatcher dans son bureau et ne perd pas une occasion de louer sa stature et son action, ce qui, dans un pays qui garde un souvenir amer du conflit des Malouines, passe très mal. De même, le « régime d'incitation aux grands investissements » (RIGI), présenté comme un moyen infaillible d'attirer les capitaux étrangers, aurait pour principal effet de priver l'économie argentine du moindre dollar d'exportation provenant des nouveaux projets d'investissement. A cet égard, l'orientation de Milei tourne résolument le dos au « souverainisme ». De manière plus générale, c'est l'importance accordée à l'économie qui tranche avec la politique suivie par Bolsonaro : certes ce dernier a encensé Elon Musk, comme Milei après lui, mais il s'est pour l'essentiel reposé sur Paulo Guedes, son ministre de l'Économie passé par l'École de Chicago, et s'est concentré beaucoup plus sur des actes symboliques forts (la guerre contre le marxisme culturel, etc.). Même si cela peut surprendre, en matière de politique néolibérale, *Milei est allé en quelques mois beaucoup plus loin que Bolsonaro en 4 ans.*

En dépit de ces différences, qui recouvrent parfois de véritables divergences, les liens entre les formations d'extrême droite se sont renforcés ces derniers temps. Une photo publiée le 17 novembre nous montre déjà Milei aux côtés d'Eduardo Bolsonaro, fils aîné de l'ancien président, et de Kast, leader du parti pinochetiste chilien, sous le titre « Amigos son los amigos » : elle fut prise à l'occasion du 5<sup>e</sup> sommet transatlantique de la *Red Política por los Valores*, une alliance des extrêmes droites conservatrices. Plus récemment, on a pu observer la mise en scène bruyante de l'alliance des extrêmes-droites lors du dernier Congrès de Vox tenu le 19 mai à Madrid : aux côtés de Marine Le Pen ou de Georgia Melloni, Milei y a figuré dans le rôle de « vedette américaine ». Le président argentin a notamment déclaré : « Je vais montrer au monde qu'un gouvernement qui partage nos idées peut réussir ». C'est par cette ambition que Milei entend faire école. On se souvient que le responsable de Vox envoyé pendant la campagne présidentielle pour soutenir Milei avait affirmé, tout en reconnaissant que son parti n'était pas libertarien, qu'il existait suffisamment de coïncidences avec le candidat argentin pour l'intégrer à un front antiprogressiste international. Il faut se garder de surestimer la cohésion

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<sup>16</sup> <https://www.bbc.com/news/articles/c722-qy5dzlgo>. Le Libertarian Party fut créé en 1971 sur la base d'un programme de privatisation totale de la société.

idéologique de cette alliance qui révèle surtout les hybridations en cours au sein de l'extrême-droite (Stefanoni, 2023). L'accueil réservé à Trump par la dernière convention nationale du Parti libertarien américain rend cette fragilité manifeste : affichant ses convictions libertariennes pour mieux solliciter le soutien de ce parti au nom de l'alliance contre Biden, il fut hué par une bonne partie des délégués<sup>16</sup>. Cependant, même si l'« internationale fasciste » est encore largement en voie de structuration, elle peut polariser les alliances à son profit en tirant parti de l'exemplarité des succès remportés par la présidence argentine dans son entreprise de destruction de toute forme d'Etat social. La meilleure preuve en est le forcing fait par Meloni pour obtenir de Milei sa participation au sommet du G7 des 13-15 juin, alors même que ce dernier avait annoncé dans un premier temps qu'il ne s'y rendrait pas : si s'afficher avec Milei est politiquement « vendeur », c'est parce que le président argentin montre ce que peut faire l'extrême-droite une fois parvenue au pouvoir et c'est à cette « démonstration pratique » qu'il doit une grande part de son succès sur le plan international, en dépit de divergences intactes avec les courants souverainistes. Sous le masque souriant de la Meloni « européiste » et « atlantiste » qui courtise Ursula von der Leyen, il y a une autre Meloni plus discrète, mais non moins redoutable, qui mise sur la réélection de Trump le 4 novembre prochain pour avancer plus ouvertement dans la voie qu'elle s'est tracée. C'est cette Meloni qui entend prendre toute sa place dans cette nouvelle alliance dont l'axe est constitué par le conservatisme, la lutte contre l'égalité, les droits des minorités et l'immigration, et dont le terrain d'élection est celui de la « guerre des valeurs ». Nous entrons dans une nouvelle période dominée par une polarisation politique inédite, celle que produit un radicalisme d'extrême-droite sur les diverses variétés de néolibéralisme autoritaire.



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# THE IRONIC TURN OF LIBERALISM: THE FACE OF AUTHORITARIAN FREEDOM\*

*The irony of this device: it makes us believe it's about our liberation.*

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## LA VUELTA IRÓNICA DEL LIBERALISMO: EL ROSTRO DE LA LIBERTAD AUTORITARIA

### Abstract

A large number of scholars have underlined the current turbulent character of the liberal and global order, which, for a long time, represented itself and was perceived as a stable and inevitable order. Despite the reluctance of some areas of the planet to accept the liberal-democratic model made in the USA, a fairy tale told us that the global free market, the World Wide Web, and technological development would surely lead everyone to choose human rights and liberal democracy. Yet, we are now dealing with a shocking sequence of 'crises': terrorism, environmental damage, unstable economy, migrations, a healthcare crisis, and even open military aggression. The essay hypothesizes that liberalism's firmness in preserving its global position entails not only the divorce from the contingent alliance with representative democracy but also the activation of its inherent security liberticidal logic.

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## Keywords

authoritarian liberalism; crises; liberal democracy; securitization

## Resumen

Un gran número de estudiosos subraya el carácter turbulento actual del orden liberal y global, el cual, durante mucho tiempo, se autorrepresentó y se percibió como un orden estable e inevitable. A pesar de las reticencias de algunas partes del planeta a aceptar el modelo liberal-democrático *made in USA*, un cuento de hadas nos decía que el libre mercado global, la *World Wide Web* y el desarrollo tecnológico con seguridad nos llevaría a todos a la elección de los derechos humanos y la liberal-democracia. Sin embargo, ahora nos enfrentamos a una espeluznante secuencia de “crisis”: el terrorismo, el deterioro ambiental, una economía inestable, las migraciones, la crisis sanitaria e incluso una agresión militar abierta. La hipótesis del ensayo es que la firmeza del liberalismo para preservar su posición global implica no solo el divorcio de la alianza contingente con la democracia representativa, sino también la activación de una lógica liberticida inherente a la seguridad.

## Palabras clave

liberalismo autoritario; crisis; segurización; democracia liberal

## 1. Once Upon a Time, There Was a Liberal Order...

A large number of scholars (political scientists, constitutionalists, sociologists) has underlined the alarming current turbulent character of the liberal and global order, which for a long time—in the past twenty years—represented itself and was perceived as a stable order, with no alternative and, thanks to free market globalization, oriented towards a peaceful, increasingly integrated universe (Ikenberry, 2018, pp. 7–23; Kagan, 2018). It is true that there were some areas of the planet reluctant to take on the model of liberal-democratic order guarded and guaranteed by US hegemony. However, a fairy tale told us that the global free market, the worldwide web (at the time experienced as a means of democratization), and technological development would surely lead everyone (voluntarily or having been persuaded or induced) to choose human rights and liberal democracy, which only enhances the anguish for the shocking sequence of ‘crises’ and global emergencies (which are immediately considered to be global due to interdependence): terrorism, environmental damage, unstable economy, migrations, healthcare crisis, and finally open military aggression.

We use the word ‘open’ because since the fall of the Berlin Wall—triumphantly seen as the second definitive victory of liberal democracy—wars, disguised as ‘special police operations,’ have actually been continuous. Now, however, the decline of the liberal order and the worsening of conflicts—not only but above all international conflicts—are all too evident. This impression might also have to do with the exceptional sense of security of the nineties, which, by contrast, created a widespread feeling in the West of being under siege (Colombo, 2022): The emphasis on how Western civilization improved the rest of the world, with a universalism that applied both to the market and human rights, has turned into fear.

The long-removed problem is that the siege of rampant trade and military competitors, which increasingly and explicitly challenge Western hegemony and its failed interventions to maintain security and order, add to the glaring internal crisis of liberal democratic states, or rather, of democracy as such (Brown, 2015).

This, however, is not a crisis of liberalism. And this is the point. The crisis of democracy that dramatically affects the liberal-democratic couple—the unchallenged *Grundnorm* of the present and future world—does not involve liberalism (and only partially involves its neoliberal version). By liberalism we mean domestic and global political strategies that impose standards of behavior and productivity aimed at their own goals, a free and boundless capitalist market of goods, workforce, and capital that forces politics, culture, and processes of subjectivation to cater to its needs.

As is clear, with the word liberalism, we are not referring to the theories of liberal deregulation: These can alternate, as has historically been the case, with forms of

protectionism and state capitalism, which means that the strategic goal is always the same, despite the variety of contingent means adopted.

Liberalism's marriage of convenience with democracy and its rule of law, civil rights, and checks and balances lasted a long time. Indeed, property rights and free trade (between stronger and weaker countries or social groups in private bargaining)—which is what liberalism is interested in—also belong, in the Western tradition, to the set of values of democracy, which came out victorious from the double clash with Nazism and Communism.

If the feeling of a triumphal *end of history*, Fukujama *docet*, has quickly turned into fear and uncertainty, it is surely due to pressing emergencies. However, the mythization of the two victories referred to as liberal democracy emphasized that feeling, thus avoiding a realistic analysis of the contradictions that the victorious model contained (in the double meaning of the word) (Fukuyama, 1989, pp. 3–18). Two events, 1946 and 1989, were turned into the founding myth of liberal democracy, concealing the contingent and self-conflicting nature of this myth. When the democratic element (i.e. the welfare state) entered into crisis in the eighties, the liberal element occupied the whole scene, supporting capitalism's cognitive turn, which left the factories in place while avoiding the workers' conflict. The liberal cultural and economic-social revolution had 'won.'

When we say that history is over, this means we have entered the time of myth, which—according to Benjamin (1971, p. 170, 2000, p. 434)—is a motionless, naturalized, and destinal time: The *semper novum* is an endless repetition of the same. Myth, as naturalized history, is the narrative on which the neoliberal revolution has been based, which means that its claim to impose a social and economic model without alternatives, not only domestically but globally, is itself mythical, an illusion. This myth or ideology, like all ideologies, presented itself as an anti-ideological truth, one that would finally erase all catastrophic utopias and ideologies from the bellicose twentieth century. This myth has been harshly debunked twenty years later.

Collapse is usually thought to result from 'external' attacks on liberal democracy and liberalism itself: sovereignty and populism (internally), autocracies, terrorism, environmental and health crises (externally)... Causes are always exogenous. How can we forget that neoliberalism diagnosed the most recent major financial crisis as being caused by an insufficient implementation of its own model?

Liberalism is our topic, but we have to start from the triumphal union of liberalism and democracy, which for a long time was viewed as being normative and irreversible, something that today is often denied. We will have to analyze both the internal and international 'story' of their connection, as well as their divergent logic. Only a historical, genealogical analysis (history is exactly what the mythical and naturalistic narrative of

liberalism and liberal democracy removes) can grasp the ‘strategic’ workings of liberalism and, therefore, expose *who* chose and used it to master society.

On the other hand, only an analysis of its rationality can show its ironic configuration, exposed to reversals and the heterogeneity of ends. A double point of view is suitable because practices and material power condition and are conditioned by the logical and ideological level (which has a key value here). Effects result from their combination.

Since our focus is on authoritarian liberalism and its anti-democratic turn, a continuous counterpoint is required to understand how democracy has been transformed by this triumphal marriage: The democratic consensus, at first politically organized, filters into fragmented individual opinions, also dissenting ones. The opposition loses its power and conflictual strength, becoming involved in the idea of a neoliberal market. As an opposition, it limits itself to focusing on human rights, which are meta-historical, often devoid of concrete relationships, and implemented in a fragmented way. This is a noteworthy aspect because it is precisely when the opposition empties itself of specific antagonistic content and shares the hegemonic culture that we can truly speak of a neoliberal *order*.

The hypothesis put forward by this essay is that the firmness of liberalism (and capitalism, which supports it, being supported by it) in maintaining the global position it has gained, entails not only the divorce from the contingent, temporarily fitting union with representative democracy, but also the activation, in direct and widespread forms, of the security and liberticidal rationality, already inherent to it.

The neoliberal revolution (revolution and reform, words that once belonged to the left, now belong to neoliberal progressivism), conceptually constructed in the interwar period, broke out in the eighties.

It was aware from the start (like never before) that a key priority was to radically change people’s mentality. This awareness is not obvious for an intellectual and social group, it is elitist by nature, hostile to the masses and the opinion of the majority. But it is the strategic nature of the project that suggests this: It tells a captivating story as a tool to conquer the social power that democracy (totalitarian and/or socialist, or, better, social-democratic) had captured or threatened to capture from the capitalist organization.

Neoliberalism is, therefore, from the beginning, a counter-hegemonic, ‘partisan’ program: It knows that it has to move ahead of the voting process, on subjectivization and on consensus building, not only and not so much in order to influence the democratic vote, but to change people’s attitudes toward the social, long shaped by solidarity and welfarist protection of social rights.<sup>1</sup>

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<sup>1</sup> See Biebricher (2019, p. 346), who highlights the common matrix of the different forms of neoliberalism in protecting the market from democracy to prevent redistributive conflict.

This clever political strategy was able to capture (it must be said) the libertarian and anti-authoritarian drive of the seventies and reverse the autonomist movements' power into a heteronomous and systemic order (pro-capitalist and pro-market).

Such an analysis—it is obvious—refers to capitalism as a social relationship (as well as an economic organization) that needs a discourse on truth supporting its change, expansion, and adaptation.<sup>2</sup> It was ready to identify in the anti-authoritarianism of the seventies and eighties the chance for a post-Fordist mode of production, which would expropriate and exploit—with the help of the neoliberal libertarian narrative—the creative social brain and, with the digital economy, its immaterial de-territorialization (Boltanski & Chiapello, 1999). Free enterprise of self-employment is opposed to dependence on value-labor theory; however, each producer will be evaluated and selected *a posteriori* by the market, which is a final, headless, unaccountable judge. It was this kind of capital, one that is mobile, not subjected to territorial control, global by nature, that would drive the *Weltmarkt* and its unprecedented unequal development (Mezzadra & Neilson, 2019). The subsequent immaterial shift towards financialization was decisive, as it does not remove, but confirms the abstract nature of capital, freeing it from the concrete values of labor and material wealth—politically more graspable—to produce self-referential wealth.

As one can see, we want to analyze a complex plot. It has already presented us with historical reversals and revelations that justify the adjective 'ironic' in the title.

## 2. A Shaky Marriage: Liberalism and Democracy

Let us retrace, albeit briefly, the history of the compromise between liberalism and democracy, a contingent one, like all phenomena.

Despite significant differences, the non-democratic side of liberalism has been, more or less, an unchanging factor of liberal democracy. Its postwar balance—a frail one, as already emphasized—linked different elements: European constitutionalism, international organizations for human rights, global free trade, and integration of European states into the EU, as well as the (decisive, for the liberal side) technicalization of politics. Governance connects these elements: It is a form of power management that claims to be liberal-democratic but severely limits sovereignty and its excesses, defined as totalitarian. It presents itself as a reply to the interwar failures that led to the catastrophe (Hayek, 1976). This means a deep distrust of the politician's autonomy and its possible arbiters. It was a matter of setting limits—liberalism's task from the beginning—both

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<sup>2</sup> See the analyses of the world-system school by Arrighi (2010), Streeck (2016) and the classics Polanyi, Schumpeter, or Keynes, indispensable to provide the material context on which ideology and strategic rationality are grafted.



on the state machine, on the (democratic) power of the masses but also on parliamentarism, rather than on nationalism or racism.

Constitutions formalize this security cordon that binds parliaments and democratic sovereignty to defend it, so the story goes, from itself. But the technicalization of power, strongly advocated by the liberal side, is the main feature of this process. Technocracy is indeed the softest way to empty democracy, without starting revolutions or military coups.

The liberal side, subdued until the seventies/eighties, prevailed and then formed the content of the liberal-democratic union in the post-Cold War era when the alternative of *real* socialism vanished. With the demise of its real antagonist, it asserted itself forcefully with the aim of reducing political power, well beyond the 1946 project of a democracy under surveillance. It was about reacting to the socialism of the welfare state (identified from the start with the totalitarianism that had been defeated in 1989) and dismantling institutions and powers of the social pact. In the name of efficiency and freedom. Sometimes it was possible to do this by saving the democratic form—this would be the technocratic path of the European Union—sometimes by means of a coup d'état, as in Chile—the Chicago boys' first experiment with an un-democratic liberal state. Under the benevolent gaze of US liberal democracy.

Ordo-liberal and technocratic governance is the core business of Europe. It declares itself liberal-democratic but shows an 'authoritarian' soul, shifting the prerogatives of decision-making from political contentment to technical agencies, which are presumed neutral, in order to find *efficient* solutions. Technique means *expertise* and science about what must be governed.

This is the first crucial point of our analysis. Authority is not managed (nor delegated) by citizens but overlaps with techno-scientific competence, which is especially (but not only) economic. As such, it is entrusted to experts. This overturns democratic functioning. We may say that authoritarianism is already present in the governance of the golden years of liberal democracy, the nineties.

The soft power of think tanks, study centers of economics, and strategic organizations claim the right to decide, evaluate, and punish PIGS countries impose austerity and unfair tax regimes on citizens, and moreover, it does not assume any political accountability. The management device, no longer personalized as in the political form, but technicalized in policy making, is based on an incontestable scientific/truthful discourse (Habermas, 2015).<sup>3</sup>

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<sup>3</sup> J.P. Morgan's report (Barr & Mackie, p. 12), explicitly suggests that southern European states subordinate superfluous or dangerous democratic politics to financial economics. Stearns and Mortgage of the J.P. Morgan group agreed to a \$13 billion settlement for the subprime scam.

Politics becomes *problem solving*, valued in terms of efficiency and optimization. This is indeed the *modus operandi* of the European Union, which thus prevents state policy from deviating. It is ironic that people complain about the European democratic deficit and hope it will strengthen into a unitary state while, in fact, it was against the risks of democratic and political sovereignty that Europe was born under the *liberal* rather than the democratic aegis. Administrative-managerial rules limit powers from below, imposing directives rather than laws that would be questioned in parliament. Good practices, as long as they are compliant with established technical standards and parameters. This is what Germany, in particular, does, thus reassuring the USA about its loyalty to the market economy and the other European states about its non-totalitarian choices. It was Germany that spread the precepts of the ordoliberal school of the thirties in Europe: The state must limit itself to setting the economy's regulatory framework—in line with the neoclassical economic theory—making sure the market works, but not interfering with it. Among the rules that the state must strictly comply with are reinforcing private property, civil rights (not political and social rights), and the *liberal freedom* of markets.

It is essential to clarify that this is a *political* program about public action and political decisions that are taken/accepted by the state. It would be wrong to believe the latter is ousted because its prerogatives are reduced. On the contrary, ordoliberalism is very much aware that the market is an artificial construct that only the political intervention of the State can protect, ensuring competition and social order, which is functional to it. Thatcher's authoritarian liberalism *within* a liberal democracy proves this. It should be made clear that those who created and applied the neoliberal model were aware of and active in the political class conflict: Here, it is not a matter of depoliticization. Rather, it is a power that, in order to become hegemonic, infiltrates the cultural and anthropological domain, even that of the opposition. It is power masked by natural order—and this too is an old *topos* of liberalism—which has no alternatives—TINA, as economic experts say. It is power insured by public force.

At an international level, however, it is human rights and their protection—and this is the universalistic-juridical contribution of democracy—that provide the constraint against risks of mass democracies drifting. Again, it is human rights that provide the liberal democracies (which establish them for the whole of humanity) with the ideological basis to intervene all over the world. No longer in the name of sovereignty (which is demonized), but in the name of the *free world*, justice, and morals, being their guardians under the leadership of USA hegemonic power (Santos & Rodriguez Garavito, 2005; Toulmin, 1990).

The international liberal order, or international rules-based order, *reigned* until the new millennium without too many difficulties.

This historical premise shows how precarious and unbalanced the compromise between the two souls of liberalism & democracy was, and, from the beginning, restrictive of democracy. Moreover, democracy's logic is entirely political, as well as egalitarian, territorial and community-based, even if it increasingly resorts to a procedural form with constitutional contents and value boundaries, removed from the conflictual logic. The neoliberal rationale, on the other hand, does not recognize equality and solidarity and aims at unequal individualization achieved through socio-economic competition between both individuals and states. Political unpredictability is the worst threat to liberalism (once the sovereign's will, today, the pressure of the most disadvantaged in the order based on competition). Therefore, the government must be fragmented and technical in order to reduce the margins of politics.

A multipolar network—a successful metaphor in those years—codified the relationships between governments and big private networks: The management of *common* problems was outsourced to private arbitrators and control agencies.

In a global uni-polarity, hegemonized by the USA, international law decreased, and the *lex mercatoria* of private contracts, both voluntary, free, and asymmetrical, spread, with the effects of inequality being felt in people's lives. There is no state or group of (politically responsible) states that ensure compliance with the agreements and negotiations, but rather big economic institutions, that view themselves—questionably—as neutral: the IMF, the World Bank, and, in Europe, the ECB. They are technical institutions, obviously non-democratic, endowed with sovereign prerogatives, that drastically limit political action (Dardot et al., 2021).<sup>4</sup>

This clearly translates into class domination. The question is how far democracy's restriction must be extended in order to talk about an authoritarian regime: Can it be defined as such when forms of representation remain in place? And if so, how much pressure on consensus defines it as authoritarian?

There is also the issue of media control—media obviously managed by economic powers—of the stories that organize consent, involving the training of subjects and their subjectivation. Of course, consensus does not ensure that there is no authoritarianism. Indeed, ironically, democracies blame autocracies for unfree consensus.

Because of its internal contradictions, the myth of liberal democracy—the best of regimes—began to crumble. In the last few years, it has collapsed, freeing the

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<sup>4</sup> Civil war or class struggle? In this sense, also see Streeck (2016).

anti-democratic or post-democratic soul of neoliberalism or, at most, the soul that is indifferent to democracy (several options are possible).

This must be stressed: The collapse and the authoritarian turn confirm the strategic nature of liberalism. As historical conjunctures change, an authoritarian organization and alliances with anti-democratic forces become more fitting, if not necessary, in order to remove obstacles to capital operations. The fact that an ever-changing capitalism chooses authoritarian and anti-democratic forms and state protection does not contradict, in itself, its rationality based on profit—this indeed has already happened in the past. New narratives are needed in unfavorable economic and political conditions to transform the liberal-democratic state into a strong state, not only a guardian state but one that—as globalization shatters—also acts as a military aggressive/defensive state towards the rest of the world. It also becomes necessary to renew the idea of security intrinsic to liberalism.

The liberal-democratic hybrid, with its checks and balances and legal control, can be an obstacle to the rapid transformation of capitalist accumulation, which is increasingly less free trade, as opposed to monopoly and finance. New rules, new forms of life. Does liberalism change its skin? Deregulation and free trade will be replaced by an ideology (an ideology based on security) functional to monopolistic and oligarchic impositions in ‘friendly’ allied areas of the world, counteracting or preventing the expansion of those of the enemy. As has already happened during colonial imperialism.

### **3. *Authoritarian Can Be Said in Many Ways***

Following the end of the Bretton-Wood system, finance capital was the first to break all territorial and, therefore, democratic ties to free itself from the liberal-democratic form of liberalism. Now capital *directly* manages aggressive practical financial *policies*, free from state controls. It can challenge the states and their growing sovereign debts. International financial agencies, in an unregulated game, penetrate the markets of the most exposed countries with loan agreements, threatening their stability and blackmailing governments. Financial capitalism accumulates profits in a self-referential way, as these are completely disconnected from the real economy and, therefore, from class conflict (Gallino, 2011). It channels workers’ savings into pension funds, involving them in its hazards, as a discharge point for possible and probable crises (as happened in 2007-8) (Marazzi, 2008). Financial powers, still led by the dollar but free from territoriality, can force indebted states to kneel, as these are vulnerable to their decisions. This anarchist de-regulation opens up to self-regulation *if and when* financial agreements are fitting.

This is already an *authoritarian* form of government, even though not explicitly political (despite being allowed and often supported by liberal governments): It fulfills the liberal leaning to limit or deny the democratic pressures from below. It is a very insidious authoritarianism because, despite its harsh practical effects, there is no battleground. Its power—overlapping with the neoliberal myth of free and competitive entrepreneurship—goes beyond the consensus problem and bypasses any liberal democratic checks-and-balance system.

Its unlimited expansion, its de-territorialization, require political non-democratic decisions: States that act in an authoritarian way—even if not formally—are needed, states that remove crucial decisions from the control of citizens. The political decision is no longer visible in public discourse—we passively talk about *what the markets want*. If it is true that the end of the Bretton Wood agreements disconnected states and money issuing and put an end to all economic policies of states, the effects were instead political: Under a free-financial rule, the clash is between speculators and those who work, which means class conflict becomes more difficult.

Following the 2008 crisis, politics takes on a clear fascist *facies* not only in South America. A radical neoliberal far-right spreads, with movements and parties not only enhancing a neoconservative political representation but also setting the current agenda of governments. It is a punitive neoliberalism that reacts to crises of accumulation by allying itself with reactionary political forces, useful to direct the violence (inherent to neoliberal inequality) towards racialized, precarious, genderized groups that cannot adjust to the standard of a competitive society.

Liberalism's turning point replaced the unbalanced coexistence with democracy (seldom officially repudiated) with oligarchic and authoritarian forms.<sup>5</sup>

We must go back a few steps to understand what it means to combine liberalism and creeping or explicit authoritarianism. It is no coincidence that the heated debate on authoritarian liberalism took place in the interwar period of the twentieth century, involving great political scientists and jurists. Also then, as today, international law, the *jus publicum europeum*, was failing and also then, a weak democracy (Weimar's democracy) was in crisis, threatened by authoritarian changes. Schmitt, one of the protagonists-antagonists of this debate, addressing the business leaders at the Langnamverein (Dusserdolf, 23 November 1932), opened by saying, "Gentlemen! I shall deal with the issue of a 'Strong State and sound economy' from the point of view of the state" (Cristi, 1998).

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<sup>5</sup> Brown (2019) emphasizes how processes of de-democratization are inherent to neoliberalism, while Cooper (2017) focuses on the convergence between neoliberalism and the neo-conservative project.

He, of course, supported a strong state *separated* from economic affairs, against the Weimarian social constitutionalism. According to German ordoliberalism at the time, indeed, a strong state was the condition of the possibility of a free market. The contradiction is, therefore, only apparent: Force is necessary to *impose* a competitive order against anti-capitalist social claims.<sup>6</sup> On the other front, there was the Frankfurt Institute of Sociology: Pollock, Horkheimer, Neumann, Marcuse (1934).<sup>7</sup> Heller, contrasting Schmitt from another point of view, one that was juridical and liberal, used the locution ‘authoritarian liberalism’ to expose the liberal rhetoric that *covered* authoritarian decisions in the last years of the Weimar Republic (Heller, 1933).<sup>8</sup> Also, then, like today, the debate for or against a strong state is ambiguously linked to the interpretation of the liberal lemma.

From our point of view, authoritarian liberalism is not an oxymoron but an ironic reversal of the word ‘liberty’ within the semantic space of liberalism: it is authoritarian because it is both repressive in a direct manner and in a soft, friendly sense, “as a managerial strategy useful, if not necessary, to the economy” (Applebaum, 2020; Somek, 2015). What emerged from that debate, rich in ideas, was not so much a true model of authoritarian liberalism but rather a *constant feature* of the liberal galaxy, implicit and sometimes evident. Being a *part* of the social conflict, which claims to impose itself also by force, and representing itself as a whole, it avoids contestability.

New monopolies and oligarchies of today’s capitalism willingly coexist with so-called populist (but actually authoritarian) democracies since they channel dissent towards aims that are not dangerous for capitalist operations. Oligarchies, on the one hand, are consonant with unequal—by default—neoliberal institutions and mythologies, which organize society through inequality; on the other hand, they are, in fact, widespread in states that are autocratic but liberal in economics. This transversal line, therefore, makes the emphatic opposition to autocracies (some, not all) by the liberal West, which are ready to take on authoritarian forms, paradoxical and weak.<sup>9</sup>

There has been talk about neo-feudalism, but the word oligarchy better stresses the detachment from territory and community and the absolute disproportion between the financial wealth that controls media, credit, and commerce and a fragmented, dispersed, impoverished mass without the tools to contend and without strategies and

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<sup>6</sup> See the monographic issue of “Political Philosophy” 1/2019 on ordo-liberalism and Schmitt’s influence on it; Ptak (2004) on the active participation of ordoliberalists in Nazi economic management (p. 62 ff.) and Bonefeld (2016, 2017).

<sup>7</sup> Marcuse denounces the authoritarian “from within” of the liberal state.

<sup>8</sup> The term authoritarian is used here polemically and in extreme defense of the dying Weimerian republic.

<sup>9</sup> In some cases, as in Russia, the oligarch class is directly in power; in the USA and Europe, there are professionals closely tied to political power: politically and economically winning elites and lobbies.

aims. Masses feel only the insecurity that grips them, the dark, undefined, and ubiquitous threat not only to well-being but to life itself.

This is the *topos* where the authoritarian option places itself, traditionally emerging from the very fear it can exploit and ride—fear of the siege to our way of life, to our race, to patriarchy, to the *sine cura* enjoyment of our property—fear governed in such a way as not to question economic liberalism, oligarchies and even less the state itself, the guardian of our West and therefore endowed with a growing security apparatus to control any and all social discontent.

It would be an unforgivable mistake to underestimate how much politics there is in the systematic hollowing out of democracy and in stimulating endemic social insecurity.

Populism is not the topic of this essay. It would require a specific analysis of its being more a technique and rhetoric of authoritarian liberalism than a nationalist communitarianism (Bruno, 2020, pp. 147–158). However, we are interested in its ambiguity and its making authoritarianism acceptable by allowing it in common sense: as long as it actually protects people, maintaining well-being or at least survival.

It is in fact the issue of security, hypertrophically developed, expressed in a rancorous and defensive-aggressive key, that must now lead us to understand the specificity of the authoritarian turning point, immanent to liberal rationality and activated by current contingencies.

The *free world* feels increasingly less safe. And it overturns the idea of exporting civilization into a gigantic apparatus that defends its hegemony; therefore, in the West it severely restricts the personal freedoms that it once ideologically emphasized.

#### **4. *Live Dangerously. Society Must Be Defended: From Whom?***

In liberal and neoliberal discourse, the word freedom has a privatistic, individualistic, and economic meaning: it stresses authority if understood as an excess of sovereign power over the economy. The connection to a redefined concept of authority is, instead, positive if liberalism is the political rationality that defends the capitalist form of life. Here—as we have seen—authority overlaps with expertise, as removed as possible from sovereign arbitrariness (like science vs mass ignorance, evaluations rather than judgments, standards rather than laws). However, the effects are always political and harshly anti-democratic: they are austerity and, restriction of rights, lack of accountability of decision-makers, whose sovereign authority is accepted if bound to the *science* of capital's objective interests.

Emergency and fear (its subjective side) are behind the acceptance of the authoritarian turn, which is even collaboratively supported. Emergency, reloaded from classical legal-political theory, is the urgent, alarming way in which problems are presented.

Urgency *forces* neoliberal problem-solving governance to authoritative operations that suspend the normal course of rights and silence any alternative. Of course, the relationship can be, and it is, reversed, and the emergency can be urged or emphasized in order to authorize interventions: this is the double bind of the media's narrative of an emergency context, constructed so as to require authoritative technical-political intervention. All of this fully undermines democracy.

At the heart of the authoritarian device, there is fear, insecurity, and hunger for security. "Whoever examines the conscience of the present-day European, will always elicit the same imperative from its thousand moral folds and hidden recesses, [...] 'we wish that some time or other there may be NOTHING MORE TO FEAR!'" (Nietzsche, 1968).

The self-representation of the prewar bourgeois *Sicherheit Zeit* is—then and again in the 1990s—assertive. It removes the fear that always belongs to the unequal liberal order: the fear of losing all that has been won, besieged by the antagonistic class, by the social disorder of the poor, the vagrants, the thieves, and by the contagion of the diseases they transmit and by the wars waged by madmen, terrorists, barbarians and murderers (Wacquant, 2009). The emphasis on security always hides the secret anxiety over the fragility caused by violence perpetrated and forgotten. It is not only expressed by seismographic art but also erased by security apparatus and the deployment of force.

As an economic-social order that dissolves the traditional defenses of the subalterns, so that they are *free* to sell their labor-power, liberalism cannot but require reassurance and security devices. "Liberalism engages in a mechanism in which it will be obliged, at any moment, to arbitrate the freedom and security of individuals on the notion of danger [...] one could say that liberalism's motto is '*live dangerously*'" (Foucault, 2004). Foucault underlines the ambiguous meaning of this dangerous living: on the one hand, it is the entrepreneur's inclination to take risks, the destabilizing dynamism of the capitalist; on the other, the danger of a destabilized, expropriated society, under the cover of an egalitarian form. If everyone is free—in order to be commodity-labor—this freedom can produce disorder, it can threaten property and accumulation. This does not have to happen in order to be afraid. Fear is inherent in the liberal way of life: "'*Live dangerously*' means that individuals are continually put in a state of danger, or rather, are induced to experience their situation, their life, their present, their future, as pregnant with dangers [...] There is no liberalism without a culture of danger" (Foucault, 2004).

Liberalism must, therefore, be conceived of as a demonic (or ironic?) policy of insecurity, a complex process, *framing* all political and social relationships in terms of danger-security. The safety language is, indeed, not a simple tool to describe dangerous



events, but what allows them to be produced, if not from nothing, almost from nothing (Castells, 2009). The security discourse is performative: it modulates and redefines political and social relations. And, of course, it “drips with historicity,” that is, the security discourse is charged with the concreteness of material devices. Therein, knowledge (political, judicial, medical, economic, psychiatric, administrative-police) structures practices of power that are accepted because of the danger and, therefore, for the protection of life (a *topos* of liberal thought), which justifies everything.

The insecurity produced by security techniques not only fuels old and new xenophobes and idiosyncrasies but also excites them through the deployment of security means (cameras, patrols, alarms, check-ins...), with “the formidable extension of control procedures, of constraint and coercion.” Security control becomes “the driving postulate” (Foucault, 2004) and the grid of intelligibility of political and social phenomena.

This is the topical node in the relationship between freedom and security, which is not a simple zero-sum game, as it means the transfer of the idea of freedom—civil, political, and social freedoms—to the framework of security, which involves its translation into techniques for governing *freedom as a dangerous excess*.

Insecurity politics is *the* liberal-authoritarian technique of governing the present. A technique that affects the state, both if understood in a Foucauldian sense, as a set of governance practices, or in its vertical dimension, in terms of sovereignty, constituted power, exclusion/inclusion, exception/law. The state becomes the hub—though it is not the only one—of agencies and actors who compete for security management, obviously avoiding any bottom-up control, *for security reasons*. Indeed, *for security reasons*, it obtains active cooperation in general surveillance of individual daily behaviors, either out of the desire for patrols, or out of partial ignorance, or simply out of disinterest, whereby individuals passively provide data to the algorithms that will profile *possible* enemies, both domestic and foreign (Andreas & Nadelmann, 2006; Huysmans, 2006; Marwick, 2012; Palidda, 2016).

It is important to underline the subjective—as well as objective—aspect of the lack of security, which is fear. As we know, contemporary liberalism hinges on subjectivation. The authoritarian fold is successful and effective when the people themselves *freely* ask for policing and domestic and international protection, feeling and being induced to feel that their lives are in danger. The police offer security as a *sine cura*, as worry-free enjoyment of one’s wealth: “harmless happiness,” according to Hobbes (1641), who refers to an *anthropos* split between aggression and fear. Today, it is civilized emotions, though certainly active in a society fit for competition.

If the whole liberal narrative is based on a desire for *sine cura* that delegates its assurance to state authority, this desire becomes obsessive when multiple crises besiege the

fortress of the individual. At this point, it is better for the ruling class to emphasize and *ride* fears to master disorder for its own benefit.

We are back where we started. After the shock of September 11, the apotheosis of security under the aegis of US liberal democracy and global market—individuals, entrepreneurs of their own success then transformed danger into a calculated and fruitful risk, police control was welcomed in the form of surveillance of suburbs and of the poor, who were ‘at risk’ of delinquency—gave way to distressing anxiety over insecurity, which affects the hegemonic state itself, the great guarantor of the liberal global order, the USA. Imaginary and materiality converge in reversing security into insecurity over a danger, one that was even greater due to its being unexpected, due to the distorted image provided of what was happening, due to the blindness regarding the global tensions involving those who had been silenced by neoliberal myth, almost as if all they hoped for was to be able to challenge the financial and cultural Western hegemony!

Instead, growth slows, inequalities mix labor and exploitation with race and gender subalternity, and the middle classes lose their status... when global emergencies (environmental, financial, terrorist, and health crises) explode—beyond national control—the liberal West becomes the land of fear (Baumann, 2006), which justifies more of the infinite growth of the security apparatus, which becomes increasingly militarized and ready for preventive war.

The populist liberal-authoritarian wave in South America and the creeping one in the West are the classic responses to fear: the mechanisms of representation, already hollowed out by technocracy, implode, hyper-developing the executive power in an unbalanced way and centralizing it in a leader, who reassures the masses, by addressing discontent and anxiety. The strong state promises safety: moreover, it does not seem to have the strength to counteract the shattering global hegemony, which breaks down along its own fault lines, driven by contextual and regional specificities. The liberal global order ignored and trampled the latter, intervening on them with its wars disguised as ‘special operations’ to straighten a *wrong* regime, in Iraq, Syria, the Balkans, Libya, Afghanistan... Hybrid wars leave unresolved wounds and never stabilize concrete and historical situations. Rather, they produce discontent, a resentment deprived of any legitimacy and therefore ready to take the extreme form of terrorism. Which cannot be seized. The result is fear of the liberal West, towards which all possible threats seem to be channeled, all possible contagions: health, financial, of cyber piracy, irregular currencies, wrong religions, environmental contamination... The answer of authoritarian liberalism is now the maximization of security, of war, or at least the call to arms, both metaphorical and real, hybrid and mediatic. These are all public or mercenary forces

needed to prevent the attacks. Preventive war means attacking possible foreign, pathogenic bodies first before the enemy becomes an enemy.

What about capitalism's brand? Surveillance and preventive defense are classic, very rich fields of investment and profit that offer a profitable outlet for capital stagnation, with technological innovation both in surveillance and in the military (Zuboff, 2019). In the West, economic investments and militarism have always been linked as state capitalism's response to stagnation.

Artificial intelligence, in turn, is the most recent but basic device linking economy and surveillance/war, as well as data collection for surveillance, in turn connected to the consumer market. The whole of the population is being watched, monitored, and selected in the name of the defense of rights. The mutual slippage of private and public in neoliberal governance authorizes the contracting of public functions of surveillance to private agencies that support or replace police security, in an opaque and illegal exchange of data, functional to diverse (sometimes conflicting) controls. Liberal freedom shows its bleak downside—its *heart of darkness*—in the widespread surveillance of all citizen operations. For their own good, of course. For their safety.

This mixed, opaque system of control not only weakens democratic accountability and overlapping political and economic strategies but also works with a surplus of self-referentiality.

Surveillance studies highlight this specific feature. Technologies automate the security systems avoiding human (political) intervention, thus confirming technocratic and authoritarian management. The security apparatus seems to be a tool (managed by the state power), an automaton, a headless, irresponsible device whose decisions emerge from the data collection itself. This is another ironic effect of a theory that mythologized the self-regulation of the headless market!

Alongside the authoritarian *facies* that liberal regimes claim to ensure, by riding on fear and insecurity, social control functional to capital, another form is emerging (also ironic because it stems from this reversal). It is *involuntary* authoritarianism, which does not refer to a teleological project. If we no longer doubt that political institutions colonize a large part of technological control, the latter (given capital's control over technologies) promotes a self-referential system that cannot be blamed only on the political powers promoting it, or on a resistance to it, perhaps economic or social, or only on the people's concurrence.

Ironic structures are subject to the heterogony of ends. Another surprising, unusual, and ironic effect of authoritarian security technologies for the control of lives is, in fact, that data collection builds an incoherent aggregation of de-subjectivized fragments,

which reflects no living being in its concrete context. Each living individual is broken into different users of different services and specific, possibly dangerous, activities. If it is necessary to control men and women, what is actually captured is no stable, real subject. It always changes, reformulating itself in random conditions, it is a mere assemblage of data that does not correspond to any real living being.

Rather than a project—the liberticidal erosion of real freedom by political-economic oligarchies carried out with the management of insecurity—we have an *authoritarian effect*, a hypertrophic type of control that produces insecurity and the loss of freedom of everyone, not only of presumed *possible* enemies.

This control effect, however, is doomed to failure. If only for the inability to intervene normatively on *big data*. But also for the ironic effect that power loses its grip on *vanishing* subjects who lack specific and concrete context.

These lives could find their own power to struggle in the material dimension of oppression: the struggles are immersed in the concreteness of situated relationships, and within them, they require the political subjectification of discontent. On the one hand, technological immateriality exposes control to failure; on the other, it makes the conflictual profile of subjects evanescent. This is a serious anti-democratic effect. It does not mean total absence of power; rather, it requires a differentiated and genealogical analysis of concrete contexts and struggles.

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# FASCISMO Y DEMOFASCISMOS: INMANENCIA BÉLICA Y ESTÁSICA EN LA DEMOCRACIA NEOLIBERAL \*

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## FASCISM AND DEMOFASCISMS: WARLIKE AND STASIS IMMANENCE IN NEOLIBERAL DEMOCRACY

### Resumen

El presente artículo expone un ejercicio analítico que interroga la conceptualización del fascismo y su distinción con la democracia, señalando la *inmanencia bélico-estásica* que coexistiría tanto en el fascismo y los neofascismos en que deviene la democracia capitalista-neoliberal eurocéntrica-occidental. Primero, examina algunos rasgos centrales en la definición de fascismo. Segundo, advierte un conjunto de signos que vinculan el neofascismo y la democracia neoliberal.

### Palabras clave

fascismo; neoliberalismo; democracia; capital; stásis

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## **Abstract**

This article presents an analytical exercise that interrogates the conceptualization of fascism and its distinction from democracy, highlighting the *warlike-stasis immanence* that would coexist in both fascism and the neo-fascisms into which Eurocentric-Western capitalist-neoliberal democracy evolves. First, it examines some central features in the definition of fascism. Second, it identifies a set of signs linking neo-fascism and neoliberal democracy.

## **Keywords**

fascism; neoliberalism; democracy; capital; stasis

## Introducción

Una vasta literatura de la tradición filosófica y politológica —producida frenéticamente desde la segunda mitad del siglo XX— ofrecía la esperanza y el consuelo de que las democracias occidentales de cuño liberal nos ponían a salvo de la amenaza totalitaria. Numerosos estudios sobre su tipología y caracterización consagraban aquella distinción y oposición radical entre totalitarismo y democracia (Bobbio, 2003; Habermas, 1999; Macpherson, 2003; Rosanvallon, 2009; Touraine, 2006; Lefort, 1990). Este consuelo afirmaba una adscripción democrática basada en una supuesta prerrogativa orgánico-institucional de las democracias liberales de tornarse inmunes a los principios y prácticas que definían el flagelo totalitario, fuese en cualquiera de sus distintas fisonomías: fascismo, nazismo y comunismo<sup>1</sup>.

Transcurridas dos décadas del siglo XXI, a la luz de cruenta y cuantiosa evidencia (Agamben, 2004; Esposito, 1996; Nancy, 2009; Todorov, 2017; Wolin, 2008; Badiou, 2016), se constata que aquella resignación y demiurgo democrático se ha tornado cada vez más frágil y problemático, acusando los límites del formalismo jurídico y su desmedida confianza —en que los mecanismos del Derecho serían capaces de regular y sofocar aquellas ominosas amenazas.

Actualmente se aprecia en Occidente el resurgimiento de concepciones, ideologías y prácticas políticas que enarbolan con tenebroso entusiasmo ciertos principios y valores totalitarios, retornando la promesa moral-civilizatoria de un *Bien supremo absoluto*, disponible y realizable para cierta porción específica de la humanidad, cuya raza, clase y género está llamado a vencer y destruir a su enemigo, “natural portador y promotor del mal”.

A la ya histórica e imperial política-belicista de Estados Unidos —hoy puntualmente desplegada en Ucrania—, se ha de sumar el pogromo desatado por el Estado Israel contra el pueblo palestino, las sediciones incitadas por Trump en EE. UU., por Bolsonaro en Brasil y por Boluarte en Perú, así como la excepcionalidad instaurada por Bukele en El Salvador, o la razia neoliberal desatada por Milei contra el Estado y los derechos sociales, devastando y reprimiendo a la población más desamparada. Estos signos trazan un cuadro inquietante si se advierte que aquellas políticas emergen y se legitiman desde el paradigma jurídico-político de la democracia liberal occidental-capitalista.

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<sup>1</sup> A pesar de la amplitud y arraigo semántico que alcanzó la expresión “totalitarismo”, es preciso advertir el carácter problemático de esta conceptualización que buena parte de la teoría democrática implantó en el lenguaje de las ciencias sociales, especialmente lo que concierne al rango de homologación que la categoría implicaba de configuraciones tan diversas como el fascismo, el nazismo y el comunismo soviético (Zizek, 2002; Nolte, 1995; Traverso, 2001; Arendt, 1998).

Este resurgimiento “totalitario” notifica al menos dos problemas inmediatos. Primero, la necesidad de repensar y reexaminar críticamente los límites, vigencia o agotamiento de la conceptualización canónica del totalitarismo. Segundo, sugiere interrogar analítica y críticamente la densidad de los límites de la disyunción entre totalitarismo y democracia, entre fascismo y liberalismo.

Quizás aquella aberración política conceptualizada como “totalitarismo” no haya podido ser desterrada en cuanto conserva una relación genética, orgánica y consustancial a la configuración política de las democracias liberales, de modo que el fascismo no sería una mera amenaza exterior, sino la potencia íntima e inconfesable de la inmanencia bélica de la matriz democrática capitalista-occidental.

Adviértase que la expresión “totalitarismo” fue acuñada a comienzos de la década del 20, principalmente por autores liberales y católicos, críticos al fascismo y al bolchevismo de la época. Empero, resulta significativo que no pocos comentaristas liberales expresaban su preferencia y mayor tolerancia al avance del fascismo, pues todavía este obedecía y contenía los ideales de la libertad occidental, esencialmente opuesto al barbarismo bolchevique (Traverso, 2001, pp. 29-39).

Cabría entonces examinar la concepción que se formuló del fascismo, descifrado solo como respuesta contingente a una amenaza histórica específica, gatillada por las abyecciones del comunismo soviético (Nolte, 1995, pp. 77-99). Asimismo, antes que explicar el fascismo como desventura episódica, cabría interrogar por aquella potencia bélica inmanente a una concepción y matriz histórica específica de la comunidad política. Dicho radicalmente, antes que concebir el fascismo como un accidente y una desnaturalización de la política, cabría inscribirlo en la *inmanencia bélico-estásica* de una racionalidad histórico-política que asienta sus raíces en el canon metafísico eurocéntrico-civilizatorio capitalista de la modernidad occidental.

Cabría atender a la íntima y orgánica nervadura que existe entre la antropología filosófica capitalista que encarna el neoliberalismo, con la axiomática necropolítica y sacrificial del fascismo, lo que sería una articulación crucial para comprender la relación genética que existe entre la democracia capitalista occidental y el neofascismo, que deviene ineluctablemente en lo que hoy entendemos como *demofascismo* (Arancibia, 2010, pp. 344-355). Pensado así, no resulta tan extraña la emergencia de modulaciones político-democráticas, cuya matriz genético capitalista-neoliberal linda muy sutilmente con liderazgos y escenificaciones estético-políticas muy próximas a la mitología política del nazi-fascismo (Lacoue-Labarthe y Nancy, 2002). Al fin y al cabo, tal como explica Traverso, si en los años treinta del siglo XX las élites industriales, financieras y militares europeas apoyaron al fascismo como solución a las crisis políticas endémicas, “hoy en día, respaldan al neoliberalismo” (Traverso, 2021, pp. 16-18).

En virtud de estas disquisiciones, nos limitamos a insinuar un sucinto ejercicio analítico que interroga la conceptualización del fascismo y su distinción con la democracia, señalando la inmanencia *bélico-estásica* que coexistiría tanto en el fascismo como en los neofascismos en que deviene la democracia capitalista-neoliberal eurocéntrica-occidental.

## Fascismo y democracia neoliberal

Un axioma primo del fascismo sería la vocación por la dominación total a partir de un precepto político-moral absoluto. Su lengua nativa es la violencia, cuya pulsión mayor es la guerra. Una guerra incesante e insaciable hasta conseguir la dominación total. Hannah Arendt en su célebre estudio sobre el totalitarismo consigna que la lucha por la dominación total sobre toda la población de la Tierra y la eliminación de toda realidad no totalitaria es inherente a los regímenes totalitarios (Arendt, 1998, p. 482). De allí que la racionalidad bélico-totalitaria reconstruya, una y otra vez, la categoría de un enemigo objetivo.

El concepto de “enemigo objetivo” cuya identidad cambia según las circunstancias predominantes —de forma tal que, tan pronto como es liquidada una categoría, puede declararse la guerra a otra— corresponde exactamente a la situación de hecho reiterada una y otra vez por los gobernantes totalitarios; es decir, que su régimen no es un gobierno en ningún sentido tradicional, sino un movimiento permanente, cuyo avance constante tropieza con nuevos obstáculos que deben ser eliminados. (Arendt, 1998, p. 519)

Arendt señala que el problema de la guerra y el de la revolución constituyen los dos temas políticos principales de nuestra época, confrontándose uno como la amenaza de una aniquilación total mediante la guerra, otro como la esperanza de una emancipación de toda la humanidad mediante la revolución. En contraste con la revolución, el propósito de la guerra escasamente expresa la idea de libertad (Arendt, 2019, pp. 13-14).

Para Arendt, la justificación de la guerra es muy antigua, y esta supone la convicción de que las relaciones políticas no están sujetas al imperio de la violencia. Tal convicción se encontraría por primera vez en la Grecia antigua, una vez que la polis griega, la ciudad-Estado se definió a sí misma como un modo de vida basado exclusivamente en la persuasión y no en la violencia (Arendt, 2019, p. 15)<sup>2</sup>.

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<sup>2</sup> Ante aquella comprensión modélico-normativa que Arendt concibe de la polis griega y de la emergencia de la democracia ateniense, bien cabría contrastar con las lecturas sugestivamente distintas como las propuestas por Nicole Loraux, 2008a, 2008b, 2012; Luciano Canfora, 2014; Julián Gallego, 2003; Donatella Di Cesare, 2024. Asimismo, significativo el estudio realizado por Roberto Esposito, 1999.

La actualidad y relevancia de este debate en el siglo XX sitúa dos concepciones de la política que cristalizan dos motivos radicalmente opuestos: libertad y dominación. Esta distinción rápidamente adoptó las dicotomías entre democracia y totalitarismo; liberalismo y fascismo; la teoría democrática contemporánea se ocupó de fortalecer y amurar esta diferencia (Traverso, 2001, pp. 15-44). En ese empeño, Hannah Arendt destinó su acucioso trabajo a describir y sistematizar los principios del totalitarismo (Arendt, 1998), y Claude Lefort postuló la “lógica totalitaria” como categoría para definir la racionalidad totalitaria, como un nuevo tipo sociohistórico de amenaza a las democracias (Lefort, 1990, p. 38).

Así, una amplia literatura convencional se limitó a identificar y circunscribir la racionalidad totalitaria a la acotada experiencia nazi-fascista, mientras los medios de comunicación y los productores de opinión presentaron una visión extremadamente reductiva y simplificada del totalitarismo (Traverso, 2001), lo cual, de paso, levantó muros imaginarios que eximían y liberaban a la democracia de tales aberraciones. Como explica Nolte (1995), desde el punto de vista de la historia mundial, en aquella época la principal diferencia oponía “democracia” y “totalitarismo”, donde la categoría de “totalitarismo” se impuso para distinguir a la democracia de estas formas aberrantes de la política, así como para caracterizar cualquier tipología política que adoptara formas institucionales y acciones que amenazaran a la democracia, léase, al “mundo libre” (p. 107).

En dicho contexto, una reducción específica muy frecuente fue la sola asociación salvífica entre Estado de derecho y democracia, pues en el plano analítico de la teoría política —tal como indica Habermas— es sabido que toda dominación política se ejerce bajo alguna forma específica de derecho (Habermas, 1999, p. 247), de modo que la sola presencia de la dimensión jurídica resulta insuficiente para trazar dicha distinción, pues ella sería constitutiva de la “racionalidad de excepción” (Agamben, 2004, pp. 23-83).

Será el propio devenir histórico de la democracia neoliberal-capitalista de la modernidad occidental el que ha tornado gris esta inicial disyunción, paradójicamente cuando el “fantasma totalitario” parecía ya vencido y disuelto.

El totalitarismo pertenece entonces a la modernidad. Es un producto perverso de la era democrática, marcada por el ingreso de las masas en la vida política, en el seno de sociedades que han abandonado las antiguas jerarquías de casta y rango. Por un lado, solo puede afirmarse destruyendo la democracia en el plano político, jurídico, institucional; por otro, sin embargo, despliega un dispositivo de reclutamiento y de activación de las masas que implica necesariamente el advenimiento de las *sociedades democráticas*, en el sentido en que las definía Tocqueville. (Traverso, 2001, p. 22)

El escenario actual acusa dos síntomas que problematizan internamente a la democracia. Primero, la caracterización histórica que se hizo del totalitarismo —hace ya 70 años— en muchos aspectos decisivos sirve para describir a las democracias neoliberales contemporáneas. Segundo, el carácter bélico y expansionista de la democracia capitalista-neoliberal comporta principios y acciones que claramente contravienen el “virtuoso” ideario democrático.

Así, no resulta extraño que en las últimas décadas hayan surgido al interior de las democracias fuerzas políticas institucionalmente reconocidas y legitimadas que encarnan idearios antidemocráticos y abiertamente neofascistas. Reaparece esta amenaza, que ahora asedia desde su propia conflictividad, pues “mientras la democracia tuvo un enemigo externo al que odiar —el totalitarismo nazi o comunista—, podía vivir sin conocer sus amenazas internas, pero hoy debe enfrentarse a ellas” (Todorov, 2017, p. 189).

Tal como señala Traverso, actualmente el fascismo, más que un área de estudios históricos, vuelve a ser una cuestión de la agenda contemporánea, pues si en el siglo XX el fascismo fue un proyecto de “regeneración” de la nación, vista como una comunidad étnica y racial homogénea, este núcleo del fascismo, reaparece hoy en los movimientos de extrema derecha, “como los herederos del fascismo clásico”. Efectivamente el léxico fascista ha cambiado, hoy exhibe nuevas características y nuevos mitos (Traverso, 2021, pp. 11-15).

Recordemos que un rasgo central y decisivo que define la lógica totalitaria, según la tipología arendtiana, es que el mito totalitario no se limita a lo nacional. La captura y dominio de un territorio, de una nación o de una región del planeta no le basta, pues el totalitarismo tiene en su lógica esencial un carácter invasivo, expansionista e imperial (Arendt, 1998, pp. 479-483).

Paradójicamente, disuelta ya la amenaza nazi-fascista y el comunismo internacional, explica Todorov, en la actualidad conocemos “guerras humanitarias” que suscitan poca resistencia en los países que las infligen, que incluso gozan de apoyo y buena reputación, convirtiéndose en la norma de las intervenciones militares occidentales, expresando el resurgimiento del mesianismo político, propio del totalitarismo.

Pese a las crisis que provoca, la ideología ultraliberal sigue dominando los círculos gubernamentales de muchos países. La globalización económica priva a los pueblos de su poder político, y la lógica del *management*, que lleva al formateo de las mentes, se expande por doquier. El populismo y la xenofobia aumentan y aseguran el éxito de los partidos extremistas. La democracia está enferma de desmesura, la libertad pasa a ser tiranía, el pueblo se transforma en masa manipulable, y el deseo de defender el progreso se convierte en espíritu de cruzada. La economía,

el Estado y el derecho dejan de ser los medios para el desarrollo de todos y forman parte ahora de un proceso de deshumanización. (Todorov, 2017, p. 186)

En ese tenor, Calveiro explica que la globalización impuso un modelo económico único, el *neoliberal*, y un modelo político también único, la *democracia restringida*. En principio, se trataría de dos procesos contradictorios y opuestos, sin embargo, esta contradicción sería solo aparente, pues el modelo neoliberal ha incrementado la marginación social, y a la vez ha alentado todas las formas de acumulación, ya sean legales o ilegales (Calveiro, 2012, p. 303). Asimismo, señala que uno de los rasgos principales de la reorganización neoliberal del mundo es la extensión de la racionalidad del mercado y la forma “empresa” a todos los ámbitos de la vida. De ello se desprende una desestructuración de la política y un debilitamiento de la autonomía del Estado. La figura por excelencia de ese control económico que penetra y restringe el ámbito de la política es la “corporación” (Calveiro, 2012, p. 304).

Las nuevas formas de dominación pasan por el control corporativo —es decir, descentrado del Estado y concentrado en diferentes grupos de poder económico, jerárquicos y cerrados— de la totalidad de los recursos sociales. Se trata de una red financiera-militar-tecnológica-comunicacional en sus nodos centrales, con muchos focos o centros de poder diferenciados por sus funciones y por su potencia, pero siempre interconectados. (Calveiro, 2012, p. 304)

A este principio se suma un segundo rasgo de la racionalidad totalitaria, advertido por Arendt y Lefort como el carácter totalizador que busca tomar el control de un territorio para tomar control total de su economía. En principio, el Estado totalitario captura, somete y controla la economía a su precepto, sin embargo, en la lógica neoliberal es el mercado el que subsume al Estado, generando el mismo efecto totalitario, obliterando la distinción entre “lo político” y “lo económico”, donde lo político sucumbe al servilismo de lo económico.

El objetivo del capital siempre es la toma del poder continuada, la “guerra de conquista” (o la guerra civil) es la condición de existencia política del capitalismo en cuanto dispositivo de constitución de clases. Hace falta nada menos que la guerra, y la guerra luego prolongada a través de las normas, las instituciones, la producción y el consumo, para realizar una distribución tan violenta del poder, expropiado a unos y concentrado por otros, que se repetirá con cada cambio de régimen de acumulación. (Alliez y Lazzarato, 2021, p. 22)



Lefort identificó un principio revelador que define la especificidad de la lógica totalitaria: “nada escapa a ese Poder” (Lefort, 1990, p. 39). Se instaura así un nuevo tipo de poder absoluto, capaz de subsumir toda lógica extraña a su fin último. Sin embargo, como indica Todorov, en nuestros días esta amenaza parece verificarse cotidianamente:

El poder político no puede, o no quiere, limitar el poder económico de las multinacionales, los bancos y agencias de calificación. El rasgo que todas estas desviaciones comparten es que proceden no de ataques externos, sino de principios internos a la propia democracia. (Todorov, 2017, p. 185)

La lógica del desarrollo del capitalismo se reconoce nítidamente ya en estos primeros signos totalitarios. Lefort (1990) señala que, en un mundo sacudido por la expansión del capitalismo, el liberalismo ha producido ya su propia mitología, inventando la ficción de una sociedad que se ordenaba espontáneamente bajo el efecto de “una libre competencia entre propietarios independientes, y en la que el Estado solo se limitaba a hacer respetar las reglas del juego y a proteger personas y bienes” (p. 39). Sin embargo, Harvey (2007) explica la concepción de libertad del Estado neoliberal, que concibe y reduce la libertad personal al mercado, donde cada individuo es responsable de su propio bienestar y este principio “se extiende a toda la esfera del sistema de protección social, del sistema educativo, de la atención de salud e incluso al sistema de pensiones” (Harvey, 2007, p. 75).

En nuestros días, la única religión política es tal vez, como mucho, la idolatría del mercado. El mercado es una entidad sagrada constantemente celebrada y postulada como indiscutible. Esa es la premisa de todas las políticas sociales y económicas de las naciones desarrolladas, sean sus gobiernos de derecha o de izquierda [...] La ideología del mercado es la religión política de nuestro tiempo. (Traverso, 2021, p. 149)

Esta lógica de subsunción total de la vida al capital, a muy corto andar acusa sus tensiones y constricciones para la democracia, pues, como señala Foucault, a la base del pensamiento neoliberal encontramos una antropología problemática del *homo oeconomicus* (2007, p. 286). Trátase del hombre como un ser autosuficiente, “básicamente solitario y que solo de forma puntual necesita a otros seres a su alrededor, cosa que contradice a la psicología, la sociología y la historia” (Todorov, 2017, p. 104).

El neoliberalismo no es solo una doctrina económica o una floja teoría de la autorregulación de los mercados, sino una organización general de los cuerpos de acuerdo con criterios productivistas que emanan de una determinada antropología

filosófica no exenta de elementos fascistas. Para sostener dicho supuesto debemos aventurarnos más allá de la naturalizada oposición entre fascismo y democracia, solo así podremos entender el neofascismo contemporáneo no como una excepción con respecto a los regímenes neoliberales, sino como su puesta en escena más distintiva. (Villalobos-Ruminott, 2020, p. 14)

Tal como señala Villalobos-Ruminott, la concepción liberacionista del neoliberalismo deriva de los presupuestos antropológicos de la Escuela Austriaca que radicalizan el individualismo posesivo del primer liberalismo histórico y lo convierten en una racionalidad económica elevada a dogma irrenunciable del *Homo economicus*. Así, la identificación del neoliberalismo con la idea de libertad individual inalienable se hace hegemónica a partir de “una tramposa homologación entre capitalismo y democracia”, y su consiguiente oposición entre democracia liberal y totalitarismo (2020, pp. 14-15).

Se advierte entonces una transmutación del fascismo histórico inicial empeñado en el exterminio racial y los campos de exterminio, con la cual este se reconfigura en una serie de prácticas de regulación de la vida y de asimilación con la democracia y suspende los conflictos bélicos monumentales, reemplazados ahora por una proliferación de guerras temporal y geográficamente limitadas, aunque no menos devastadoras (Vietnam, Corea, Irak, Afganistán, etc.). “Es en este contexto de metamorfosis del fascismo donde habría que encontrar su plegamiento con las formas contemporáneas de gubernamentalidad neoliberal” (Villalobos-Ruminott, 2020, p. 15). En ese sentido, apunta Traverso (2021):

Tras décadas de políticas neoliberales, las clases dominantes han incrementado enormemente su riqueza y su poder, pero también han sufrido una significativa pérdida de legitimidad y de hegemonía cultural. Estas son las premisas para el ascenso del *neo o posfascismo*: por un lado, la creciente “caída en el salvajismo” de las clases dominantes y, por otro, las extendidas tendencias autoritarias que su dominación engendra. (p. 16)

Por su parte, Badiou (2016) advierte, en clave semejante, aquella nevadura que imbrica la axiomática capitalista neoliberal y la reconfiguración del fascismo:

De manera general, pienso que podemos llamar “fascismo” a la subjetividad popular generada y suscitada por el capitalismo [...] El fascismo es una subjetividad reactiva. Es intracapitalista, puesto que no propone otra estructura de mundo. Se instala en el mercado mundial, de hecho, en la medida en que le reprocha al capitalismo no estar en estado de cumplir sus promesas. Al fascizarse, el decepcionado del deseo de Occidente

se vuelve el enemigo de Occidente porque, en realidad, su deseo de Occidente no se satisface [...] En cuanto a su forma, se puede definir a este fascismo moderno como una pulsión de muerte articulada en un lenguaje identitario. (pp. 67-68)

Esto exige repensar una tercera característica de la lógica totalitaria, pues aquella no se reduce o limita a una mera forma aberrante o una experiencia específicamente violenta de la política, sino que concierne a una racionalidad que, por principio, niega, impide y constriñe lo político. Esta obliteración de lo político define a la racionalidad totalitaria, no así la forma específica o contingente de dicha negación.

En última instancia, el totalitarismo no es más que la liquidación de lo *político* en cuanto lugar de la alteridad, la anulación del conflicto, del pluralismo que atraviesa el cuerpo social sin el cual ninguna libertad sería concebible. El terror, una *violencia de Estado* cuyas víctimas se cuentan por millones, revela el totalitarismo como una síntesis monstruosa de Leviatán y de Behemoth, de ilegalidad y de potencia. El terror totalitario ignora y pisotea el derecho, pero presupone el monopolio estatal de la fuerza, que despliega según métodos y procedimientos concernientes a la racionalidad de los Estados modernos. (Traverso, 2001, pp. 23-24)

Tal como sostiene Di Cesare, solo puede haber política donde las relaciones ya no se vean degradadas por la subordinación y donde la isonomía, la igualdad sea operativa. El llamado “nacimiento de lo político” se debe pues a un destronamiento del *arché*. Simplemente porque ese orden se ha disuelto, resulta posible discutir las formas en que la *polis* está articulada y organizada. “En este sentido podemos decir que el gesto anárquico inaugura el espacio político y al mismo tiempo pone en marcha la democracia” (Di Cesare, 2024, pp. 6, 92). Así, la legitimación simbólica del poder y de las relaciones sociales instauradas consiste en que dicha legitimidad del poder se funda en el “pueblo”; pero a la imagen de la soberanía popular se le une la de “un lugar vacío”, imposible de ocupar y de colmar por quienes ejercen la autoridad pública. “La democracia alía estos dos principios en apariencia contradictorios: uno, que el poder emana del pueblo; otro, que ese poder no es de nadie. La democracia vive de esta contradicción” (Lefort, 1990, p. 42)<sup>3</sup>.

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<sup>3</sup> Abensour entiende que la “verdadera democracia” se asienta en cuatro principios distintivos: primero, que la soberanía pertenece al pueblo; segundo, que la relación entre la actividad del sujeto del demos y la objetivación constitucional de la democracia es singular y diferente a las otras formas de Estado, dado que en ésta, el hombre es creador de la ley y no la ley creadora del hombre; tercero, esta autoconstitución del pueblo deviene en la auto-institución democrática de lo social como una autodeterminación continuada; cuarto, la singularidad democrática consiste en una relación inédita entre el Estado político o la constitución y el conjunto de las esferas materiales o espirituales, donde la actividad instituyente es el demos como sujeto, como fin en sí mismo (Abensour, 1998, pp. 72-97).

De allí que una de las iconografías centrales del totalitarismo sea la construcción de una identidad del “Pueblo”, de quien este poder es garante y representante. Obviamente, se le llama pueblo a la porción de la población que adhiere, obedece, secunda y legitima el orden, mientras que a todo actor o grupo disidente al sistema totalitario se le llama “enemigo”. La definición y existencia de un enemigo es constitutiva de la identidad monolítica del pueblo; así, la lógica totalitaria despliega una profilaxis destinada a la preservación y resguardo del cuerpo social, para lo cual “debe asegurar la eliminación de los parásitos que le amenazan” (Lefort, 1990, pp. 48-49).

En cuanto este “lugar vacío” es representado y encarnado por una esencia o identidad específica ajustada a la proclama totalitaria, adviene una identificación que Jean-Luc Nancy denominó «inmanentismo», precisamente para referirse a una racionalidad contemporánea que determina y subsume toda la mundanidad a esta pretendida esencia.

El vínculo económico, la operación tecnológica y la fusión política representan o más bien presentan, exponen y realizan necesariamente por sí mismos esta esencia. Allí está ella puesta en obra, allí se convierte en su propia obra. Es lo que hemos llamado «totalitarismo», y que, tal vez, sería mejor llamar «inmanentismo», si no es necesario reservar esta designación a ciertos tipos de sociedades o regímenes, en vez de ver en ella, por una vez, el horizonte general de nuestro tiempo, que engloba también las democracias y sus frágiles parapetos jurídicos. (Nancy, 2001, p. 16)

Este «inmanentismo» también se ha denominado “indeterminación democrática”, refiriéndose a esa región en común o de indistinción entre democracia y aquello de lo que esta pretendía distinguirse. Se disipa ahí la frontera entre democracia y totalitarismo, diagramando una relación mimética con aquello que la democracia solía abominar, erigiendo muros que se presumían infranqueables (Todorov, 2017, p. 187).

Así, el «inmanentismo» o la lógica totalitaria supone una negación democrática, por cuanto ese lugar simbólicamente vacío, una vez usurpado, encarnado y sustantivado por el orden expresa el poderío de una facción al servicio de intereses privados, incrementando la privatización corporativista, por lo que, en última instancia, ya no existe sociedad civil (Lefort, 1990, p. 42).

Si la imagen del pueblo se actualiza, si un partido pretende identificarse con él y apropiarse del poder con el pretexto de esta identificación, lo que se niega es, más profundamente, el principio mismo de una distinción entre lo que corresponde al orden del poder, al orden de la ley y al orden del conocimiento. Se opera entonces

en la política una suerte de imbricación de lo económico, lo jurídico, lo cultural. Fenómeno característico, justamente, del totalitarismo. (Lefort, 1990, pp. 42-43)

## Inmanencia bélica y stásica en la democracia neoliberal

La racionalidad totalitaria fagocita y coloniza todas las dimensiones de la comunidad política bajo un principio de subsunción expansiva, donde lo económico, lo político, lo jurídico, lo cultural, la técnica y el conocimiento quedan arrestados a su representación mítica. Ese movimiento afirmativo comporta un poder totalizante configurando lo que Agamben ha denominado la “zona gris”, trazando una racionalidad de la excepción como aquel umbral de indeterminación entre la gubernamentalidad democrática y totalitarismo.

Esta dislocación de una medida provisoria y excepcional que se vuelve técnica de gobierno amenaza con transformar radicalmente la estructura y el sentido de la distinción tradicional de las formas de constitución. El estado de excepción se presenta más bien desde esta perspectiva como un umbral de indeterminación entre democracia y absolutismo. (Agamben, 2004, p. 26)

Lo que estaría en ejercicio en esta región de indeterminación democrática es lo que Bauman (2015) recobra de la máxima de Schmitt: “El soberano es quien tiene el poder de exceptuar”. El poder de imponer reglas se origina precisamente en el poder de suspenderlas o dejarlas sin efecto ni valor toda vez que se requiera (p. 149), tornando plausible el primado excepcional que recobra Agamben del derecho arcaico: *necessitas legem non habet*.

El “estado de excepción” ya no tiene nada de excepcional: bajo la forma —en principio circunstancial (atentados o pandemia)— del “estado de emergencia”, se ha convertido en una modalidad “normalizada” de la gubernamentalidad. Las nuevas formas del fascismo que vimos emerger en todas partes se desarrollan desde *el interior* de las instituciones “democráticas”, y no contra estas. Revelan a la vez continuidades y discontinuidades respecto de los fascismos históricos. El fascismo de los cincuenta tonos de gris es definitivamente una de las modalidades de la gubernamentalidad. (Alliez y Lazzarato, 2021, p. 23)

Precisamente aquella “zona gris” de la excepcionalidad es lo que constituye la equivocidad política de la violencia, y simétricamente la equivocidad de la política, cuando esta se enfrenta a la violencia (Balibar, 2010, p. 17). Señalada como una primera aporía que desestabiliza nuestra comprensión canónica de la política y nuestra confianza en sus

poderes, Balibar precisa que, de hecho, la presunción de una eliminación de la violencia es uno de los elementos constitutivos de nuestra convencional idea de política. Sin embargo, a falta de una eliminación pura y simple de la violencia, la idea se reduce a una limitación de su campo y de sus efectos, encapsulándola en una doble forma de encierro, situándola en una esfera de mera asocialidad e ilegalidad, lo que supone pertenecer a un ámbito extrapolítico (Balibar, 2010, p. 18).

La política, en tanto que ella presupone y presume así de lo político (como orden autónomo de la política), es primero la negación, el relevo de la violencia. Pero si la violencia no puede ser relevada, o si, peor aún, si los medios y las formas de este relevo aparecen, no de modo contingente sino de modo esencial, como los medios y las formas de su continuación, hay por consecuencia una perversidad intrínseca de la política, entonces la política deviene desesperada y desesperante. (Balibar, 2010, pp.18-19)

La política se presenta así como relevo de la violencia a condición de que dicha noción haya sido colectivizada y distribuida, es decir, que haya reunido o conceptualizado primero todas las formas de violencia. Así, no obstante que la guerra es concebida como la peor de las violencias, en ciertas condiciones ella debe ser aceptada, pues la paz no es el valor supremo ni mucho menos un valor incondicional. Sin embargo, la política se figura como el imperio de la ley (*nomos*) en cuanto el campo de la violencia figura como el *imperio del mal* (Balibar, 2010, p. 19).

Es pues la noción de *guerra civil* lo que debe ponerse en el centro de todos estos análisis de la penalidad. La guerra civil es, creo, una noción bastante mal elaborada desde los puntos de vista filosófico, político e histórico. Una serie de razones lo explican. Me parece que el ocultamiento, la negación de la guerra civil, la afirmación de que la guerra civil no existe, es uno de los primeros axiomas del ejercicio del poder. (Foucault, 2016, p. 28)

Tal representación de la política de Estado, como ocultamiento de la violencia, encubre una hipocresía que concede al orden establecido —al orden jurídicamente instituido, por el solo hecho de que la forma jurídica es la de un consenso, o la de una racionalidad— la cualidad misma de la no violencia, cuando no es más que la envoltura común de una multiplicidad de violencias generales o particulares, abiertas o encubiertas (Balibar, 2010, p. 24).

Se considera al Estado y en general al poder como un instrumento peligroso para quienes lo utilizan, precisamente porque no es otra cosa que violencia cristalizada o estabilizada, y en definitiva nada más que la relativa estabilización de la propia violencia por parte de grupos e individuos de una sociedad determinada en forma de distanciamiento y distribución desigual, más o menos, apropiación duradera de sus medios por parte de algunos de ellos. (Balibar, 2010, pp. 24-25)

Desde esta clave comprensiva cobra especial relevancia la hipótesis que expone Traverso al señalar que el concepto de totalitarismo resulta pertinente en cuanto intenta superar una aporía de la sociología y de la ciencia política que, desde Thomas Hobbes hasta Norbert Elías, pasando por Weber, ha interpretado siempre el proceso de canalización estatal de la violencia como un factor de civilización casi inevitablemente ligado a un fortalecimiento y a una extensión del derecho. El totalitarismo reproduce todas las características esenciales de la racionalidad instrumental que modela la técnica, la administración, la economía y la cultura del mundo occidental, “pero culmina en la negación de aquello que Weber definía como el dominio legal (*legale Herrschaft*)”. En otras palabras, designa el advenimiento de un *Estado criminal* (Traverso, 2001, pp. 23-24).

La forma práctica de estos fascismos es siempre la lógica de la banda, el gánsterismo criminal, con la conquista y la defensa de territorios en que se tiene monopolio de los negocios, como lo tiene el líder en el rincón de su barriada. Para que eso se sostenga, hace falta el carácter espectacular de la crueldad [...] Esta forma fascizante es entonces, en realidad, interna a la estructura del capitalismo mundializado. (Badiou, 2016, pp. 68-69)

Este signo, que marca la excepcionalidad democrática, indica que la democracia es capaz de acometer precisamente todo lo que en principio la niega. Nancy (2009) designa esta indeterminación o desajuste excepcional de la democracia consigo misma —que tensiona la frontera entre fascismo y democracia— como la “inadecuación” de la democracia o la “democracia inadecuada”. Sin comprender del todo aquello que se dispuso en llamar «totalitarismos» —escribe Nancy—, nos habituamos a identificarlo como “el mal político absoluto opuesto a la democracia y que simplemente llegaba de manera inesperada y caía sobre la democracia como si no proviniera de ninguna parte, o bien llegado de un afuera malo en sí mismo” (p. 18). Sin embargo, aquella inadecuación se descubre, opera no desde un exterior, sino que se hospeda inmanente a la política democrática que caía sin más resistencia alguna en una doble denegación: de justicia y de dignidad (Nancy, 2009, pp. 18-19).

Esta indeterminación, o inadecuación democrática es lo que Sheldon Wolin ha llamado la “inversión democrática”. Hay una inversión, explica Wolin, cuando un sistema —como una democracia— produce un número de acciones significativas que suelen asociarse con sus antítesis: por ejemplo, cuando el jefe electo del ejecutivo tiene el poder de encarcelar a un acusado sin garantías procesales, cuando sanciona el uso de la tortura mientras que instruye a la nación acerca de la santidad del Estado de derecho. “Este nuevo sistema, el totalitarismo invertido, profesa ser lo opuesto de lo que es en realidad. Niega su verdadera identidad, en la esperanza de que sus desviaciones sean normalizadas como “cambios” (Wolin, 2008, p. 83).

Lo que resulta decisivamente inquietante acerca de esta inversión o indeterminación excepcional es que, en última instancia, diluye el principio de lo político, entendido como el manantial de legitimidad del poder que Lefort atribuía de manera inequívoca a la democracia. Por ello, la teoría política tradicional se ve perturbada cada vez que la democracia exhibe su carácter excepcional, ya sea a través de la corrupción generalizada de la clase política, su venalidad y servilismo hacia los poderes económicos, la corrupción institucional de los altos mandos de la policía y las fuerzas armadas, el espionaje ilícito, la fabricación fraudulenta de evidencias y montajes policiales contra adversarios políticos, o la invasión de algún país y la masacre de su población en nombre de los valores democráticos. En cualquier caso, independientemente del agente y la forma adoptada, esas prácticas y acciones de poder evidencian el carácter excepcional de la democracia y, con ello, desafían, en última instancia, la sacrosanta legitimidad del poder democrático.

De allí que los genuinos demócratas se inquieten con las tan proclamadas intenciones pacíficas de los Estados democráticos, mientras estos mismos países provocan y desatan sangrientas guerras que justifican con el argumento de llevar el progreso y defender los valores universales, que hoy en día se identifican con los derechos humanos. Pero a las poblaciones que sufren la invasión, los sublimes valores en cuestión les suelen parecer una simple máscara que esconde los verdaderos intereses de los beligerantes, y estas guerras tienen consecuencias no menos desastrosas que las iniciativas de conquista, destinadas a proporcionar a los vencedores prestigio, poder y riquezas. (Todorov, 2017, p. 184)

Tempranamente lo advertía Kropotkin a comienzos del siglo XX, cuando indicaba que en los Estados prestamistas había una organización completa, en la que gobernantes, banqueros, promotores de compañías y especuladores se agrupan para explotar Estados enteros. Allí donde los ingenuos juzgaban descubrir profundas causas políticas



u odios nacionales, no yacían sino los conciertos tramados por los “filibusteros de la finanza”. Estos todo lo explotan: rivalidades políticas y económicas, enemistades nacionales, tradiciones diplomáticas y conflictos religiosos. “En todas las guerras de este último cuarto de siglo se halla la mano negra de las grandes casas financieras” (Kropotkin, 2021, p. 27).

Bajo esa clave, Lazzarato ha advertido con lucidez la racionalidad bélico-política del desarrollo y crisis del capital, identificando la relación consustancial entre neoliberalismo y guerra. El despliegue del neoliberalismo se funde en la versión militar y policial de la aceleración económico-financiera.

Lo que vemos emerger, por lo tanto, no es una degeneración monstruosa del capitalismo tardío y de la democracia liberal, ya que la guerra civil y el fascismo, el fascismo y su militarización del *socius* que permite ganar la guerra civil estuvieron en la base misma del estado de emergencia de las políticas neoliberales en su empresa de disociación entre “democracia” y “liberalismo” “*reales*”. (Alliez y Lazzarato, 2021, p. 20)

Así, la inicial disyunción entre democracia y fascismo se torna opaca e intrincada, pues como evidencia la investigación de Roberto Esposito, el carácter y paradigma inmunitario no es exclusivo de la lógica totalitaria, sino que se ha logrado instaurar como una premisa de funcionamiento de las democracias contemporáneas (Esposito, 1996, 2003, 2005, 2006). Aquella condición se torna más inquietante si se considera que las actuales mutaciones y reconfiguraciones “democráticas” que ha adoptado la matriz del fascismo clásico, no significa que ya no exista un peligro fascista. De ningún modo, sostiene Traverso, pues si se observa el presente a través de un prisma histórico, no se puede descartar esa posibilidad. “El impresionante ascenso de los movimientos, partidos y gobiernos de extrema derecha muestra con claridad que el fascismo puede convertirse en una alternativa” (Traverso, 2021, p. 19).

Ese peligro no resulta una amenaza eventual, sino que constituye la flagrante cotidianeidad en que se desenvuelve la dinámica democrática neoliberal. Pues tal como explica Lazzarato, es falso que el neoliberalismo crea en el funcionamiento “natural” del mercado, muy por el contrario, sabe que debe intervenir continuamente y respaldarlo mediante marcos legales, estímulos fiscales, económicos, etc. “Pero hay un “intervencionismo” previo llamado “guerra civil”, único que puede crear las condiciones para “disciplinar” a los “gobernados” (Alliez y Lazzarato, 2021, pp. 21-22).

Los capitalistas y sus respectivos Estados siempre conciben sus estrategias (guerra, guerra civil, gubernamentalidad) en relación con la situación del mercado

mundial y los peligros políticos que allí se presentan. Son estrategias que se construyen en el curso de los conflictos y que son dosificadas de acuerdo con las resistencias, el grado de oposición y las confrontaciones con las que se encuentran en el camino. Pero no debemos cometer el error de separar un Sur “violento” y un Norte “apaciguado”: se trata del mismo capital, del mismo poder, de la misma guerra. (Lazzarato, 2020, p. 23)

Esta condición pareciera estar en la base de la configuración de la democracia neoliberal, que aún erigiendo el mito de la libertad y supremacía individual no deja de provocar el conflicto colectivo, cuya intensidad paroxística ha sido conceptualizada como *stásis*, que antes de devenir un desperfecto pareciera constituir la clave constitutiva de la subjetivación política de la acumulación capitalista bajo la gubernamentalidad neoliberal.

No hay guerra civil que no sea enfrentamiento de elementos colectivos: parentelas, clientelas, religiones, etnias, comunidades lingüísticas, clases, etc. La guerra civil siempre nace, se desarrolla y se ejerce a la vez a través de masas, elementos colectivos y plurales. No es en absoluto, por tanto, la dimensión natural de las relaciones entre individuos en cuanto individuos: los actores de la guerra civil siempre son grupos en cuanto grupos. Más aún, la guerra civil no solo pone en escena elementos colectivos, sino que los constituye. (Foucault, 2016, p. 46)

Dicho en los términos de Di Cesare, la historia democrática de la polis “es una historia de desacuerdos, conflictos, enfrentamientos sangrientos”. Pero para comprender la *stásis* en su dramática profundidad es necesario renunciar a lentes modernizadores y mirar a la polis como una comunidad no estatal que, en ausencia de un aparato coercitivo, es capaz de mantenerse unida solo a través de vínculos políticos. “Condición fundamental de su existencia, la *stásis* es el abismo subyacente a la polis, la amenaza ineludible de su disolución” (Di Cesare, 2024, p. 7).

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# NEOLIBERALISMOS Y GUERRAS CIVILES\*

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## NEOLIBERALISM AND CIVIL WARS

### Resumen

La definición de “neoliberalismo autoritario” parece insuficiente y resbaladiza tanto política como teóricamente. El concepto no parece capaz de proporcionarnos una “ontología” del presente, y es, más bien, la consecuencia de una época en la que la guerra y la guerra civil han sido eliminadas del debate teórico, solo para volver hoy a primer plano, como todo lo que no se quiere ver o conocer, con una violencia sin precedentes. Definir la evolución en curso de las democracias occidentales como autoritaria, antiliberal, es otra manera de eliminar la realidad violenta del choque de clases y de las guerras que de él se derivan. La tesis que quiero demostrar en este artículo es que la guerra civil es la condición de posibilidad tanto del ordoliberalismo como del neoliberalismo; juntos constituyen su continuación por otros medios.

### Palabras clave

neoliberalismo autoritario; guerra civil; democracia

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## **Abstract**

The definition of “authoritarian neoliberalism” seems insufficient and slippery both politically and theoretically. Indeed, this concept does not seem capable of providing us with an “ontology” of the present, and is rather the consequence of an era in which war and civil war have been eliminated from the theoretical debate, only to return today to the foreground, like everything else that one does not want to see or know, with unprecedented violence. Defining the ongoing evolution of Western democracies as authoritarian, illiberal, is another way of eliminating the violent reality of the class clash and the wars that result from it. The thesis I want to demonstrate in this article is that civil war is the condition of possibility of both ordoliberalism and neoliberalism, together constituting their continuation by other means.

## **Keywords**

authoritarian liberalisms; civil war; democracy



La definición de “neoliberalismo autoritario” me parece débil, insuficiente y resbaladiza tanto política como teóricamente. El concepto puesto en circulación, al menos en Francia, por Grégoire Chamayou, no me parece capaz de proporcionarnos una “ontología” del presente, y es más bien hijo de una época en la que la guerra y la guerra civil han sido eliminadas del debate teórico, solo para volver hoy a primer plano, como todo lo que no se quiere ver o conocer, con una violencia sin precedentes. Definir la evolución en curso de las democracias occidentales como autoritaria o antiliberal, es otra manera de eliminar la realidad violenta del choque de clases y de las guerras que de él se derivan.

La tesis que quiero demostrar es muy simple: la guerra civil es la condición de posibilidad tanto del ordoliberalismo como del neoliberalismo, pues juntos constituyen su continuación por otros medios (económicos, jurídicos, políticos). Tanto en el orden ordoliberal como en el neoliberal fluye una guerra civil “encubierta”, dice Marx, siempre susceptible de convertirse en guerra civil abierta, lo que, al cabo de un tiempo más o menos breve, sucede regularmente porque las contradicciones y oposiciones que produce el capitalismo solo encuentran su solución en la violencia extraeconómica. El mercado, la competencia, la libertad de precios, el individualismo posesivo y apropiativo fracasan con asombrosa regularidad como técnicas de gobierno.

El ordoliberalismo no habría podido transformarse después de la Primera Guerra Mundial en políticas reales —en una “economía social de mercado”— sin la guerra civil librada primero por la socialdemocracia y luego por el nazismo contra el movimiento obrero revolucionario en Alemania. El neoliberalismo, por su parte, solo lograría lanzar su primera experimentación a gran escala después y gracias a las sangrientas guerras civiles en toda América Latina libradas por los fascismos locales bajo la dirección de Estados Unidos.

Pocos han señalado —de hecho nadie, que yo sepa— que el ordoliberalismo, la primera crítica al fracaso del liberalismo del siglo XIX que desembocó en la Primera Guerra Mundial, nacida durante la República de Weimar, nunca ha sido capaz de gobernar ni de aplicar sus políticas en los años en que se desarrolló. ¿Por qué? En los años 30 habría sido imposible hacer del ordoliberalismo una política, porque había una guerra civil en curso que hacía inoperantes, y por tanto inútiles, las “pacíficas” recetas ordoliberales. La clase obrera y los movimientos de la época nunca habrían aceptado la “neutralización” de su fuerza política en la que consistía la esencia del programa ordoliberal. Solo sería posible en la posguerra, cuando la violencia nazi hubiera aplastado la fuerza del movimiento obrero y vencido sus subjetividades.

Una secuencia similar se produjo con el ascenso del neoliberalismo en América, aunque solo después de las guerras civiles que sembraron el terror en toda América Latina.

El neoliberalismo es aún más paradigmático porque comienza en el Sur con la violencia de los golpes militares liderados por Estados Unidos, mientras que en el Norte basta con golpear políticamente a los sindicatos y a las resistencias y movimientos obreros de finales de los años 60 y principios de los años 70. Durante la aplicación de las políticas neoliberales sobre la piel de las subjetividades derrotadas, la guerra civil parece desvanecerse; en realidad, fluye como un río cárstico bajo la “gubernamentalidad” neoliberal, produciendo una intensificación del poder ejecutivo, una mayor concentración y centralización de los oligopolios y monopolios, y el nacimiento de nuevas formas de populismo y fascismo que conducen, y esta es la actualidad, a una nueva guerra civil mundial paralela y contemporánea a la guerra entre imperialismos. La secuencia guerras - “mercado” y gobierno - guerras se repite con asombrosa regularidad.

Entonces, mi punto de vista es particular: no entiendo cómo reconstruir en detalle las políticas ordo y neo-liberales; para esto, ya existen numerosos trabajos muy interesantes. Sin embargo, ninguno de ellos interroga las “condiciones de posibilidad” de los nuevos liberalismos, faltando así a los principios elementales de la crítica.

### **El problema del ordo-liberalismo a través de los ojos de Carl Schmitt**

El análisis de Schmitt en los años 30 parece converger, durante un brevísimo periodo, con el punto de vista ordoliberal (*Economía libre, Estado fuerte*) escribió Rüstow en 1932, haciendo eco de un texto anterior de Schmitt, (*Estado fuerte, economía sana*). Las dificultades de la República de Weimar, agravadas por el estallido de la crisis de 1929, se leen a través de la crisis del Estado. Schmitt lo define como *total o económico*, concepto que volvemos a encontrar en el mismo año, 1932, en Rüstow y Eucken, por que:

hat ein ausgedehntes Arbeitsrecht, Tarifwesen und staatliche Schlichtung von Lohnstreitigkeiten, durch welche er die Löhne maßgebend beeinflusst; er gewährt riesige Subventionen an die verschiedenen Wirtschaftszweige; er ist ein Wohlfahrts- und ein Fürsorgestaat und infolgedessen gleichzeitig in ungeheurem Maße ein Steuer- und Abgabenstaat. (Schmitt, 1940, p. 154)

Todos los sectores de la sociedad están implicados en este proceso: ya en 1928, dice Schmitt, el 53 % de la renta nacional estaba controlada por los poderes públicos. El Estado total rompía la separación entre política y economía, entre Estado y sociedad civil, que definía lo que era político y lo que no.

Así, Estado y sociedad se interpenetran, el primero 'ya no es 'algo distinto y cualitativamente superior' a la sociedad, ya no se opone a la religión, la cultura, la educación

y la economía, momentos que ‘dejan de ser neutrales, en el sentido de no estatales, y no políticos’. El Estado perdería su ‘autonomía’, presa y botín de los intereses partidistas que lo asaltan. Surge una ‘multiplicidad de partidos totales’ y sindicatos ‘totales en sí mismos’, funcionando como monopolios.

Wichtiger als jedes wirtschaftliche Monopol ist dieses politische Monopol einer Reihe von starken politischen Organisationen, die einen starken Staat nur unter der Bedingung tolerieren, daß dieser Staat ihr Ausbeutungsobjekt ist. (Schmitt, 2021, p. 75)

Tanto Schmitt como los ordoliberales saben que, en realidad, fue el conflicto de clases el que determinó la crisis de la autonomía del Estado, que dejó de ser suprapartes como titular del monopolio de la “soberanía”. Para estos últimos, las raíces de la crisis de Weimer se encuentran incluso en la Revolución Francesa, que convirtió a las “masas” en activas y organizadas, con lo cual provocó la ruptura del orden jerárquico de las clases que establecía para cada una su lugar y su función en la sociedad. El *orden* que hay que restablecer es la condición metaeconómica de la economía.

Para Schmitt, sin embargo, 1848 fue el momento decisivo. La época de las revoluciones fue abierta por la burguesía (americana y francesa), pero fue la europea, y especialmente la francesa (“¡Maldito sea junio!”) de 1848 la que marcó la entrada de la hostilidad proletaria en la lucha de clases: “der revolutionäre Radikalismus in der proletarischen Revolution von 1848 unendlich tiefer und konsequenter ist als in der Revolution des dritten Standes von 1789” (Schmitt, 2015, p. 61).

Lo que trastornó las sociedades europeas a partir de la Revolución Francesa no fue la guerra entre Estados, sino la guerra civil: ya no guerras civiles de religión, ni siquiera entre facciones de la aristocracia o la burguesía, sino una continua guerra civil de clases, ahora soterrada, ahora abierta (también denominada “guerra civil legal”). Con la guerra civil de clases comenzó la desaparición del Estado tal y como había sido configurado por el Tratado de Westfalia, capaz de mantener “la paz, la seguridad y el orden” internamente y de transferir esta violencia neutralizada a la guerra contra el enemigo exterior. La policía manda sobre la sociedad, la soberanía decide la guerra entre Estados. La irrupción de las “masas” desafiará radicalmente el monopolio estatal de la política y la toma de decisiones, porque es reclamado y ejercido por sujetos no estatales (los trabajadores, las mujeres, los esclavos, los colonizados).

La revolución soviética rompió definitivamente esta organización sobre la que se había constituido el sistema político burgués: la guerra civil de clases hizo saltar por los aires la distinción entre *el exterior* y *el interior* (el internacionalismo proletario actuó a

través de esta separación), *la guerra y la paz* son desplazadas porque ambas solo expresan los intereses del capital y del Estado.

El principal objetivo de la revolución será repolitizar lo que el Estado ha despolitizado, transformando el conflicto interno, así restablecido, en una ruptura del orden establecido. Con las revoluciones proletarias que tienen lugar en las periferias y en el sur del capitalismo, donde la guerra y las guerras civiles hacen estragos ininterrumpidamente, el Estado se ve desposeído de otra de sus prerrogativas, el *jus belli* que solo él podía ejercer: ya los esclavos haitianos habían declarado la guerra a los imperios coloniales derrotando a los dos más importantes (Inglaterra y Francia), mientras que los bolcheviques habían promovido y organizado la primera guerra civil mundial de los “partisanos”.

El historiador Fernand Braudel decía que la Europa de principios del siglo XX estaba preparada para avanzar hacia el socialismo y que solo el estallido de la Primera Guerra Mundial lo impediría. Es esta fuerza la que hay que neutralizar y derrotar. El programa ordoliberal, que ya estaba listo en los años 30, no tiene ninguna posibilidad de “integrar” este impulso revolucionario a través de su economía y su derecho. Las nuevas normas económicas, políticas y sociales del ordoliberalismo (la lucha contra los monopolios, el restablecimiento de la competencia, aunque ya no sea en su forma “perfecta”, la imposición de un sistema de precios libres capaz de seleccionar los servicios, y una *constitución económica* cuya ley deberá garantizar tanto la competencia como los precios), para ser aplicadas, exigen una acción política mucho más radical, sin la cual no tendrán ninguna eficacia.

Fue el mismo Carl Schmitt quien nos lo explicó: “Jede generelle Norm verlangt eine normale Gestaltung der Lebensverhältnisse [...] Es gibt keine Norm, die auf ein Chaos anwendbar wäre. Die Ordnung muß hergestellt sein, damit die Rechtsordnung einen Sinn hat” (Schmitt, 1922, 19).

¿Quién y cómo “establece el orden” necesario para la norma jurídica, pero también económica y política, en una situación como la Alemania de entreguerras? La neutralización de la lucha de clases no puede llevarse a cabo mediante normas económicas, políticas y sociales ordoliberales si antes no se produce una despolitización, es decir, la derrota del movimiento obrero y de sus organizaciones, a través de la guerra civil

Y está claro cuál es el significado de “ordo” que se antepone al liberalismo. Primero, hay que restablecer el orden, normalizar, neutralizar las demandas de rentas y salarios que surgen de la clase y del proletariado, así como el deseo de sustituir el capitalismo por el socialismo, extinguir el “caos” que este deseo y su organización provocan. Solo la guerra civil podía estar a la altura del nivel de enfrentamiento alcanzado en Alemania y en el planeta tras la revolución soviética. No hay alternativa, y de hecho las dos guerras mundiales son una larga guerra civil contra el socialismo, que en Alemania alcanzaría

cotas de violencia sin precedentes, saliendo de las manos de las clases dominantes que habían favorecido el ascenso de los nazis, porque aquí existía el movimiento obrero más fuerte y organizado de Europa, la socialdemocracia, que seguía siendo, a pesar de todo, el partido de Marx y Engels.

Durante la fase constituyente de la República de Weimar, “wie es der frühe Horkheimer selber gesagt hat: »Gewerkschaften und Sozialdemokratien wurden zu gigantischen Maschinen zur Unterdrückung der Spontaneität.«» «die Selbstorganisationsformen des Proletariats (die Arbeiter-, Soldaten- und Betriebsräte)” (Krahl, 2008, p. 242). La socialdemocracia desempeñó un papel clave en esta primera fase de la guerra civil. Ya en 1914, al votar a favor de los créditos de guerra y “traicionar” el internacionalismo proletario, dividió al movimiento obrero y determinó la imposibilidad, para siempre, de la revolución en Europa. Más tarde se hizo cargo de la represión armada de la revolución de noviembre antes de que esta fuera derrotada, a su vez, por el nazismo.

A pesar de la derrota de los espartaquistas, el equilibrio de fuerzas no se restableció completamente a favor del capital y del Estado. No bastaba con el trabajo sucio de los Noske, había que acabar con el nazismo, que destruyó de raíz el conflicto de clase más importante de la época en Europa del que Lenin esperaba el inicio de la revolución mundial. Uno recuerda muchas cosas sobre el nazismo, pero nunca lo suficiente, como que fue una larga y despiadada guerra civil contra el “bolchevismo” que aterrorizó a las burguesías de todo el planeta.

Carl Schmitt y una parte de los ordoliberales se implicaron, más o menos radicalmente, en la guerra civil de los nazis, confirmando, consciente o inconscientemente, que el orden de las clases dominantes era la condición de toda política<sup>1</sup>.

Solo en la posguerra, con la derrota del nazismo, parte de las políticas ordoliberales fueron asumidas por la nueva república federal nacida bajo el estricto control de los vencedores de la Segunda Guerra Mundial. Sin embargo, solo se aplicó una parte de las recetas ordoliberales porque la “cuestión social” debió integrarse en sus políticas, mientras que en los años 30 el ordoliberalismo la identificaba como la causa del hundimiento del orden social (*ancien régime*) que siempre lamentaron. El gran reaccionario Friederich Hayek nunca perdonaría a sus colegas que introdujeran “social” en la definición de “economía de mercado”. Una herejía a sus ojos. En realidad, los ordoliberales tuvieron que plegarse

<sup>1</sup> “Il totalitarismo appare a questo punto definibile come quella forma di regime che prosegue in forma legalizzata una guerra civile latente, bloccandone ogni possibilità di sviluppo in direzione di uno scontro frontale tra gruppi armati (...) In questo senso si potrebbe parlare altresì di ‘guerra civile bloccata’ por qué “dopo aver reso inoffensivo il ‘nemico’” tramite la repressione dell’opposizione operaia e sindacale “si dimostra incapace di restaurare la normalità (...) la guerra civile appare ora indirizzata non tanto alla prevenzione di un pericolo reale ma alle persecuzione di un capro espiatorio”. (Portinaro, 1986, pp. 25-27)

a las relaciones internacionales de poder determinadas por la naciente Guerra Fría, pero sobre todo por la fuerza que la revolución mundial aún poseía al final de la guerra, y que mantendría a lo largo de los años sesenta.

Aunque el nazismo sale derrotado de la Segunda Guerra Mundial, la obra de destrucción del movimiento obrero alemán permanece, y las clases dominantes le estarán eternamente agradecidas. En su seno, la clase se había desarrollado como sujeto político revolucionario, que ahora debía ser reducido a “capital variable”, a fuerza de trabajo y, por tanto, a un mero componente y función del capital, a una clase en sí misma, a “fuerza productiva”, a trabajo asalariado.

Solo en estas condiciones será posible la “cogestión”, la “codeterminación” del capital y del trabajo. Lo que había sido imposible en la República de Weimar, tras la derrota infligida por el nazismo al conflicto obrero, se hizo realidad. Una subjetividad vencida solo tuvo que adherirse a un programa centrado en la propiedad privada, la empresa y la iniciativa empresarial, así como a un sistema jurídico que afirmaba, garantizaba y regía un renovado poder patronal, que, a cambio de la paz social, concedería derechos, salarios y bienestar. La socialdemocracia seguiría desempeñando un papel clave en la integración de la clase obrera, rompiendo con lo esencial de su tradición marxista en 1959. Se dieron todas las condiciones para que la dialéctica conciliadora capital-trabajo funcionara según las normas ordoliberales, que en este momento también pueden incluir el conflicto como motor de desarrollo.

En los estudios sobre el ordoliberalismo es difícil encontrar análisis de la crisis del modelo de “economía social de mercado”. Ya en los años 60, el tema obsesivo que los ordoliberales repropone continuamente —la lucha contra los monopolios, el fraccionamiento de toda concentración de poder, tanto económico como político— manifiesta toda su impotencia. La descentralización del poder político y económico, su compartimentación y la abolición de cualquier exceso de soberanía mostró su debilidad ante los primeros signos de conflicto en la segunda mitad de los años sesenta. El proceso, nunca latente, de centralización política y económica, a pesar de la legislación antimonopolio más “avanzada” de Europa, salió a la luz con la afirmación del “Estado autoritario” y las leyes de excepción que prevén la suspensión de las garantías democráticas ante una posible “amenaza subversiva”, la limitación de las libertades individuales (incluido un control exhaustivo de las comunicaciones de los sospechosos), así como la posibilidad de declarar ilegítimas ciertas huelgas.

Tan pronto como el proletariado rompió con su condición de “capital variable”, cuando incluso amenazaba con salir de su subordinación, de la pacificación colaborativa para el desarrollo, el hermoso castillo construido sobre los cimientos del ordolibera-

lismo se derrumbó y la tan despreciada centralización se reveló indispensable.

El ordoliberalismo, anticipándose al neoliberalismo y demostrando así su afinidad, evolucionó rápidamente hacia lo que en los años sesenta fue definido por los críticos de la naciente izquierda revolucionaria como “Estado autoritario” o “Estado de bienestar autoritario”. No se trata, por tanto, de una novedad recién introducida; el concepto pertenece al movimiento de protesta alemán de la época, que lo heredó de Horkheimer. Las palabras de un dirigente de las juventudes del SPD, Hans Jurgen Krahl, introducen una novedad esencial en el análisis tanto del liberalismo como del fascismo:

Der Autoritären Staat [...] ohne rechtlichen und politischen Legitimationsbruch in den Ausnahmezustand Carl Schmittscher Definition übergeht, dass es nicht erst eines Staatsstreichs bedarf. (Krahl, 2008, p. 239)

La competencia, en lugar de ser un sustituto de la guerra —como quería Benjamin Constant— preserva “erhalten die Konkurrenz als potentiellen Kriegszustand nach innen wie nach außen” al que sin duda la “constitución económica” no impidió evolucionar hacia dispositivos de control y represión que poco tienen que ver con el mercado, la competencia, los precios, etc. (Krahl, 2008, p. 234).

Para abrir a nuevas formas de fascismo ya no es necesario que

dass der bestehende Staat nicht wie der alte liberale durch ein System großer ökonomischer Naturkatastrophen in den Faschismus übergeht, sondern dass sich der Staat selber zur technologisch-faschistischen Führerperson machen kann, ohne einen personalen Führer zu brauchen. (Krahl, 2008a, p. 239)

El ejecutivo, como muestra Marx en *El 18 Brumario*, continúa su inexorable centralización desde los tiempos de la monarquía absoluta, condición indispensable para la centralización paralela del capital.

Man kann ja demokratische Autoritäten und Revolution Instanzen, etwa das Parlament, nicht nur terroristisch zerschlagen, sondern [...] manipulativ ins Instrumentarium der autoritären Exekutive integrieren, wie eben die Notstandsgesetze zeigen. (Krahl, 2008b, pp. 264-265)

Rápidamente se establece una continuidad, que nunca se ha negado y que hoy encontramos intacta, entre democracia y fascismo, entre capitalismo y fascismo, porque si el capitalismo competitivo contenía en sí la posibilidad del socialismo, “el capitalismo

monopolista e imperialista desarrolla en cambio una tendencia a la barbarie fascista”. Esta otra constatación relevante de la crítica revolucionaria alemana de los años 60 es de una actualidad punzante porque habla de la presente integración sin problemas de los fascismos en las instituciones.

El choque de clases, en lugar de integrarse a través de la economía social de mercado, rompe el compromiso de posguerra entre capital y trabajo. Así, en los años 60 volvió a surgir un estado de excepción —no solo en Alemania, sino en el mundo entero— que no desembocó, como hoy, en una guerra entre Estados, porque el mercado mundial se regía por la división entre los USA y la URSS, que no habían impuesto precisamente la paz, en sentido estricto, sino una condición política sin precedentes: “la ‘guerra fredda’ è un altro modo per indicare che la differenza tra guerra e pace, così come quella tra guerra e guerra civile, è svanita”<sup>2</sup>.

Estado de excepción que volvió a decidirse por una “guerra civil” que se desarrolló de forma diferente entre el Norte y el Sur, según la intensidad del choque de clases que hubiera determinado la situación de emergencia.

## Neoliberalismo

A principios de los 70, la Trilateral elaboró un documento sobre la *governance* o “gubernamentalidad”, es decir, la crisis de mando de los Estados y el capital sobre el proletariado, que se convertiría en la agenda de la contrarrevolución. Los problemas de Estados Unidos provenían de “un exceso de democracia”, mientras que en Europa los gobiernos estaban “sobrecargados de participantes y demandas” que el Estado y su administración no podían gestionar; un análisis muy similar al que los ordoliberales y Carl Schmitt hicieron de la República de Weimar en los años 30: el Estado es rehén de las demandas obreras y proletarias. Lo que se cuestiona es la forma liberal-democrática del sistema político establecido en el Norte tras la Segunda Guerra Mundial. Su nacimiento se produjo en la intersección de diferentes dinámicas. Una “recompensa” debida a las poblaciones sacrificadas en las dos guerras mundiales (id a que os masacren y nosotros, con el Bienestar, garantizaremos el cuidado de la vida de los supervivientes, escribió Foucault en alguna parte), la necesidad de controlar los mercados financieros cuya libertad había desencadenado las guerras y las crisis mundiales de la primera mitad del siglo, el fin de los regímenes fascistas y de las diversas resistencias que habían contribuido a ello, pero mucho más profundamente, la democracia social y política respondió al gran ciclo de las revoluciones del siglo XX. Sin embargo, el miedo a la revolución rusa, a la revolución

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<sup>2</sup> Reinhart Koselleck, citado por Imbriano (2016, p. 101).



china y a los intentos fallidos en Europa había sembrado el pánico entre las burguesías y las clases dirigentes estadounidenses y europeas. En la posguerra, “una avalancha de guerras civiles” (Koselleck) mantuvo la presión sobre los capitalistas, y los Estados se vieron obligados a hacer concesiones, tanto económicas (salarios, bienestar) como políticas (democracia, derechos). El constitucionalismo nunca habría evolucionado hacia la democracia sin revoluciones y guerras de clases.

Para la Trilateral, la Constitución, el Estado, los partidos, la administración y las corporaciones, tal y como habían sido organizados por el sistema político de posguerra, incluso sin abandonar nunca el marco de la propiedad privada —el capitalismo y el liberalismo— seguían estando demasiado a merced de las relaciones de poder, de la lucha entre clases. Había que dismantlar el conjunto de condiciones económicas y políticas que favorecían las reivindicaciones y los derechos de las masas. Dos son los instrumentos fundamentales de esta estrategia, la guerra civil sangrienta en el sur y la derrota política del movimiento obrero en el norte, mientras que, al mismo tiempo, se experimenta una estrategia basada en el “gran endeudamiento del Estado, las empresas y las familias” para alimentar el gran consumo a crédito de los mismos sujetos, recortando y bloqueando simultáneamente los salarios. *Deuda y consumo* son las dos fuerzas que continúan las guerras civiles de los años 70 con instrumentos económicos, transformando las técnicas y los dispositivos de la gubernamentalidad de las políticas ordoliberales, todavía centradas en el empresariado industrial.

Las constituciones liberal-democráticas deben ser dismanteladas porque, a pesar de su liberalismo, a pesar de su capitalismo, siguen siendo demasiado peligrosas, cumplen o acompañan las demandas de democracia, de salarios, de derechos que surgen desde abajo. En su lugar, la constitución formal debe registrar ahora las nuevas relaciones de poder de la *constitución material*, en la que ya no deben escribirse con letras claras los derechos de los trabajadores y “el pueblo”, sino la primacía de los acreedores sobre los deudores y los instrumentos para conseguirla (presupuestos equilibrados, austeridad financiera, etc.).

Siempre es útil recordar el origen del neoliberalismo, porque tanto Foucault como todos sus continuadores, por no hablar de la cultura política dominante, lo eliminan por completo: Milton Friedman, el líder de los Chicago Boys, se reunió con Pinochet en 1975, mientras que Hayek, el paladín de la “libertad”, fue recibido en Chile también por el dictador en 1977. La violencia extraeconómica que representaron los golpes de Estado y la destrucción del movimiento obrero y de los experimentos “socialistas” en Chile fue la base sobre la que, durante una década (1975-1986), los economistas neoliberales construyeron y ensayaron sus recetas económicas sin encontrar resistencia alguna, la sangrienta represión había eliminado todo conflicto, oposición y crítica.

Otros países latinoamericanos siguieron estas políticas “innovadoras”. Los Chicago Boys ocuparon puestos clave en Uruguay, Brasil y Argentina. Con la llegada al poder de Videla, cuya junta militar fue responsable de una represión quizá aún más atroz, los neoliberales entraron en el gobierno militar e intentaron reproducir las políticas chilenas de recortes masivos de salarios y gastos sociales, privatización de escuelas, sanidad, pensiones, etc. Estas políticas fueron inmediatamente reconocidas y adoptadas por el Banco Mundial bajo el término de “ajustes estructurales”. Luego se aplicaron en África y Asia, y llegaron mucho más tarde al Norte global. La diferencia entre el Norte y el Sur, que ha caracterizado al capitalismo desde 1492, también es evidente aquí: en el Norte, las sangrientas guerras civiles no son necesarias, las derrotas políticas infligidas al movimiento obrero por Thatcher y Reagan son suficientes. En los dos casos, lo que resultó fue una subjetividad proletaria derrotada, forzada a la obediencia y disponible a los impulsos de la gubernamentalidad neoliberal: “accepte la réalité ou qui répond systématiquement aux modifications dans les variables du milieu” aparece como “maniable”, se revela como “*éminemment gouvernable*”, es decir, se convierte en *homo oeconomicus* (Foucault, 2004, p. 274).

Nunca el proletariado sudamericano habría aceptado las *normas* del “capital humano” sin una acción militar que deshiciera el “caos” de la revolución mundial.

Lo que cambia con respecto al ordoliberalismo son los modos de gubernamentalidad, una vez superado el rechazo obrero al compromiso capital-trabajo. Se impusieron nuevas normas: no la empresa industrial, sino las finanzas (la empresa financiarizada); no el salario, sino el crédito; no el asalariado, sino el trabajador precario; no el bienestar, sino la privatización de los servicios; no el empresario de sí mismo, sino el endeudado, etc.

Lo que nos interesa es captar el ciclo político del neoliberalismo, que sigue las fases de expansión y contracción del ciclo del capital: de las guerras civiles pasamos a la gubernamentalidad neoliberal, para concluir, tras la gran crisis del 2008, con guerras abiertas entre Estados y nuevas guerras civiles que agotan el control neoliberal, al igual que el liberalismo clásico se había desechado un siglo antes. Cuando la acumulación de capital encuentre crisis, contradicciones, oposición, cuando la globalización fracase, la guerra y la guerra civil se presentarán como las únicas alternativas.

¿Cómo es posible que el liberalismo, el hemisferio liberal y el neoliberalismo, tras un breve periodo de expansión, desemboquen primero en políticas de emergencia, luego en nuevas formas de fascismo y populismo, para terminar en guerras y guerras civiles? Desde el siglo XX, la secuencia se desarrolla con una regularidad desconcertante.

Lo primero que hay que hacer es no identificar nunca las diferentes formas de liberalismo con el capitalismo, no confundir nunca gobernanza con acumulación. Desde la década de 1870, el capitalismo se estructura según principios radicalmente

distintos de las normas que rigen el ordo y el neoliberalismo: no mercado, competencia y libertad, sino monopolios, imperialismo y guerra (que se convierte en parte estructural de su organización a través de la industria armamentística). Estos procesos de centralización del poder económico y político, que son el principal enemigo de los diversos liberalismos, considerados como las causas del “totalitarismo” y del “colectivismo”, no cesarán nunca; es más, durante el neoliberalismo, a través de la financiarización, alcanzarán cotas sin precedentes. Los liberalismos y su gubernamentalidad manejan la horizontalidad de las relaciones de poder, pero en el capitalismo es la verticalidad, la centralización del poder económico y político la que manda. Los liberales oponen la gestión local, difusa, regional del poder a la centralización, cuando en realidad constituyen un mismo proceso indisoluble, pero comandado por esta última. Cuando se agota la expansión económica que necesita de la horizontalidad, la centralización del poder económico y político toma el relevo. Por eso fracasan regularmente: quieren oponer la competencia (“perfecta” y espontánea de los liberales clásicos o “plena” y jurídicamente encuadrada de los ordoliberales) a los monopolios, cuando es la primera la que necesariamente produce los segundos. Los procesos de centralización continúan prácticamente imperturbables, también gracias a la ideología de mercado que querría oponerse a ellos.

En poco más de un siglo, es la cuarta vez que el capitalismo resuelve sus conflictos no con el mercado, ni con la competencia, ni con la libertad del empresario, ni con el mecanismo de los precios, sino con la guerra y la guerra civil.

### **Foucault, neoliberalismo y guerra civil**

Debemos detenernos rápidamente en el análisis del ordoliberalismo y del neoliberalismo elaborado por Michel Foucault, porque ejercerá una gran influencia en las generaciones de investigadores y militantes que vendrán después de él. No se trata de alabar la evaluación del neoliberalismo que desarrolló en “Naissance de la biopolitique”<sup>3</sup> (Foucault, 2004). Por el contrario, se puede y se debe leer este curso de 1978-1979 en el *College de France* como la culminación de la normalización de su pensamiento. El final de una parábola que le llevó de la guerra civil a la “gobernanza”. A raíz del 68 francés y mundial, Foucault, prácticamente el único entre los filósofos del pensamiento crítico, se ocupó de la guerra civil como modelo o matriz de las relaciones de poder entre 1971 y 1976, partiendo de la hipótesis “nietzscheana”. Sin embargo, no se trata de la guerra de todos contra todos de Hobbes, un enfrentamiento

<sup>3</sup> “Si deve a lui un’interpretazione autoriale divenuta un punto di riferimento imprescindibile” (Zanini, 2022, p. 471).

entre una multiplicidad de individuos “libres”, sino más bien de su contrario, una guerra entre fuerzas colectivas y organizadas. No se produce ni antes de que surja el sistema político, determinando su constitución, ni después, expresando su disolución y degeneración. Por el contrario, la guerra civil define la estructura misma del sistema político, su funcionamiento normal y cotidiano.

La soberanía no es la superación de la guerra civil, sino su despliegue, contra toda ideología de la función pacificadora del soberano. La política y también la economía, son la guerra civil librada por otros medios, por lo que hay que invertir y ampliar el sentido de la famosa fórmula de Clausewitz: la política es la continuación de la guerra, que el prusiano solo refería a las relaciones entre Estados, incluida la guerra civil entre clases, que se convierte en el fundamento de la política. Incluso la dialéctica hegeliana es para Foucault una negación de la guerra civil, porque el trabajo de lo negativo funciona como una superación de la hostilidad, una conciliación.

Por todo ello, la primera tarea del poder es negar la existencia de la guerra civil. Desgraciadamente, como asustado por tanta lucidez, esta es también la posición que adoptará Foucault en la continuación de su obra, y precisamente en *Naissance de la biopolitique* no encontramos ni rastro de las guerras civiles, que fueron las condiciones de posibilidad del neoliberalismo.

La constitución de los nuevos sujetos políticos, las formas inéditas de acción colectiva, los saltos y rupturas que se producen en las subjetividades se forman en el seno de estos conflictos, algo descuidado por las teorías modernas que, paradójicamente, tienen en el centro al “sujeto” (Foucault), la “producción de subjetividad” (Deleuze et Guattari) y la “subjetivación” de la multitud (Hardt y Negri). Gianfranco Miglio considera que la confrontación fratricida es la más “política”, la más “total” de las guerras, y afirma “Questa radicalità chiarisce a sua volta perché dalle guerre ‘civili’ escano *normalmente* le classi politiche più compatte e più attrezzate a contare poi nel processo storico” (Miglio, 2022, p. 23); y también los sistemas institucionales más duraderos e importantes.

Foucault, antes de teorizar sobre la gubernamentalidad y una fabricación del sujeto según cánones ético-estéticos, lo sabía bien:

La guerre civile, non seulement met en scène des éléments collectifs, mais elle les constitue. Loin d'être le processus par lequel on redescend de la république à l'individualité, du souverain à l'état de nature, de l'ordre collectif à la guerre de tous contre tous, la guerre civile est le processus à travers et par lequel se constitue un certain nombre de collectivités nouvelles, qui n'avaient pas vu le jour jusque-là. (Foucault, 2016, p. 41)

A partir de 1976, las relaciones de poder ya no se expresan a través de la guerra civil, sino a través de la gubernamentalidad. El poder no es tanto del orden del enfrentamiento entre dos adversarios, sino del orden del gobierno. Es un modo de acción “ni bélico ni jurídico”, prosigue el filósofo francés. El poder no debe buscarse en la “violencia y la lucha”, sino en el “gobierno” (Foucault, 2001). El neoliberalismo se interpretará con estas categorías, *Naissance della biopolitique* es el signo de la ruptura con la inteligibilidad del presente asegurada por la guerra civil.

La ascensión por Michel Foucault de la guerra civil como modelo de relaciones de poder se detiene antes de la Comuna, es decir, se desarrolla dentro de un capitalismo todavía competitivo. Nunca se ha cuestionado en qué se convierten la guerra civil, la guerra y el capitalismo dentro de la ruptura provocada por el imperialismo y los monopolios: la guerra mundial y la guerra civil mundial.

Para comprender el gran cambio operado por la guerra civil surgida tras la derrota de la Comuna (Lenin y Mao), la obra de Carl Schmitt es mucho más útil. Mientras que Foucault, con cierto desprecio, desprecia a Lenin desde la altura de su intelectualidad específica, reduciendo su estrategia a los conocimientos de un teniente de cuartel de importancia secundaria (Foucault, 2001, p. 427), Schmitt evalúa el alcance de la transformación que experimentó la “pequeña guerra” de Clausewitz durante las revoluciones soviética y china: la guerra de partisanos, primero en Rusia, luego en China, derribó los imperios europeos y coloniales (Schmitt, 1975), desplazando el centro de la lucha de clases del Norte al “Sur”. Derrotadas o agotadas ambas, estas revoluciones sedimentaron, sin embargo, una dislocación de la acumulación capitalista hacia el Este. Y es precisamente la ruptura de la secular subordinación y explotación de las periferias al centro del capitalismo el origen de la guerra y la guerra civil contemporáneas.

Con el abandono de la guerra civil, Foucault abandona también el intento de construir una alternativa a la reconciliación implícita en la dialéctica hegeliana mediante un conflicto basado en un nuevo concepto de negación, ya no dialéctico, que exhibe la guerra civil.

La teoría de la gubernamentalidad, que define un nuevo modelo de relaciones entre las fuerzas y ya no se basa en un poder guerrero, es una ideología de la horizontalidad y de la multiplicidad de dispositivos de poder que parecen haber eliminado la verticalidad, la centralización, ¡la soberanía! Foucault parece compartir la narrativa de los liberales: opone la “multiplicidad no totalizadora de los sujetos económicos” a la “unidad totalizadora del soberano jurídico”.

L'économie est une discipline sans totalité; l'économie est une discipline qui commence à manifester non seulement l'inutilité, mais l'impossibilité d'un point de

vue souverain (Foucault, 2004, p. 286). La crítica de la soberanía y la totalidad en la era del imperialismo, los monopolios y la hegemonía del capital financiero es uno de los principales contrasentidos de *Naissance de la biopolitique*, reproducido por Deleuze en su “Foucault”. (Deleuze, 2004).

Para Deleuze, en primer lugar, el poder es siempre local, pero su ejercicio tiene dos diferentes sentidos: es local porque nunca es global, pero no puede localizarse porque es difuso. El poder no opera centralizaciones porque, por característica, tiene la inmanencia de su campo, sin unificación trascendente y sin centralización global. Hace de la gestión “local” y “difusa” la forma general del poder, separándolo del mando de los monopolios económicos y políticos, que, por el contrario, no han hecho más que fortalecerse desde la época de las monarquías absolutas<sup>4</sup>. La “continuidad de sus segmentos” (escuela, fábrica, cárcel, ejército, etc.) no produciría una “totalización diferenciada”. Es muy cierto que todas estas dinámicas de globalización, totalización y centralización del poder nunca “se realizan plenamente, es más, están condenadas al fracaso”. Sin embargo, cuando estos procesos fracasan o muestran fallos, el capitalismo siempre tiene la posibilidad de producir una “totalización diferenciada” que se llama guerra, que se llama fascismo, que se llama guerra civil (incluso en el nazismo la centralización y la horizontalidad son simultáneas e inseparables).

Como suele ocurrir, los estudiantes que se limitan a aplicar las categorías de sus maestros producen obras problemáticas: Pierre Dardot y Christian Laval, tras escribir quinientas páginas sobre el neoliberalismo (Dardot y Laval, 2010), fueron reprochados por el primer latinoamericano con el que se encontraron por haber acabado con las sangrientas guerras civiles de las que surgió. Como su maestro Foucault, no solo adoptaron un punto de vista eurocéntrico, sino que sembraron la confusión al identificar capitalismo y neoliberalismo, mercado y capital (en el capitalismo, decía Ferdinand Braudel, no hay mercado, sino el contramercado, el mercado de los monopolios). En el libro *Le choix de la guerre civile* (Dardot y Laval, 2021) intentan poner un parche que es llamativamente peor que el agujero. Rechazan el “concepto de guerra civil mundial” que es la diferencia específica que introduce el siglo XX. Una vez más siguen a Foucault, cuya definición de guerra civil se limita al siglo XIX e ignora el salto dado por el capitalismo y el Estado (guerra mundial total e imperialismo) y la lucha de clases (guerra civil mundial). Hasta Lenin, el socialismo y la lucha de clases eran blancos, europeos, occidentales, solo con la revolución soviética se colorearon y se globalizaron. Desde el ascenso del

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<sup>4</sup> Sobre este tema me permito señalar a Lazzarato (2023).

imperialismo, la guerra civil mundial es el marco en el que tienen lugar todas las luchas locales, nacionales, etc., ¡lo sepamos o no!

## ¿Poder o explotación?

A raíz de las posiciones de Foucault, se ha abierto un debate que opone “poder” a “explotación”. Se trata claramente de una crítica al marxismo que reduciría la especificidad de las relaciones de poder a la organización de la dominación del capital, a la producción de mercancías. Sin embargo, Foucault desarrolló también otra crítica: los marxistas hablan continuamente de “lucha de clases”, pero privilegian una *sociología de la clase*, en lugar de un análisis *estratégico de la lucha*. Estas dos críticas convergen: no reconocen la autonomía y lo propio de las relaciones de poder, y por lo tanto no piensan su relación como una estrategia de lucha, una estrategia de guerra, una estrategia de guerra civil.

En realidad, en el capitalismo el poder y la explotación no pueden separarse de ninguna manera porque los explotados (trabajadores, mujeres, esclavos) no existen en la naturaleza, sino que deben producirse, y esta producción es una cuestión de poder, de guerra de apropiación y de sometimiento. El “ciclo económico” comienza con un “ciclo político” de formación de clases y producción de subyugación y termina con un ciclo “político” de guerras.

En el capitalismo, la producción —sea material o inmaterial, afectiva o deseante, cognitiva o neuronal— presupone siempre la producción extraeconómica, extraafectiva y extracognitiva de las clases sociales. Antes de producir mercancías, es necesario tomar, apropiarse, expropiar por la fuerza de la violencia y del Estado, tierras, poblaciones, cuerpos, medios de producción y recursos, y dividir, distribuir lo tomado según el principio de propiedad de pocos y no propiedad de muchos.

Históricamente, el capitalismo nació de una triple conquista: la conquista de la tierra y de los campesinos en Europa, la conquista de las mujeres (la caza de brujas es un signo de la expropiación de su saber específicamente por la acumulación originaria), la conquista de las “tierras libres” del Nuevo Mundo, con el sometimiento de los indígenas, convertidos en colonizados, y de los africanos, reducidos a la esclavitud. Sin estas guerras de conquista de los cuerpos, que dividen a vencedores y vencidos, en propietarios y no propietarios, no puede haber producción.

Hace tiempo que la acumulación originaria dejó de entenderse como limitada a los dos siglos que precedieron a la Revolución Industrial, para pensarse como contemporánea de la producción propiamente capitalista, que se manifiesta particularmente en los periodos de transición de un tipo de acumulación a otro.

Incluso la transición del fordismo al neoliberalismo requiere su acumulación originaria, es decir, la violencia extraeconómica de la guerra civil, la violencia de la guerra de

conquista y la guerra de sometimiento. Hayek, con una franqueza reaccionaria de la que carecen progresistas y demócratas, confirma y reivindica abiertamente esta dimensión metaeconómica, definida, sin miedo, como “dictadura”: “Pero una dictadura puede ser un sistema necesario para un período de transición. A veces es necesario que un país tenga, por un tiempo, una u otra forma de poder dictatorial”, declaró al diario chileno “El Mercurio”, el 8 de noviembre de 1977 (Hayek, 1981), durante su visita a Pinochet, cuando aún no se habían apagado del todo los ecos de las torturas, los asesinatos y la represión generalizada.

Para Hayek, por tanto, la acumulación originaria, llamada “dictadura de transición”, se reproduce también dentro del régimen contemporáneo de acumulación de capital, y es la condición para el funcionamiento de la libertad de mercado. La necesidad de ejercer, en palabras de Hayek, “poderes absolutos” también se manifestará al final del ciclo porque el mercado, el comercio mundial y la libre iniciativa empresarial se convertirán en una espiral de contradicciones y oposiciones que solo la guerra y la guerra civil podrán resolver.

Los propios ordoliberalistas reconocen que las relaciones económicas deben imponerse políticamente. Su gran innovación no consiste ni en el funcionamiento del mercado mediante la intervención del Estado, ni en la libre determinación de los precios, siempre asistida jurídicamente, sino en la teorización de la Constitución económica. Hace falta un marco político, una decisión metaeconómica, para afirmar la existencia y garantizar el funcionamiento del capitalismo. Pero esta dimensión extraeconómica no la proporciona la constitución, sino la guerra y la guerra civil, que definen cada vez una nueva constitución material, que es lo que está en juego en la actual guerra mundial “a pedazos”.

La fuerza, la violencia y la guerra son fuerzas económicas, como ya sabía Marx, porque solo a través de ellas puede comenzar el ciclo económico: “La acumulación originaria”, génesis política del capitalismo y de las clases, “es una distribución originaria: la violencia, la lucha de clases como fuerza productiva”, dirá Hans-Jürgen Krahl (1973), añadiendo que integrar la “distribución primaria de los medios de producción”, que descansa en “la violencia, las luchas de clases, las revoluciones” al concepto de producción, es la única manera de articular la *crítica de la economía política* y la *lucha de clases, la producción y la guerra*.

La guerra y la guerra civil son, pues, los signos de la repetición de la acumulación originaria, capaces de determinar la transición de un modo de producción a otro, de una forma de acumulación a otra, porque juntas constituyen las fuerzas *destructivas* del viejo orden y *constitutivas* de un nuevo *nomos* del mercado mundial.

Sin embargo, debemos abandonar el punto de vista eurocéntrico presente en el marxismo occidental para dar cuenta de esta “distribución original” en la que esta-



mos inmersos hoy. La conquista de los cuerpos y su sometimiento se articula a nivel del mercado mundial y se produce y estabiliza, por primera vez, diferencialmente entre el Norte y el Sur por la conquista de América. En el Norte, la consolidación del poder de los vencedores movilizará la ley, el salario, el bienestar y todos los instrumentos que las teorías de los años sesenta y setenta elaboraron (afectos, deseo, disfrute, etc.) para integrar el cuerpo y el alma de los vencidos en la producción. En el Sur, en cambio, a la institucionalización de la relación laboral, a la integración por medio del bienestar, a la acción de los afectos, se antepone la violencia colonial, la “gubernamentalidad”, si se puede llamar así, que utiliza como “dispositivos” el racismo y la guerra civil permanente. Así, desde el punto de vista del mercado mundial, que es el punto de vista de la máquina de capital-estado, el régimen de guerra es permanente, la “paz” es siempre relativa, local y temporal. O, más exactamente, desde la Primera Guerra Mundial las diferencias entre guerra, paz y guerra civil ya no son tan claras, tienden a desaparecer.

Esta violencia diferencial entre centro y periferia constituye la segunda condición política que las teorías de la producción, ya sean materiales o inmateriales, biopolíticas o cognitivas, parecen ignorar por estar centradas en Europa.

Tercera condición: la gubernamentalidad, que prosigue la guerra de conquista por otros medios, solo puede actuar sobre la subjetividad después de haberla ganado. Ninguna norma económica, sexual o racial puede imponerse en una situación caracterizada por un alto nivel de lucha de clases (como, por ejemplo, en América Latina o Italia en los años setenta). Es necesaria una normalización preventiva tanto política como subjetiva, variando la intensidad del uso de la violencia y de la guerra civil en función de la relación de fuerzas. Solo en estas condiciones las normas neoliberales encuentran la posibilidad de actuar sobre los individuos, moldeándolos, construyéndolos y subyugándolos. Esta normalidad no es un supuesto externo que pueda ignorarse; al contrario, concierne directamente a su eficacia.

Estas tres condiciones —es decir, la división entre propietarios y no-proletarios, la articulación de estas divisiones a nivel del mercado mundial y la normalización por la fuerza que precede a la normalización por las normas y los afectos— se encuentran al principio de cada ciclo de acumulación y también hoy, cuando nos encontramos en esta misma situación.

Para terminar, el cambio radical de fase política que se produjo con la crisis financiera y de la deuda, primero privada y luego pública, que comenzó en 2007/8, se manifiesta en la guerra y en la guerra civil. Lo que está en juego es el “Nomos de la tierra” que vuelve a convertirse en la división y apropiación primaria, de la que dependerá la futura

división del trabajo, la producción, la reproducción, el mando del mercado mundial y la configuración de las clases de trabajadores, mujeres y racializados.

Tras la crisis financiera que marca el fin de la gubernamentalidad neoliberal, una enorme creación monetaria mantiene artificialmente vivo un sistema que, en lugar de reiniciarse, se desgasta. Los Estados que salvaron la máquina de beneficio/poder se enfrentan a enormes desequilibrios internos entre clases y externos con otros Estados. La competencia se convierte en conflicto armado. La guerra, que inició el ciclo, lo termina ahora, pero con una violencia multiplicada por la producción y la productividad desarrolladas durante la fase de expansión del ciclo.

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# HERMANN HELLER AND “AUTHORITARIAN LIBERALISM.” PLEONASM, OXYMORON, OR...? GENESIS AND DEVELOPMENT OF A HISTORICAL-POLITICAL CONCEPT\*

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## HERMANN HELLER Y EL “LIBERALISMO AUTORITARIO”. ¿PLEONASMO, OXÍMORON O...? GÉNESIS Y DESARROLLO DE UN CONCEPTO HISTÓRICO-POLÍTICO

### Abstract

In 1933, the year of the dramatic end of the Republic of Weimar, Herman Heller analysed for the first time the concept of authoritarian liberalism in an essay published on *Die Neue Rundschau*. He identifies the risks and ambiguities of this expression, which hides the core of a new social, political, and economic group of power firmly pointed in the conservative direction. In this respect, Heller focuses his criticism on the theorist of this authoritarian turn, Carl Schmitt, who condemns parliamentary liberalism because

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of its pluralism. Schmitt's goal is to achieve the total State. Heller is aware that liberalism is a feeble answer to the ongoing crisis and knows that only a State endowed with adequate authority would be able to ensure the functioning of Parliament and Government, both riven by irreconcilable conflicts.

### **Keywords**

authoritarian liberalism; Weimar Constitution; strong state; free economy

### **Resumen**

En 1933, año del dramático final de la República de Weimar, Herman Heller analiza por primera vez el concepto de liberalismo autoritario en un ensayo publicado en *Die Neue Rundschau* e identifica los riesgos y ambigüedades de esta expresión, que esconde el núcleo de un nuevo grupo de poder social, político y económico que apunta con firmeza en una dirección conservadora. En este sentido, Heller centra su crítica en el teórico de este giro autoritario, Carl Schmitt, qui en condena el liberalismo parlamentario por su pluralismo. El objetivo de Schmitt es lograr el Estado total. Heller es consciente de que el liberalismo es una respuesta débil a la crisis actual y sabe que sólo un Estado dotado de la autoridad adecuada podría garantizar el funcionamiento del Parlamento y del Gobierno, ambos divididos por conflictos irreconciliables.

### **Palabras clave**

liberalismo autoritario; Constitución de Weimar; Estado fuerte; economía libre

*Authoritarian liberalism?* is the title of the final essay published in 1933 by political Hermann Heller in the German magazine *Die Neue Rundschau* (Heller, 1971a). At that time, he had already fled Germany and headed to London, where he gave some lectures at the London School of Economics during the brief exile preceding his premature passing in Spain.

The spiral of events leading to the tragic end of the Weimar Republic was the inspiration for this paper. The oxymoron, as it was defined (Atzeni, 2021), that gives the title to the brief essay is the indicator of an outgoing political process which, in a couple of weeks, will bring Adolf Hitler to the office of Chancellor of the *Reich*. This *epochemachend* turning point took place within the boundaries of lawfulness, paving the way to the rise of Nazism. The Hellerian paper actually represents a strongly polemical response to the work *Starker Staat und gesunde Wirtschaft* by Carl Schmitt (Schmitt, 1995). This was the text of a speech given at a conference held in Düsseldorf in 1932 within the general assembly of the so-called 'Langnam-Verein', a powerful association of the industrial lobbyists of the Rhineland. It should be noted, however, that among the sources criticised by Heller in his work, behind Schotte, von Papen, and Schmitt, there could be Alexander Rüstow, one of the fathers of ordoliberalism. Heller had already criticised Rüstow and quoted him, albeit implicitly, in the term 'Neoliberal State', which is used critically in the text under discussion (Heller, 1971a, p. 653). The expression 'Neoliberal State' was supposedly coined for the first time by Rüstow in an essay in 1932 (Malatesta, 2021, p. 72).

1.1. Heller was a militant social democrat. To fully understand and evaluate his paper, it is essential to be aware of the political and constitutional situation of those last weeks of 1932. First, it must be observed that Heller's great opponent, Carl Schmitt, strongly criticised the Republic of Weimar. His analysis enjoyed an immense and corrosive success—for a series of reasons that we will explain—within such an explosive social, political, and economic situation.

*Die Evidenz des an sich unklaren Schlagwortes vom 'autoritären' Staat beruht also im Nachkriegsdeutschland zu einem Teil auf der Schwäche des demokratischen Regimes. Zum weitaus größeren Teile aber darauf, daß die ratlose Verwirrung, in der sich Deutschland namentlich seit 1929 befindet, es besonders empfänglich macht für jede Diskreditierung der demokratischen Staatsautorität und für den Wunderglauben an die Diktatur."* (Heller, 1971a, p. 646)

The counterbalance to these circumstances was represented by the weak and pressing limit of the democratic process, whose levers of power were enfeebled and, in the end, inoperable.

No less serious deal was the ineffectiveness of the Social Democrat political action. This political force was the backbone of the Weimarian experience, which, in the early thirties, with Nazism just around the corner, still had “Germany is not Italy” among its keywords. This was the sign of a non-awareness of the severity of the political crisis and the symptom of a lack of understanding of the *novum* of National Socialism. The problem was that it was not possible anymore to save the Weimar Republic within a liberal-democratic process. Unlike many of his fellow party members, Heller was well aware of the short circuit between the dramatic polarisation of the Weimarian political overview amid extreme left and right wings, the difficulties of building a well-grounded majority on the one side, and the deep distrust of the masses in traditional parties (this last having as an immediate consequence the uncontrolled rise of “*religiose Inbrunst an die Erlösung aus allen Nöten durch den Führer*” (Heller, 1971a, p. 646) on the other.

1.2. The root of the Weimar crisis was in the ruinous defeat of the labour movement and its institutional representative, the SPD. According to Rudolf Hilferding but his vision is embraced by contemporary historiography—“*il destino della socialdemocrazia è il destino stesso della democrazia, quindi il destino dello Stato*” (Rusconi, 1977, p. 145). The working class had represented a bulwark against Nazism, for it was aware of its social role and had actively taken part in the revolution. However, the SPD’s élite was still pivotal in keeping control of the revolutionary process. This élite had immediately brought about a firmly moderate turn, and a clear signal of this course of action was the violent repression of the party’s left wing, as well as the assassination of the leaders of the KPD, Rosa Luxemburg and Karl Liebknecht on the 15<sup>th</sup> of January 1919. Even if the murder executors were members of the *Freikorps*, the instigator was the social democrat Defence Minister Edward Noske. In addition to Hilferding’s, another authoritative opinion comes to us from historian and activist Wolfgang Abendroth, who analysed the involution of the SPD and the estrangement from its political objectives. The SPD was already prepared to become a ruling party during the war years, but it had been unwilling or unable to rule without the support of the existing institutional system. Thus, the SPD had not been able to break free from the power of influence of the *Reich*, which was rooted in the central administration. The party and the working class collapsed together. The SPD had made inroads into the unity and awareness of the worker’s movement because of the terrible economic crisis and the impending politics of reparations. However, it was unable to carry on the fight both on the institutional and extra-institutional level and to exploit “*le possibilità di democratizzazione nate nei mesi della rivoluzione*” (Rusconi, 1977, p. 506). The road to authoritarian involution was paved and open. Heller’s defence of the Republic was genuine and desperate at the



same time, for he was aware of the dramatic shortcomings in the democratic political practice, whose founders have "*der historische Schuld (...) daß sie das unerschütterliche Gesetz der politischen Macht allzusehr mißkannt haben*" (Heller, 1971a, p. 646): the inseparability of law and power which, in a democratic system, are to support each other, or they both collapse. There cannot be any law without power, and vice versa. Unfortunately, Heller says, the ominous belief in the law that is ruled by itself and is liberated from power is deep-rooted in Germany's cultural tradition. The Republic's founders dramatically separated these instances, thus condemning themselves to inaction and a lack of comprehension of the present. As it has been well said, Heller imported a painful, yet crystalclear conviction: "*fu la debolezza di coloro che avrebbero dovuto difendere la Repubblica di Weimar e la sua costituzione, ancor più della forza di chi vi si oppose, a decretarne la fine*" (Atzeni, 2023, p. 37).

1.3. Following the April 1932 State elections, the Prussian Government lost its *Landtag* majority, and on the 19th of July 1932, *Reich* President von Hindenburg issued an Emergency Decree that dismissed the government. Because of its geopolitical weight, those who controlled Prussia controlled the whole *Reich*. The pretext for this emergency measure was the violent riots in some areas of the *Land*. This pretext went down in history as the "Altona Bloody Sunday" and took place on the 17<sup>th</sup> of July 1932, with clashes between SA members and Communists. Local authorities were not able to keep the riots down, and eighteen people were killed. The Emergency Decree of the 20<sup>th</sup> of July 1932 removed the Prussian State Government and proclaimed *Reich* Chancellor of Germany Franz von Papen *Reich* Commissioner for Prussia, giving him full powers over all the *Land's* institutions. It was a real coup d'état, and Prussia reacted by seeking an injunction against the *Reich*, the *Preußen contra Reich*, with the State Court of the *Reich* Supreme Court. Together with Bilfinger and Jacobi, Schmitt was part of the board that represented the *Land*; on the opposite side, Heller, with Arnold Brecht, the *Land's* lawyer, defended the parliamentary groups of the Social Democratic Party. The proceeding, though, did not achieve the desired effect, for even though Hindenburg's Emergency Decree was declared unconstitutional, the transfer of power to von Papen had already been completed. Hence, the Court's decision had no effect.

1.4. The confrontation between the parties had already shown one of the major issues of the establishment of a democratic framework (then of the proper sense of authoritarian liberalism), namely the interpretation of Article 48 of the Weimar Constitution, which authorised the President "to take all the measures to restore order and public security, if they are seriously disturbed or endangered within the German *Reich*, intervening, if necessary, with the assistance of the armed forces". For this purpose, he could temporarily suspend,

wholly or in part, the effectiveness of some fundamental rights. From opposite sides, Schmitt supported the thesis of a possible suspension of all the fundamental rights for the safeguard of the Republic, while Heller believed that the authority accorded to the President of the *Reich* could not be an unlimited one in the exercise of full powers and the literal understanding of Article 48 of the Weimar Constitution. The dictator-commissioner holds a mandate that is well definite for time and object: the restoration of the status quo ante, then within the limits of the current Constitution: “*eine unbegrenzte Kompetenz ist eine contradictio in adjecto (...) die außer kraft zu setzenden Grundrechte limitativ und nicht bloß exemplifikativ aufgezählt sind, also keine anderen Grundrechte außer Kraft gesetzt werden dürfen*” (Heller, 1971b, pp. 407, 410).

In this scenario, we are keen to emphasise Schmitt’s opportunistic course of action. His position changes significantly over ten years: in *Dictatorship*, he writes about Article 48 as a clear-cut case of commissarial dictatorship while acknowledging the contradictory duplicity between the seemingly limitless jurisdiction provided by the first paragraph and the jurisdiction delimited by the enumeration of the fundamental rights that could be subject to suspension. Ten years later, between 1931 and 1932, he came to the opposite conclusion.

In the face of a real coup d’état, the last act of the dying Republic, “*kam das höchste Gremium der SPD, vier Tage noch vor dem 20 July einmütig zu dem Ergebnis, bei allem, was kommen möge, die Reichsgrundlage der Verfassung nicht zu verlassen*” (Bracher, 1978, p. 522). The worst mistake Weimar Marxists made in dealing with the rise of National Socialism was staying true to their ideological approach. They just countered “*la sua obiettiva funzione economica (...) le connivenze con il grande capitale e la sua composizione di classe*” but tragically “*negandogli la ‘dignità’ di soggetto politico*” (Rusconi, 1977, p. 453), thus preventing themselves from making a stand against such imminent danger.

2. Heller’s text is definitely a militant one: before being a jurist, a lawyer, and a philosopher of law and politics, he belonged to the SPD, albeit keeping a sharp critical eye. His work aims at uncovering the intents of a merely cosmetic liberalism that was only willing to bring about an authoritarian turn to a predominantly Nazi government. This turning point had already occurred in 1930 with the Brüning governments, but it became evident both with the von Papen government and ever more with the Schleicher government, both already sucked into the coils of the NSDAP. This turning point was supported by Carl Schmitt, who is—with his diabolical mastermind—the real polemical target of Heller’s work. Actually, the *nexus* that Heller establishes between von Papen and Schmitt should be corrected (Malatesta, 2021). Schmitt’s strongest relationship was with Schleicher. The two were friends but Schmitt “*non avrebbe certo speso molte parole*

*per protestare contro la sua uccisione*" on the 30<sup>th</sup> or June 1934 (Galli, 2019, p. 46). What could be the meaning, then, of an authoritarian liberalism? What was the meaning of such a pseudo concept hiding more than it might seem? According to classical legal nomenclature, authority "*heißt Macht und Geltung, Ermächtigung und Berechtigung*" (Heller, 1971a, p. 645). It is a key concept of the philosophy of law, for it refers to the correlation between sovereignty and legitimacy: "*Gegen wen oder was polemisiert also die Vorstellung vom 'autoritären' Staat? Hat es jemals einen nichtautoritären Staat gegeben?*" Heller wonders rhetorically (Heller, 1971a, p. 645). To him, authority means power, and the State is—if it wants to exist and remain as such—"ein autoritärer Herrschaftsverband" (Heller, 1971a, p. 645). Liberalism as a political theory, then, can only be based on authority. If we talk about *authoritarian* liberalism, we are talking about a pleonasm that disguises something very different. Apparently, it could be an oxymoron or a pleonasm, depending on interpretation. Actually, the German big bourgeoisie behind von Papen and Schleicher—those who had the *Langnam Circle* as one of their connection points—operated a radical criticism of the Weimarian democracy with a view of a revolutionary conservative turn. In light of this twist, any constitutional authority would have failed to give way to a state of exception that could replace the normative system based on the separation of powers. "*Il liberalismo autoritario non condurrebbe, dunque, ad una depoliticizzazione netta dell'economia, bensì manifesterebbe una sorta di capacità camaleontica dello Stato di farsi presenza e assenza là dove di volta in volta serve*" (Atzeni, 2021, p. 6). It is just hard not to think of Franz Neumann's *Beemoth*. 'An intermittent presence', occasional, depending on the contingent needs, then an exploitative use of the institutions that alters their structure "*e l'uso della politica, tracciando dei contorni che consentano una seminale 'statalizzazione dittatoriale delle funzioni politico-spirituali*" (Atzeni, 2021, p. 6). As pointed out by Neumann, Schmitt makes "*l'errore di fare del pericolo l'elemento centrale del politico e di svaloriare la partecipazione democratica*" (Brindisi, 2020, p. 30–31). In perfect harmony with Neumann, Heller does not accept the Schmittian legislator 'ratione necessitatis' as a justification to the state of exemption: "*Souverän ist also, wer über den Normalzustand durch die geschriebene oder ungeschriebene Verfassung entschieden hat (...) Und nur wer über verfassungsmässigen Normalzustand entscheidet, entscheidet juristisch auch über den Ausnahmezustand, gegebenenfalls contra legem*" (Heller, 1971f, p. 127).

2.1. One of the forerunners of this radical change—prior to a permanent state of exemption that took place from February 1933 when Hitler became *Bundeskanzler* of Germany in a way that could not be predicted exactly—is certainly Carl Schmitt, the most influential and controversial conservative jurist. He was Schleicher's friend during

the last years of the Republic and carried out an intense political and theoretical activity in support of the right-wing government, actively working to solve the severe crisis of those months. On some level, distinguishing between theoretical and practical dimensions, we could speak of two different Schmitts: on the one side, there is the theorist with adamantine and flawless intelligence, the author of an analysis of European significance who was even called by a significant part of German jurists, *Vater der Verfassungsväter* until after the war (Preuß, 1993) to emphasise his importance. On the other side, we have an engagé politician, who acted in an extremely ambiguous and hazy way from 1930 to 1933 making “*veri e propri contorcimenti*” and “*lampi di genialità, opportunismi, ingenuità, malcelate ambizioni*” (Galli, 2019, p. 47). In these continuously and suddenly mutating scenarios determined by the deterioration of the situation, Schmitt’s position formulates a hypothesis of a commissary dictatorship replacing the Parliament by application of Article 48 of the Weimar Constitution. This article gave the *Reich* President the powers of the state of exemption, allowing him to suspend fundamental rights. Now the question is: was such extensive power, with a faintly delimited mandate—as in Schmitt’s interpretation, the President could suspend all the fundamental rights—still in the frame of a commissary dictatorship, and therefore of the law of the Republic? Namely: “*la proposta schmittiana è ancora interna alla Costituzione vigente, o ne è un superamento di fatto?*” (Galli, 2019, p. 47).

2.2. A response to these questions comes right from Schmitt. In his most important text, *Verfassungslehre*, he wrote

*Eine Diktatur insbesondere ist nur auf demokratischer Grundlage möglich, während sie den Prinzipien liberalen Rechtsstaatlichkeit schon deshalb widerspricht, weil es zur Diktatur gehört, daß dem Diktator keine tatbestandsmäßig umgeschriebene, generell normierte Kompetenz gegeben wird, sondern Umfang und Inhalt seiner Ermächtigung von seinem Ermessen abhängig sind, so daß eine Zuständigkeit im rechtsstaatlichen Sinne überhaupt nicht vorliegt.* (Schmitt, 2003, p. 237)

It is evident here how Schmitt is setting up an equation between democracy and dictatorship, and the result is a *Kompetenz-Kompetenz*, the supreme validation of sovereignty. This last, instead, by completely emancipating itself from the parliamentary form of the State, loses its features of the commissary dictatorship, i.e., a delimited competence over time and object as required by the democratic interpretation in the furrow of Roman law outlined by Heller who was following Bodin’s model (Pomarici, 2010). The final result is a dictatorship that by subrogating all the power in its representative,

turns him into the sovereign of a new order. According to Wolfgang Schluchter (1982), what is still alive and yet unrealised in Heller's thought is his conception of democracy, which is the polar opposite of Schmitt's idea of the identity-representation dialectic. The *crux* here is the dialectic between One and the multiple, in which the multiple is an ever-present source of sovereign power through the representation. The two-way relationship between One and multiple is continuously reformulated in its content, a form of life for which Heller has been struggling arduously and in vain and whose central points were the need for redistribution by criteria of equality and the duty of the State to respect the ethical creed of its citizens and not to impede its implementation (Schluchter, 1982). Neither more nor less, therefore, than the claim contained in Marx's *On the Jewish Question*: overcoming alienation between man and citizen as the highest political value, albeit as an asymptotic objective. However, the signature of his 'democratic constitutionalism'—as the latest volume dedicated to the rediscovery of his thought defines Heller's theory of the State (Frick & Lembke, 2022)—also represents, in the Weimarian climate, the singular character of his contribution, that is, the struggle for a constitutional welfare State, of which he is considered one of the forerunners. It has been correctly noted that

*la debolezza delle democrazie post-belliche doveva essere considerata l'effetto di un processo storico-politico che aveva visto il riconoscimento dei diritti fondamentali all'interno di un contesto per altri versi caratterizzato da una crescente ineguaglianza sociale, e quindi dal sostanziale isolamento della classe operaia. L'«omogeneità» realizzata da e attraverso lo Stato di diritto si era rivelata puramente 'giuridico-formale': mancava quella 'sociale', appunto. (Lagi, 2019, p. 236)*

2.3. To explain the meaning of authoritarian liberalism, authoritarian State, or strong State (*Starker Staat*), as Schmitt would rather call it, and hence a crucial torsion in the ideal conception of liberalism, Heller resorts to the relationship between the State and capitalist economy.

*Im neunzehnten Jahrhundert hatte der preußisch-deutsche Konservatismus den bürgerlich-liberalen Kapitalismus, der alle überlieferten Bindungen auflöste, entschieden abgelehnt. Ohne allerdings die Entwicklung dieser Wirtschaftsform hindern zu können, hatte der Konservatismus damals die Kraft besessen, dem liberalen Bürgertum seine politischen Wertungsweisen einzuimpfen und es allmählich zu feudalisieren (...) Im zwanzigsten Jahrhundert vollzog sich der umgekehrte Prozeß. Der großbürgerliche Kapitalismus zeigt die größere Assimilationskraft,*

*dem Konservativismus werden alle antikapitalistischen Hemmungen genommen und der letzte Tropfen sozialen Öles entzogen; zum Vorsitzenden der ehemaligen konservativen Partei wird der frühere Kruppdirektor und Zeitungsmagnat Hugenberg.* (Heller, 1971a, p. 650)

Historically, the liberal State originated with the idea of withdrawing from civil society, and this separation was based on the idea of two connected worlds with different functions: the State set up all the financial, military, administrative, and juridical means in order to guarantee the *safety* of civil society, which, in turn, was intended for private *production and profit*. This was the division of tasks between the two spheres. So here it is the sense of the nightwatchman State, the minimal state that does not take action on society's productive activity. The State of non-intervention gives up total control over individuals, leaving freedom of trade without imposing any rules. However, such a sharp distinction between the State and the individual in the age of the big monopolies seems unachievable. Clearly, in this new situation, it is impossible for the State to ignore—also just from a liberal perspective—the economic situation, considering that the major capitals pervade the economic life, threatening its balance. Nowadays, from a liberal point of view, the State needs to have its own policy to safeguard its citizens' economy. What is, Heller wonders, this authoritarian liberalism about which Schmitts is talking if the *Starker Staat* gives up its authority as soon as you start discussing economics? (Heller, 1971a, pp. 650–651). The key point of Heller's criticism includes the core sense of the authoritarian operation, that is, the 'double' movement: on the one side, *the "Rückzug des 'autoritären' Staat aus der Sozialpolitik"* leaving the field open to all the economic forces of the big capital and, at the same time, "the authoritarian dismantling of welfare policy" at a time of tragic unemployment, as well as "*Entstaatlichung der Wirtschaft und diktatorische Verstaatlichung der politisch-geistigen Funktionen*" (Heller, 1971a, pp. 652–653). The aim is not the national budget but rather the dismantling of the remaining resistance within the SPD and the trade unions. Heller clearly describes the turning point: preparing under the cover of authoritarian liberalism and behind Carl Schmitt's words at the Langnam Circle. It is not by chance that the title of his work has a question mark. Schmitt "*im Grunde kennt er nur einen einzigen 'autoritären' Staat, nämlich die faschistische Diktatur nach Mussolinis Muster*" (Heller, 1971a, p. 647), which Heller had studied during his long stay in Italy and was the subject of his wide essay *Europa und der Faschismus*. The idea of the dictator that "*in antiker Simplizität' mit Hilfe einer einzigen Diktaturpartei dem gesamten politischen Leben den Willen eines einzigen Mannes gewaltsam*

*aufzwingt*" (Heller, 1971a, p. 647). Heller sees beyond the authoritarian operation of depoliticisation of the economy. He sees its ill-concealed purpose:

*alle Einrichtungen und Denkformen des demokratischen Rechtsstaates um ihren Autorität gebracht, als rationalistischer Unsinn des achtzehnten oder neunzehnten Jahrhunderts dargestellt und die Weimarer Verfassung durch eine entsprechende Interpretation ad absurdum geführt werden. (Heller, 1971a, p. 647)*

Schmitt's science of law, Heller says, turns the Constitution from being "etwa ein Rechts-normzusammenhang" into "eine 'Entscheidung', der Parlamentarismus eine unsinnige Einrichtung, welche durch Diskussion die ewigen Wahrheiten feststellen will, und jede Verfassungsgerichtsbarkeiten ein Gift, welches dazu bestimmt ist, das Deutsche Reich auf den Stand seiner Machtlosigkeit im siebzehnten und achtzehnten Jahrhundert zu bringen" (Heller, 1971a, p. 647).

As can be noted, in such a tragic time, Heller came close to Kelsen's positions—both on the idea of the Constitution and in his evaluation of the legal constitutional review he had stigmatised in his essay *Rechtsstaat oder Diktatur*.

2.4. Contemporary capitalism organised in its complex forms cannot escape some kinds of planning: an authoritarian State willing "die 'freie Arbeitskraft aller wirtschaftstreibenden Menschen' zu sichern" cannot slide out of the economy. "Er wird gerade auf dem ökonomischen Gebiet autoritär, und zwar sozialistisch auftreten müssen" (Heller, 1971a, p. 653). This matches perfectly the projects of a plan-state flourishing all over Europe during the interwar years (also in the Soviet model), which at the time originated an extensive body of literature. Large amounts of capital are concentrated in monopolies, generating an increasing number of economic instruments and political tools for the democratic State. It is, therefore, ruinous and inconceivable, in Heller's view, if not through deception, to think of a radical separation between politics and the economy. In a political democracy, the economic leaders are perfectly able to gain a predominant position:

*Ihre Kapitalmacht gestattet es ihnen auf dem Umweg über die Parteikassen, über die Zeitungen, das Kino, Radio und die große Zahl von sonstigen Mitteln der Massenbeeinflussung, die öffentliche Meinung zu dirigieren und so indirekt eine enorme politische Macht zu entwickeln. Aber auch direkt durch ihr der Staatsgewalt gegenüber betätigtes wirtschaftliches Schwergewicht, unter anderm durch Finanzierung der direkten Aktion politisch-militärischer Stoßtrupps, ferner durch ihren ökonomisch-technischen Sachverstand und Überblick, welcher der Bürokratie überlegen ist, und endlich durch ihre starken internationalen Beziehungen Einfluß zu entfalten. (Heller, 1971h, p. 235)*

If, in Schmitt's view, the total State emancipating itself from the politicisation of economics is the *κᾶτ'ἐξοχὴν* State, Heller tells a different tale. It is right that economic politicisation is the *definitive* front on which the contemporary State must operate to safeguard the working masses. In the long run, Heller says, the political leaders need more than indirect political influences, for these influences are threatened in their effectiveness by the provisions issued by the democratically controlled legislator. This separation of political power from social-economic power is not going to last. This is what happened, albeit in an innovative form, with the seizure of power by the National Socialists. However, Heller writes in his *Staatslehre* that an independent bureaucracy, one that is endowed with an administrative *ethos* and professional honour, one which is not easily corruptible, in combination with a working class able to contest through its own print media and political organisation, could dramatically reduce the political influence of economic leaders. But the political leaders, as compared to the bureaucracy and the working class, seem less able to exercise the political power that is theirs by right in order to curb the economic powerhouses (Heller, 1971h, pp. 200–201).

2.5. But Heller does not embrace the idea of the end of the liberal democracy. He believes that it is not impossible to hold together individual rights and pluralism while noting the conciliatory nature of liberalism, as opposed to the imperative radicalism of democracy. On this crucial point, he could not disagree more with Schmitt. This last sharply separates liberalism from democracy, thus assuming dictatorship as the highest form of democracy. To Heller, instead, pluralism is an essential value to be defended; hence, liberalism and socialism seem like the two historical forms of manifestation of contemporary democracy: in its political function, liberal democracy means emancipation from the bourgeoisie, whilst social democracy is emancipation from the working class (Heller, 1971g, p. 333). Unlike Schmitt—who radically and axiologically opposes liberalism to democracy, the *clasa discutidora* to the plebiscitary decision—for Heller, the criticism of the limits of liberalism does not lead to an option against liberalism (Heller, 1971g, p. 333). Indeed, liberalism and democracy come from one source (Dyzenhaus, 1997, p. 187), so his criticism is aimed at the *Bürger* turned into a *Bourgeois*:

*Bourgeois ist der durch seine gesellschaftlich-politische Sekurität in jeder Hinsicht saturierte Bürger; von keinem Zweifel gestört, weil von allen zeitlichen und ewigen Fragengelöst, ist er über sein persönliches und gesellschaftliches Dasein völlig beruhigt. Nichts weist ihn über seinen gesellschaftlichen Wirkungswert hinaus; er ist der nur sich selbst wollende Mensch.* (Heller, 1971c, p. 629)



The *crux* of the issue is democracy, its sense, and function: Heller vigorously defends it by going to the root of the problem. It is not about turning democracy into a dictatorship; it is about defending its reasons to the hilt.

*Und die Krise der Demokratie? (...) Geistesgeschichtlich ist eine Krise der Demokratie nicht vorhanden (...) Die Demokratie als solche, die unser Denken beherrschende Vorstellung, daß alle politische und gesellschaftliche Macht nur gerechtfertigt werden kann durch den Willen der Machtunterworfenen, ist so wenig in ihrer Herrschaft erschuttert, daß unbedenklich behauptet werden kann, es gibt überhaupt heute keine andere Herrschaftslegitimation, als die demokratische.* (Heller, 1971g, p. 329)

Heller is well aware of the severe ongoing crisis—we are in 1932—but circumscribes it to the parliamentary practice and ascribes the responsibility to a transformation of the democratic ideals. We are witnessing, he says, the switch over from a rationalistic-individual democracy to a form of social democracy. ‘Atomistic’ democracy is opposed to a national ideal, which would mean moving towards a democracy capable of engaging the entire national community. The root causes of this technical crisis of democracy need to be sought out in the intensification and generalisation of the democratic practice, which, with the current instruments (most notably, parliamentarism), is unachievable.

3. Kelsenian interlude. Unlike Schmitt, Kelsen does not embrace Rousseau when it comes to political theory. He literally disaggregates Schmitt’s idea of identity as an essential feature of democracy, and Heller will largely agree on this. Of course, says Kelsen, democracy means “*Identität von Führer und Geführten, (...) Herrschaft des Volkes über das Volk*”. But right after he wonders “*Allein was ist dieses ‘Volk’? Eine Vielheit von Menschen*” (Kelsen, 1929, p. 14). And democracy seems to assume that this plurality of individuals represents a unity “*doch ist für eine auf die Wirklichkeit des Geschehens gerichtete Betrachtung nichts problematischer als gerade jene Einheit, die unter dem Namen des Volkesauftritt*” (Kelsen, 1929, p. 15), Kelsen is, therefore, aware of the fictional nature of the unity, just like Schmitt, but arrives at radically different conclusions. On the one side, the Prague-born jurist affirms: it is true that “*nur in einem normativen Sinn kann hier von einer Einheit die Rede sein*”, but just in the sense of “*ein System von einzelmenschlichen Akten die durch die staatliche Rechtsordnung bestimmt sind*” (Kelsen, 1929, p. 15). This implies a hard relativisation of the concept of people:

*Stets sind es nur ganz bestimmten Lebensäußerungen des Individuums, die von der staatlichen Ordnung erfaßt werden; stets muß ein mehr oder weniger großer Teil des menschlichen Lebens außerhalb dieser Ordnung bleiben, stets muß sich eine gewisse staatsfreie Sphäre des Menschen erhalten.* (Kelsen, 1929, p. 16)

This means that a great mass of individuals remains out of the people intended as a legal entity, and each one for a small part: no individual belongs to the legal people “as a whole” (Kelsen, 129, p. 15). A firm distinction must be made, then, between the people as a subject of the power through involvement in the creation of the State order and the people as an object of the power, thus subjected to norms. The two peoples stay radically disjointed! And this is so clear that

*den demokratischen Ideologen eist gar nicht bewußt ist, welche Kluft sie verhüllen wenn sie das ‘Volk’ in dem einen mit dem ‘Volk’ in dem anderen Sinn eidentifizieren (...) Da das ‘Volk’ das die Grundlage der demokratischen Idee darstellt, das herrschende, nicht das beherrschte Volk ist. (Kelsen, 1929, pp. 17, 18)*

Democracy is, therefore, far from being based on identity. According to Kelsen and Heller’s views, democracy is based on differences. It originates from differences and not by any assumed natural or ontological homogeneity, as claimed by Schmitt. This is the difference between Kelsen and Heller, on the one side, and Schmitt, on the other: these differences in the dimension of reality, which Schmitt also recognises, are not extinguished in the legal fiction but constitute its structure, operating normatively to settle the difference: “treat all the same cases in the same way”, but also “treat different cases in different ways”. On the level of social reality, political parties are the expression of the divisions within the State, which are purposely arranged by law and politics to give full meaning to democratic ideals and enhance differences. This is the strong connection between democracy and liberalism, hence the organizational structures which are essential to link different opinions and ideologies: “*Nur Selbsttäuschung oder Heuchlei kann vermeinen, daß Demokratie ohne politische Parteien möglich sei. Die Demokratie ist notwendig und unvermeidlich ein Parteienstaat*” (Kelsen, 1929, p. 20).

4. The crisis of modern State, says Heller, is mostly generated by “*welche Stellung man der Regierung in der Demokratie zubilligt*”. Two political ideals are fighting against each other: the first considers government as ‘*geniales Improvisieren*’, while the second as the outcome of ‘*massenautomatisches Funktionieren*’. The latter does not acknowledge an autonomous political value to government but leaves the creation of the unity to the consensus of a “*einstufigen Masse*” that requires “*dazu entweder gar keiner oder doch nur eines Minimums an Führung von oben*”. This is the triumph of nineteenth-century liberalism of the pre-established harmony in which society seems to run by itself and subsequently “*die jede Regierung als vorläufig notwendiges, aber möglichst bald zu überwindendes Übel versteht*” (Heller, 1971d, pp. 613–614). The idea that the law

necessarily implies “*subjektiver Entscheidung und freien Ermessens*” and that the government “*sowohl in der Innenpolitik wie erst in ihrer Tätigkeit nach außen durch Gesetz entweder gar nicht oder nur in bestimmten Beziehungen bindbar ist*” (Heller, 1971d, p. 615). It is the automatism of the law, nomocracy, whose most influential supporter was Hans Kelsen, who claimed that “*der Idee der Demokratie entspricht Führerlosigkeit*” (Kelsen, 1929, p. 79). At the opposite pole of this automatism that would not require any governance, for masses and norms just happen on their own, there is ‘*die politische Geniereligion*’, an autocratic ideal advocated by Carl Schmitt. Heller does not mention it here: the people is ‘*ewig unmündig*, at most it can react to a plebiscite, but at the apex there is “*das Werk genial wirkender Heroen*” (Heller, 1971d, p. 616). Not a government of ‘genius’—in which the community of values is sovereignly at the disposal of the strongman—nor a government of the official—in this case compliance to laws would generate by itself “the essential state authority without any more authority whatsoever”—seem able to face this crisis of democracy. For democracy, especially contemporary democracy, is based, by its very nature, not on the miracle of automatically functioning orders, but on a fragile and complex system of mediations, which is essential to hold the equilibrium of the check and balance structure that characterises it. Instead, these two political deals are based, on negation of mediation, which is considered to be a useless instrument. And the mediation ‘of choice’ in a democracy goes under the name of representation, of decision based on representation:

*In jeder, erst recht in einer derart gespaltenen Gesellschaft wie die unsrigen, kann die lebensnotwendige politische Einheit nur durch Repräsentation, d.h. durch eine von den Gegensätzen der koalitierten Massen relativ versälbständigte Entscheidungsgewalt der Regierung hergestellt werden. In der Diktatur ist diese Repräsentation eine souveräne, d.h. von den Beherrschten völlig versälbständigte, ihnen mit Gewalt aufgezwungene und von ihnen nicht abberufbare. In der Demokratie ist die repräsentative Stellung und Bestellung der Regierung eine magistratische.* (Heller, 1971d, p. 618)

#### 4.1. In the radical crisis embroiling the Republic, Heller acknowledges that

*ohne einen einzigen Artikel der Weimarer Verfassung zu verändern, hätte ein im deutschen Volk und in seiner Führung lebendiger und zielklarer Wille zur Macht in den dreizehn Nachkriegsjahren zweifellos eine unvergleichliche bessere politische und soziale Verfassung Deutschlands zustande bringen können.* (Heller, 1971e, p. 413)

We are now in 1932, and Heller considers it inevitable a constitutional transformation whose contours are still unclear, but he is aware that a reformation is indispensable: the legitimising basis of the authoritarian organisation can only lie on the people since it cannot descend from above, but it must come from below. Then, primarily, “*die Ermöglichung eines arbeitsfähiges Parlamentes und einer handlungsfähigen Regierung*” (Heller, 1971e, p. 415). The basis to achieve this is the conviction that a dialogue with political opponents is possible, that it is possible to come to an agreement *through a discussion*. This very condition allows to join the political struggle with an opponent that we do not want to destroy but with whom *we can and we want* to interact. This and nothing else is the common foundation of parliamentarism as a cultural value and is at the core of our democracy. If not, “*erst dort, wo dieses Homogenitätsbewußtsein verschwindet, wird die bis dahin parlierende zu diktierenden Partei*” (Heller, 1971i, p. 427). We are aware of the degree of imposition that was reached in 1933. In this regard, *and only in this regard*, according to Heller’s view:

*Von einer grösseren oder geringeren sozialen Homogenität ist also die größere oder geringere Möglichkeit einer politischen Einheitsbildung, die Möglichkeit einer Repräsentationsbestellung und die größere oder geringere Festigkeit der Stellung der Repräsentanten abhängig. Es gibt einen gewissen Grad von sozialen Homogenität, ohne welchen eine demokratische Einheitsbildung überhaupt nicht mehr möglich ist.* (Heller, 1971i, pp. 427–428)

4.2. We have already pointed out that Heller considered it a deceiving pleonasm, the idea of authoritarian liberalism. The authoritarian character, therefore, which is obvious for a State that wants to be considered as such, can only exist “*durch drei undiskutierbare Richtpunkte: die autoritäre Überordnung des Staates über die Gesellschaft, namentlich über die Wirtschaft, durch die demokratische Quelle der politischen Autorität und durch die bestimmten Grenzen der Autorität des Staates*” according to the Constitution (Heller, 1971e, p. 413). All this becomes possible, says Heller, only if the State is able to ensure itself a power of action and authoritarian political decision, renouncing once and for all to be the “*Kostgänger privat kapitalistischer Mächte ist (...) sondern sich eine nach innen und außen wirksame Wirtschaftsmacht zueignet*” (Heller, 1971e, p. 413). In doing so, the State demonstrates an understanding of the genuine sense of authoritarian liberalism and its objectives, as advocated by *Langnam Circle* and by one of its guests, Carl Schmitt. Heller points out, concluding: “*Wir wünschen den autoritären Staat, wir bekämpfen aber den totalen Staat*” (Heller, 1971e, p. 415), i.e., a *totale Mobilmachung* demanding total

involvement of the individual, who is fully integrated into the State. Kelsen and Heller absolutely agree on this point. Just like it is happening in Italy, says Heller, with the fascist law of the 24<sup>th</sup> of December 1925 "*wonach ausnahmslos alle Beamte – einschließlich der Richter und Hochschullehrer – auch außerhalb aller gesetzlichen Vorschriften entlassen werden können wenn sie sich in einen unvereinbaren Gegensatz 'zu den allgemeinen politischen Richtlinien der Regierung' setzen*" (Heller, 1971f, pp. 390–391). So, how is it possible to hope or only imagine eliminating the freedom of thought that has been fought after four centuries through the whole Modern Age? European individuals must inform their social and political actions to a plurality of religious, spiritual, and political values, reinforcing an essential and priceless heritage. The authority of a total State, instead, makes that impossible because "*dessen Autorität weder Rechtsschranken noch Gewaltenteilung noch Grundrechte kennt*" (Heller, 1971e, p. 416). Unfortunately, at the very moment Heller published *Authoritarian Liberalism?* neither that bureaucracy nor that working class whose existence Heller hoped against the upcoming meltdown was standing anymore. It was too late to resist the black wave that was preparing.

5. It is difficult to interpret Schmitt's real plans by imagining him in the centre of a preordained scheme. That was not the case because none of the key political players, much less Carl Schmitt, had full control over political events during those weeks. He wanted, however, to be considered as "*il leader intellettuale di un'operazione politica di 'conservazione politica attraverso la dittatura'*" (Galli, 2019, p. 48). The concept of dictatorship is a key to understanding Schmitt's theoretical path in order to outline its contours within the 'program' of authoritarian liberalism. As a matter of fact, rejecting the idea that Schmitt has been, in essence, a nazi thinker—to classify as such the inexhaustible richness of his thinking would be just wrong—an essential warning must be taken into account: the theory which was developed by Schmitt in the twenties should be considered distinct, for it represents "*il sostrato teorico delle sue elaborazioni dal 1933 in poi, ma non anche quello ideologico*" (Atzeni, 2023, p. 39). From this comes the urge not to shy away "*allo sforzo epistemologico di separare lo Schmitt liberal-autoritario da quello nazionalsocialista*". Schmitt's radical criticism of the liberal democrat structure of the Republic dates back to his seemingly incongruous equalisation between dictatorship and democracy. It could be said that, while highlighting the differences, dictatorship is an intermediate grade on the way to a totalitarian regime. It does not identify with totalitarianism and yet is not completely estranged, for it could represent one of its explanatory keys. Between 1921 and 1923, Schmitt connects the idea of dictatorship as the authentic form of democracy, in opposition to the liberal State form of the twentieth century that would not respect democratic intents. The binomial dictatorship/democ-

racy is fully developed in *Verfassungslehre* and *Der Hüter der Verfassung*, as well as in the works on the Weimarian epilogue. To rebuild the Schmittian route that leads the Plettenberg-born scholar to the theorisation of the *Starker Staat* condemned by Heller as authoritarian liberalism, we need to linger, albeit briefly, on some of these works.

5.1. The conceptual genealogy that could broadly identify the route towards the *Starker Staat* starts from the structural and axiological separation between liberalism and democracy. They are clearly distinct as State forms: the first is built on the principle of pluralism as a value of the institutional organisation and of civil society, and the second is built on the principle of identity, which is based, for its part, on the principle of representation. The hiatus between reality and fiction made manifest thanks to these dialectics is nonetheless a double level, and this duality originated in re, then ineradicable. On the one side, Schmitt claims that in a democracy, *“die Gefahr einer radikalen Durchführung des Prinzip der Identität liegt darin, daß die wesentliche Voraussetzung – substantielle Gleichartigkeit des Volkes – fingiert wird”* (Schmitt, 2010, p. 215): if the people were not, as it really is, a divided complex and a conflictual entity, it would need a *reductio ad unum* for its representation. *“Je mehr dieses Prinzip sich durchsetzt, um so mehr vollzieht sich die Erledigung der politischen Angelegenheiten ‘von selbst’, dank einem maximum natürlich gegebener oder geschichtlich gewordener Homogenität”* (Schmitt, 2010, p. 214). The datum of reality emerges irresistibly, always, and in any case. The critical point of this irruption into reality comes when Schmitt, in order to set fundamental criteria of democracy against liberalism, deals with the homogeneity of the people of the State. *“Jede wirkliche Demokratie beruht darauf, daß nicht nur Gleiches gleich, sondern, mit unvermeidlicher Konsequenz, das Nicht-gleiche nicht gleich behandelt wird. Zur Demokratie gehört also notwendig erstens Homogenität und zweitens – nötigenfalls – die Ausscheidung oder Vernichtung des Heterogenen”* (Schmitt, 1926, pp. 13–14). Immediately afterwards, in order to prevent misunderstanding, he points out: *“Bei der Frage der Gleichheit handelt es sich nämlich nicht um abstrakte, logischarithmetische Spielereien, sondern um die Substanz der Gleichheit”* (Schmitt, 1926, pp. 13–14). We are not in fiction anymore, then, but in a socio-political reality in the proper sense. These are impressive steps ahead, though they cannot be constrained at the time they were formulated, much less they can be labelled as ‘prophecies’ of what would happen in a decade. I rather discern, within this sharp definition, the pace of classicity of Herodotus’ Histories, in which Otanes, a supporter of democracy (ἰσονομίην) as the government of multitudes (πλήθος), claims: *“in the many (ἐν τῷ πολλῷ) is contained everything (τὰ πάντα)”* (Herodotus, III 80, p. 6). This is the point: the many, the general will, cancels and obliterates the will of the minority. The minority, actually, *unexists*. Since Plato—as it is explained in the political

cycles of Book VIII of *The Republic*—is the undebatable tangent point between democracy and totalitarianism, the State, in Schmitt's view, cannot be based on the contract, which has private law roots and implies differences and conflicts: unanimity, as well as the *volonté générale*, is present or is not present. *Naturally* present, he points out, quoting Alfred Weber (Schmitt, 1926, p. 20). Instead, the contract implies egoism and conflicts between private individuals and their *settlement*, and this is liberalism.

5.2. On the contrary, "*In der Lehre Rousseaus vom Contrat social ist völlige Gleichartigkeit die eigentliche Grundlage seines Staates*" (Schmitt, 2010, p. 229). The core of Rousseau's democracy cannot be found in the game of majority and minority. Even the majority can make mistakes. It is homogeneity that saves and guarantees: "*Man will sich nicht der Mehrheit unterwerfen, weil sie die Mehrheit ist, sondern weil die substantielle Gleichartigkeit des Volkes so groß ist, daß aus der gleichen Substanz heraus alle das gleiche wollen*" (Schmitt, 2010, p. 229). To Schmitt "*die demokratische Gleichheit ist daher eine substantielle Gleichheit. Weil alle Staatsbürger an dieser Substanz teilhaben, können sie als gleich behandelt werden*" (Schmitt, 2010, p. 228). It seems absolutely controversial that, on the basis of modern political concepts, 'the substantial homogeneity of the people' is *a priori*, hence homogeneity and equality are synonyms: if this was true, there would be no need of a formal concept of equality aiming at providing any future progress towards perfection (albeit only asymptotically). Equality is conceived—by Kant, for instance—*pro futuro*, as an open work, an achievement of political action, certainly not data or a precondition, as it will be in Schmitt's view. What is left to define democracy, Schmitt wonders, rhetorically.:

*Eine Reihe von Identitäten (...) Daß hierbei die überstimmte Minderheit ignoriert werden muß macht nur theoretisch und nur scheinbar Schwierigkeiten. In Wirklichkeit beruht auch das auf der Identität (daß) der Wille der überstimmten Minderheit in Wahrheit mit dem Willen der Mehrheit identisch ist.* (Schmitt, 1926, p. 34)

Democracy is, therefore, an identity, whereas an absolute equality of all individuals as it is postulated by liberalism, would be, Schmitt says, "*eine Gleichheit die sich ohne Risiko von selbst versteht, eine Gleichheit ohne das notwendige Korrelat der Ungleichheit und infolgedessen eine begrifflich und praktisch nichtssagende, gleichgültige Gleichheit*" substantially maimed (Schmitt, 1926, p. 17).

6. If we return to the route that shapes the concept of *Starker Staat*, as Schmitt defines it during a 1932 conference at the *Langnam Circle*, the attachment point is to be found

in the need to radically separate liberalism from democracy: liberal parliamentarism is, in Schmitt's view, the forerunner to the political liquidation of the State, which has now become a pluralistic State of the parties (Schmitt, 1940, p. 187). To Schmitt, this separation is unavoidable in giving back to democracy what has been taken off by the liberal State, i.e., identity and power of the origin. The identity of democracy is immediately related to the idea of dictatorship. But how does Schmitt come to this drift? Through the concept of total State, as it already emerges in *Der Hüter der Verfassung*. It is right in this work that the idea of pluralism as a highly negative concept takes shape, for it undermines the integrity of the State (we recall here the famous *ab integro nascitur ordo* that ends *The Concept of the Political*). Pluralism, in Schmitt's view, generates "*eine Mehrheit festorganisierter, durch den Staat (...) Machtkomplexe, die sich als solche der staatlichen Willensbildung bemächtigen*" (Schmitt, 1969, p. 71). This perversion led to the end of the clear distinction between Politics and Economics the way it had been postulated by 'the great German State theory'. The keywords 'no more politics!' marked the start of the Weimar Republic by solving every social-political problem through 'objective' technical knowledge. This phase was followed by a radical "*Politisierung aller wirtschaftlichen, kulturellen, religiösen und sonstigen Fragen des menschlichen Daseins, die dem 19. Jahrhundert unbegreiflich gewesen wäre*" (Schmitt, 1995, p. 73). Where does the evidence of this perverse process lead? To the emersion of a crucial connotation of the contemporary State. By economising the State and politicising the economy, mandatory evidence stands out: "*Es gibt einen totalen Staat*" (Schmitt, 1995, p. 73). A contemporary state can only be a total State, as each State is pledged to take possession of technical-military instruments. "*Es ist sogar das sichere Kennzeichen des wirklichen Staates, daß er das tut*" (Schmitt, 1995, p. 73). That is its nature, and there cannot be any other, for if the State renounces all of these prerogatives, forced as it is to take control of ever-new weapons to fight the enemy if it does not provide itself with strength and courage, like in a zero-sum game: "*Hat er dazu nicht die Kraft und den Mut, so wird sich eine andere Macht oder Organisation finden, die sie in die Hand nimmt, und das ist dann eben wieder der Staat*" (Schmitt, 1995, p. 74).

6.1. Within this new State the force is ensured not only by military resources but, on the same level, by means of propaganda, cinema, radio, or press that, at any cost, cannot be left in the opponent's hands. Those instruments must be kept under absolute control. Schmitt extends his idea into an unquestionable direction, should there be any doubts about that:

*Der totale Staat in diesem Sinne ist gleichzeitig ein besonders starker Staat. Er ist total im Sinne der Qualität und der Energie, so, wie sich der faschistische Staat einen,*



*“stato totalitario“ nennt, womit er zunächst sagen will, daß die neuen Machtmittel ausschließlich dem Staat gehören und seiner Machtsteigerung dienen. Ein solcher Staat läßt in seinem Innern keinerlei staatsfeindliche, staatshemmende oder staatszerspaltende Kräfte aufkommen. (Schmitt, 1995, p. 74)*

So what is, in Schmitt's view, the radical change of direction that characterises the fascist State? *“Der faschistische Staat will mit antiker Ehrlichkeit wieder Staat sein, mit sichtbaren Machträgern und Repräsentanten, nicht aber Fassade und Antichambre unsichtbarer und unverantwortlicher Machthaber und Geldgeber”* (Schmitt, 1940, p. 114). Then, transparency, visibility, honesty, virtue. If not any State can be a total State, there is not a unique type of total State. Within this framework, a 'normotype' seems to take shape, comprising a paradoxical isomorphism between democracy and dictatorship. Instead of modern opposition between democracy and autocracy, we should recover, albeit only *implicite*, the classic platonic nexus by which dictatorship and totalitarianism would necessarily arise from liberty and the democratic-liberal *idion*. The nexus between democracy and dictatorship—a progressive sliding from one to another—is analysed by Talmon on the basis of the ideas and practice of the French Revolution, during which the concepts of reason and general will make individual judgement ineffective: “Every member of Rousseau's sovereign is bound to will the general will. For the general will is in the last resort a Cartesian truth” (Talmon, 1985, p. 29). The only true root is equality, even when, instead, democracy as an indefinite horizon should lead to the establishment of differences. Jacobinism in its various forms makes equality a substitute to freedom of thought and action. But equality is openness and comprehension of the differences, not their denial. If the truth is pre-established, the public space of democracy becomes pure appearance and does not establish itself, as pluralism, which its key component, is lacking. What is left is the affirmation of the general will as the truth 'revealed' by reason. If public discussion—the Legislative—is considered harmful, thus made redundant, reason (and differences) are inevitably replaced by the leader's will, which is legitimated by their pure virtue. In the end “no incompatibility between the aim of establishing democracy and dictatorial means is conceded” (Talmon, 1985, p. 215).

6.2. Alongside this fundamental concept of 'total State by strength' enucleated by Schmitt, which seems the only possible solution to save the Republic, there is another meaning of the expression 'total state' corresponding to the German situation in 1932. This is the State that does not recognise any distinction, a *disfigured* State, which occupies any possible space and cannot distinguish anything.

*Nun gibt es aber noch eine andere Bedeutung des Wortes vom totalen Staat, (...) Diese Art totaler Staat ist ein Staat, der sich unterschiedslos auf alle Sachgebiete, alle Sphären des menschlichen Daseins begibt, der überhaupt keine staatsfreie Sphäre mehr kennt, weil er überhaupt nichts mehr unterscheiden kann. Er ist total in einem rein quantitativen Sinne, im Sinne des bloßen Volumens, nicht der Intensität und der politischen Energie. Das ist allerdings der deutsche Parteienstaat. (Schmitt, 1995, p. 75)*

Using a rhetorical *coup de théâtre*, Schmitt initially establishes the concept of total State as the true and unique contemporary State, then the normotype of a ‘total State by strength’ to which he opposes a ‘total State by weakness’, which must be eradicated, for it is absolutely permeable to the invasion of the pluralism of political parties and their omnivorous interests. Laski and Cole’s pluralistic theories are the outposts of a tendency which was spreading all over Europe (Schmitt, 1940, p. 134). This ‘total State by weakness’ cannot even be qualified as a ‘State.’ Actually, we are faced with an assembling of parties:

*Wie sind wir in diesen Staat totaler Schwäche hineingeraten? Näher gesehen, haben wir überhaupt keinen totalen Staat, sondern eine Mehrzahl ltotaler Parteien, die in sich die Totalität verwirklichen, in sich ihre Mitglieder total erfassen, die Menschen von der Wiege bis zur Bahre, vom Kleinkindergarten bis zum Begräbnis- und Verbrennungsverein dirigieren, sich in den verschiedenartigsten sozialen Gruppen total etablieren, und ihren Mitgliedern die richtigen Ansichten, die richtige Weltanschauung, die richtige Staatsform, das richtige Wirtschaftssystem, die richtige Geselligkeit von Partei wegen liefern (...) Der Zwang zur totalen Politisierung scheint unentrinnbar. (Schmitt, 1995, p. 75)*

That is exactly how National Socialism will operate, but through a unique party which, as predicted by Heller, will not determine “*Abstinenz des States von der Subventionspolitik für Großbanken, Großindustrielle und Großagrariere, sondern autoritären Abbau der Sozialpolitik*” (Heller, 1971a, p. 652). But there is more. The cornerstone of the nazi economic miracle, “the true basis of the economic miracle was the rearmament process (...) the whole German economy was defined, in the language of Nazism, *Wherwirtschaft*, or war economy”, even if in peace time, whereas the price was paid by German workers who,

deprived of his trade unions, collective bargaining and the right to strike, the German worker in the Third Reich became an industrial serf, bound to his master, the

employer, much as medieval peasants had been bound to the lord of the manor.  
(Shirer, 1960, p. 232)

This recovery was led, with full powers, by the genius of Hjalmar Schacht, Minister of Economy of the *Reich*. Even though he pleaded not guilty during the Nuremberg Trials, we can say that "no single person was as responsible as Schacht for Germany's economic preparation for the war which Hitler provoked in 1939" (Shirer, 1960, p. 230). By reversing Schmitt's logic that saw in the 'total State by weakness' all the confusion and disorder of private and public compartments, i.e., State and economy, as he invokes *Starker Staat* as an antidote, authoritarian liberalism seems to Heller the actual triumph of anarchy: "*die Zukunft der abendländischen Kultur nicht gefährdet ist durch das Gesetz und seine Ausdehnung auf die Wirtschaft, sondern gerade durch die Anarchie und ihre politische Erscheinungsform, die Diktatur, sowiedurch die anarchis-tische Raserei unserer kapitalistischen Produktion.*" If we understood this, says Heller, "*die Entscheidung zwischen faschistischer Diktatur und sozialem Rechtsstaates ware ge-fallen*" (Heller, 1971j, pp. 461–462).

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# AUTHORITARIAN LIBERALISM AS A SYNONYM OF NEOLIBERALISM? THE STATE-SOCIETY RELATION FROM RÖPKE TO MÜLLER-ARMACK VIA HELLER AND FOUCAULT\*

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## ¿EL LIBERALISMO AUTORITARIO COMO SINÓNIMO DE NEOLIBERALISMO? LA RELACIÓN ESTADO-SOCIEDAD DESDE RÖPKE HASTA MÜLLER-ARMACK PASANDO POR HELLER Y FOUCAULT

### Abstract

The notion of authoritarian liberalism has recently gained a widespread echo in critical theory, often as a synonym for neoliberalism. This notion is frequently employed to interpret the neoliberal wave that started in the 1970s. By reconstructing the notion of authoritarian liberalism as conceived by Heller during the final phase of the Weimar

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Republic, the following essay explores the state-society relation within the ordoliberal spectrum by analysing, in particular, the cases of Alexander Rüstow, Wilhelm Röpke, and Alfred Müller-Armack. Can ordoliberalism be understood as a specific declination of authoritarian liberalism despite its inner differences?

### **Keywords**

authoritarian liberalism; ordoliberalism; Weimar Republic; Alexander Rüstow; Wilhelm Röpke; Alfred Müller-Armack

### **Resumen**

La noción de liberalismo autoritario ha adquirido recientemente un amplio eco en la teoría crítica, a menudo como sinónimo de neoliberalismo. Esta noción se emplea con frecuencia para interpretar la ola neoliberal que inició en los años setenta.

Al reconstruir la noción de liberalismo autoritario tal y como la concibió Heller durante la fase final de la República de Weimar, el siguiente ensayo explora la relación Estado-sociedad dentro del espectro ordoliberal, en particular los casos de Alexander Rüstow, Wilhelm Röpke y Alfred Müller-Armack. ¿Se puede entender el ordoliberalismo como una declinación específica del liberalismo autoritario a pesar de sus diferencias internas?

### **Palabras clave**

liberalismo autoritario; ordoliberalismo; República de Weimar; Alexander Rüstow; Wilhelm Röpke; Alfred Müller-Armack



## Introduction

In recent years, the notion of authoritarian liberalism has gained a widespread echo in critical theory (see, e.g., Gallego & Barreto, 2021). Often used directly as a synonym of neoliberalism, it is frequently employed to interpret the neoliberal wave that, starting from the seventies, has swept the West (see above all Chamayou, 2021). Undoubtedly, the *fil rouge* of such a neoliberal revolution<sup>1</sup> is the perception of a sudden ungovernability of capitalism brought about by an excessive democratic involvement of society in questions regarding the economic order. Beyond historical contingencies and geographical specificities, to ward off this threat, neoliberals have always thought about one solution with a threefold articulation: reinforcing the state, defending market liberalism, and weakening democracy. And this is equally true for Austrian and American neoliberalism and German ordoliberalism (Biebricher, 2018). Despite their manyfold differences, what they all have in common is an undeniable demofobia (Brown, 2019; Scanga, 2021) and a special interest in the state as the executor of market capitalism. This applies especially to ordoliberalism, which is strikingly connected to Carl Schmitt's thought of the final phase of Weimar (Malatesta, 2025). In this respect, the Foucauldian statement according to which ordoliberalism's "field of adversity" (Foucault, 2008, p. 106) was Nazism appears as a naïve misunderstanding: apparently, Foucault himself fell victim to the representation given by the ordoliberals after the Second World War as brave defenders of liberal democracy torn to shreds by totalitarianism. This is obviously not to say that all ordoliberals were hostile to democracy or—even worse—that they supported Nazism. However, as we shall see, in the thirties, the founding father of the social market economy, Müller-Armack, advocated not only for a Conservative Revolution and for the fascist *Carta del lavoro* but was undoubtedly fascinated by the rise of Hitler. It should be emphasised that the ordoliberals were indifferent to the destiny of democracy insofar as the latter was always subordinated to the market: democracy should be disciplined, contained, and/or sacrificed on the altar of market capitalism.

By reconstructing the notion of authoritarian liberalism as conceived by Heller during the final phase of the Weimar Republic, the following essay explores the state-society relation within the ordoliberal spectrum by analysing, in particular, the cases of Alexander Rüstow, Wilhelm Röpke, and Alfred Müller-Armack. The question behind it is whether ordoliberalism can be understood as a specific declination of authoritarian liberalism despite its inner differences, especially with respect to the diverse attitudes shown by its most important exponents towards democracy and the rise of National

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<sup>1</sup> For an interpretation of neoliberalism as a passive revolution in the Gramscian sense, see Ferrara (2021).

Socialism. Even though there does not exist any homogeneous complex of doctrines and authors ascribable to a movement that defines itself as authoritarian-liberal or liberal-authoritarian, the political features of the neoliberal transformation isolated by Heller in his 1933 essay could prove most useful in analysing other existing forms of neoliberalism. Furthermore, against Michel Foucault's idea that neoliberalism was marked by a state phobia and by the desire to free society from the supposed omnipotence and invasiveness of the state, the present essay argues that a correct understanding of authoritarian liberalism requires the Foucauldian scheme to be completely reversed. The hypothesis to be supported here is that even though authoritarian liberalism as a monolithic political philosophy does not exist, in turn, there do exist varieties of ordoliberalism more or less willing to give up *political* democracy but still united by the desire to employ a strong state to oppose *economic* democracy and the power of society.

### From Heller to Rüstow

The “apparently oxymoronic syntagma” (Atzeni, 2023, p. 13)<sup>2</sup> ‘authoritarian liberalism’ was coined by Hermann Heller, German jurist, party member of the non-Marxist wing of the SPD and one of the most acute observers of the birth of the Weimar Republic (Bisogni, 2005; Pomarici, 1989) who, in 1933, a few months before the *Machtergreifung* of the Nazis, in an article published on *Die Neue Rundschau*, denounced the authoritarian turn of the German State. Heller, who by then had already reflected on the intimate nexus between the people and state authority, considered decision-making power as legitimate only if representative: in fact, only representation could justify political decisions (Heller, 2019). In this sense, the law was understood as an expression of the *volonté générale*, which could be realised by parties as mediators of the unification of irreducible political wills into the democratic state (Heller, 2000). The constitutive role assigned to parties as well as the majority principle as the very expression of the diverse components of society was precisely what authoritarian liberals contested, together with the political and social Revolution brought about by the Republic of Weimar: the *Weimarer Reichsverfassung* turned the law into an instrument of defence of subaltern classes, as for the first time in history labour received legal recognition and constitutional guarantees (Dukes, 2014; Mezzadra, 2000). As Heller (1930) states: “By using legislation, the economically weak party attempts to constrain the economically strong party, forcing it to satisfy bigger social demands or even expropriating it” (p. 8). Authoritarian liberalism, as described by Heller, tried precisely to tackle this condition.

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<sup>2</sup> For a brilliant analysis of Heller's theory with respect to the concept of authoritarian liberalism, see Atzeni (2023, pp. 9–64).

In the article “Authoritarian Liberalism?” Heller (2015) outlines the political imaginary of the German conservative right together with its proposal of imposing a strong state as a reaction to what was perceived as an excess of democracy in matters concerning the economy: to the pluralism<sup>3</sup> of the Weimar Republic, the conservatives opposed an authoritarian state capable of defending the inalienable principles of private property and the free market by creating an alliance between liberal principles (in the economic domain) and authoritative or even dictatorial ones (in the political domain). Weimar’s economic and political crisis—the *Präsidialkabinette* as its exemplar manifestation—could be overcome through an anti-democratic and demophobic turn of the pluralistic State. In this respect, it is clear that “[b]y invoking the ‘authoritarian’ state one polemicalises, in truth, against the democratic state” (Heller, 2015, p. 295).

Heller’s adversaries are clearly mentioned: the *Kronjurist* Carl Schmitt and Franz von Papen, chancellor of the Reich from June to November 1932 (Schulze, 1982), and the German ordoliberals, or at least one of its most important exponents, the sociologist Alexander Rüstow. In fact, the expression “neoliberal State” (p. 300) contains an implicit reference to the ordoliberal theory. In 1932, in a famous public speech given at the *Dresdener Tagung* of the *Verein für Socialpolitik*, Rüstow stated that the pluralistic state should better be replaced by a strong state, that is a neoliberal state capable of asserting its independence from social organisations: “The new liberalism, which I and my friends promote, demands a strong state, a state that is positioned above the economy, above the interested parties, in the place where it belongs” (Rüstow, 2017, p. 149). No wonder the original title of its speech was precisely *Freie Wirtschaft, starker Staat* (Rüstow, 1932), that is, free economy, strong state (see Bonefeld, 2017). Given the expression “neoliberal State” (Heller, 2015, p. 300) used to characterise the institutional imaginary of authoritarian liberalism, it is more than likely that Heller was referring precisely to the definition provided by Rüstow. Moreover, there is evidence of previous contact between the two: a few months before the establishment of the *Präsidialkabinette*, they both spoke in Berlin at the *Deutsche Hochschule für Politik*, where they were invited, together with Carl Schmitt<sup>4</sup> to discuss problems related to political coalitions. Rüstow (1959) held his speech with the title *Diktatur innerhalb der Grenzen der Demokratie* on 5 July 1929. In contrast, Heller delivered three days earlier, on 2 July, a talk entitled *Demokratische und autokratische Formen der Staatswillensbildung*, which in many senses anticipated the

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<sup>3</sup> It should be noted that the entire critical discourse on pluralism developed by the ordoliberals takes its inspiration precisely from Schmitt’s work on this issue. Cf. e.g., Schmitt (2001). The relation between Schmitt and ordoliberalism cannot be elaborated here: cf. Malatesta (2022) and Oberndorfer (2012).

<sup>4</sup> Schmitt delivered a speech entitled *Der Mangel des pouvoir neutre im neuen Deutschland* on 28 June 1928.

topics presented in *Autoritärer Liberalismus*. In any case, even on that occasion, Heller had not missed criticising directly Rüstow's political proposal to strengthen the Reichskanzler within a term dictatorship in order to save the liberal capitalistic order, pointing out that such a project could only be achieved through a *coup d'état* like that carried out by Mussolini in Italy. Rüstow (1959) contested this by saying that he was not hoping for a sheer authoritarian twist: his proposal to strengthen the chancellor was nothing less than a "fulfillment of the internal configuration of democracy" (p. 110).

Despite the different political approaches of the various exponents of German conservatism, the expression authoritarian liberalism designates a set of economic policies and theories whose shared aim is to keep the economic sphere separate from the political one, i.e., to isolate the state from the economy through its desocialisation. This political program variously sustained by the German right, therefore, implied firstly the "retreat of the 'authoritarian' state from social policy" and the "liberalization (*Entstaatlichung*) of the economy", i.e., two necessary operations "to sever the 'excessive' connections between the state and the economy" (Heller, 2015, p. 300).

The deflationary and austeritarian policies of Chancellor Brüning, the anti-unionism of von Papen, the "self-limitation" (Rüstow, 2017, p. 253) of the state—its withdrawal from the social sphere—championed by ordoliberalism, which Schmitt (Cristi, 1998) in its famous speech *Strong state and sound economy* translated into the depoliticisation of the economy,<sup>5</sup> all converge into a general political project aimed at strengthening the state, at shielding it from any demand for redistribution coming from society. Ultimately, authoritarian liberalism is nothing other than an anti-pluralistic transformation of the social and democratic state aimed at restoring the primacy of the capitalistic economic order over democracy.

"Authoritarian Liberalism?" should be considered a groundbreaking contribution insofar as it does not solely shed light on the specific historical-political conjuncture of the Weimar Republic by "captur[ing] the shift from a parliamentary democracy to an authoritarian presidentialism" (Wilkinson, 2021, p. 25). Rather, it identifies the fundamental characteristics of an epoch-changing phenomenon, which saw the transformation of the liberal state into a neoliberal one. Heller, with extreme clarity, observes a political-conceptual

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<sup>5</sup> Schmitt (1998) thought it necessary to insert an "intermediate domain" between the State and the individual by replacing it with a "tripartition". On the one hand, "the economic sphere of the State" (p. 94), could detain some monopolies and strategic companies. On the other, the private sphere, with its small and big individual enterprises, is free from state power. Finally, a third sphere that Schmitt defined as non-state, but nevertheless public, was made to coincide with the "autonomous economic administration", that is, "[a] sphere that belongs to the public interest and should not be seen as separate from it. Still, this is a non-state domain that can be organised and administered by these same business agents, as it happens in any genuine autonomous administration" (pp. 225-226). Cf. also Galli (2019).

shift within the conservative spectrum, that is, the newly gained awareness of right-wing oriented intellectuals who claimed a more active role of the state in questions concerning the economy. Faced with the necessity of “defend[ing] the bourgeois order” (p. 22), the state could not limit itself to preserve its neutrality but should take an active role in the “defence process of economic liberties” (Atzeni, 2023, p. 30). The strong state is, therefore, specifically active insofar as it pursues “strict austerity budgets, the heavy-handed dismantlement of social policy and unemployment benefits, along with the suppression of labour unions” (Scheuermann, 2015, p. 306). What Heller brings to light is the liberal-conservative demand for a new political paradigm, which is a new way of guaranteeing economic freedoms through a strengthened political authority. Even though in “Authoritarian Liberalism?” his reflections were centred around the Weimar crisis, the conceptual frame isolated therein offers a precious analytical tool that could be applied to any historically existing variety of neoliberalism (Mirowski & Plehwe, 2009). From this point of view, neoliberalism can be considered a transhistorical phenomenon whose lowest common denominator is the refusal to accept the democratic management of the economy and the need to affirm a strong state capable of defending the capital order.<sup>6</sup>

### Varieties of ordoliberalism? From Röpke to Müller-Armack

The idea according to which neoliberalism is “*intrinsèquement autoritaire*” and that “*c’est seulement dans l’usage de la force par l’État qu’il varie*” (Dardot et al., 2021, p. 74) appears therefore as a plausible hypothesis. In this respect, if we limit the present investigation to the German political laboratory, the proximity of some right-wing intellectuals to National Socialism does not change the fact that the effort put in isolating the economic sphere from social revindications is substantially identical. Whereas within the ordoliberal spectrum, there was no consensus on the best political form within which liberal capitalism could prosper (be it a democracy or a dictatorship), there was a unanimous agreement on the functions assigned to the state in the rational construction and defence of market capitalism. Whether this relation was accompanied by the democratic exercise of the right to vote did not alter the substantial evidence that the decisive characteristic of the neoliberal paradigm is the insulation of the economy from democratic pressures.

For example, let us take the early reflections on the strong state by Wilhelm Röpke (Solchany, 2015), a founding father of the social market economy and an alleged arch-liberal who, with the Nazi rise to power, fled to Turkey and then to Switzerland. During the twenties, Röpke opposed the welfare state of the Weimar Republic and its growing

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<sup>6</sup> For a discussion on the capitalist state and the “liberal state-economy relation in crisis”, see Alvarez Taylor (2022).

tendency toward economic interventionism. Like Schmitt (2008), he recognised the dual nature—social and liberal—of the Weimar economic constitution. Yet, in economic practice, he saw the emergence of an *Übergangswirtschaft* (transitional economy) that would not want to abandon the monopolism of the war economy under any circumstances and that, in a short time, would probably abolish free enterprise. Röpke's (1923) judgement is that even though the “idea of economic liberalism (is) not dead”, it is so neglected “that no hope seems to spring directly from it” (p. 42). The reason for this transformation from the free economy of the pre-war period to the impending “etatist epoch” (p. 43) lies in the regrettable fact that every German party “has compromised with the system of state interference” (p. 42) so that this increasing politicisation of the economy paves the way for the final capitulation of liberalism. Because the original structure of liberalism itself—namely, the separation of economy and society—had been undermined at least since the beginning of the First World War, Röpke argued in favour of a radical rethinking of the role of the state: it is time to abandon early liberalism, which “limited the state to its ‘night watchman’ functions” (p. 44), and transform it into the active bearer of liberal capitalism. The “historical mission” of German liberalism ultimately was to “appoint itself to guardian and promoter of a concept of the state purged of anti-liberal aberrations”. Far from minimising the role and functions of the state, as the Anglo-Saxon liberal tradition had always done, the new German liberalism—or more precisely neoliberalism—should become the “guardian of the idea of the state, which has been undermined from all sides” (p. 46). As early as 1923, Röpke (1929) understood what function the state should fulfil in order not to be monopolised by interest groups that threatened its autonomy and to prevent free competition from being eliminated by state interventionism.<sup>7</sup> In this text, the first traces can be observed of what Röpke's friend Rüstow (1950) recognised some twenty years later as the actual function of the neoliberal state, namely its role as “holder of the market police” (p. 79).

Given the overtly anti-pluralist tones employed during the Weimar years, it could be surprising that Röpke (1960) has always presented himself as the undisputed champion of a kind of capitalism with a human face. Even more so if we consider his ferocious criticism of mass democracy, his conception of the French Revolution as the “evil's family tree” (Röpke, 1950, p. 43), its hyper-conservative, anti-worker and strongly anti-feminist sociology<sup>8</sup> (Röpke, 1950), or its treatment of the issue of decolonisation underpinned by a racist evolutionism that is difficult to disguise (Slobodian, 2014).

In 1964, Röpke published a pamphlet whose title leaves no doubt as to its positioning: *South Africa: An Attempt at a Positive Appraisal*. Here, he attacks all those

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<sup>7</sup> For a reconstruction of Röpke's criticism against planning, see Malatesta (2023b).

<sup>8</sup> On the relation between neoliberalism and conservatism, see Cooper (2017).

progressive humanists who tend to elevate “the ideals of modern mass democracy” (Röpke, 1964, p. 1) to universally valid global norms. Those who see in the apartheid policy pursued by Hendrik Frensch Verwoerd the realisation of an “odium generis humani” (p. 3) would be blinded by abstract moralism, unable to see that a “majority—consisting of an extremely different race” (p. 10) has overwhelmingly penetrated the white settlement areas. Following this argumentative logic, it cannot be said that South African segregationism is “evil” (p. 15). Rather, it constitutes the “specific form in which South Africa pursues the policy of ‘decolonizing’ and ‘development aid’” (p. 14) that whites grant to blacks by virtue of their “extraordinary qualities[:] pioneering spirit[,] initiative, hard work” (p. 4). In contrast, equal political rights and “progressive schooling” would lead to “black supremacy” (p. 16). “Political equality” would thus amount to “advising national suicide” (p. 19). Not granting any political right to blacks and keeping them in a minority state is, in Röpke’s view, the best possible solution to impede their democratic involvement in economic questions. Since blacks would certainly aspire to a global New Deal aimed at redistributing resources and strengthening labour, it is more than wise to sustain the apartheid policies implemented by the strong state of Verwoerd. This peculiar mixture of economic and racist<sup>9</sup> considerations with respect to the necessity of imposing a strong state and a free economy leaves no doubt about the authoritarian character of Röpke’s political thought. His widely praised opposition to Hitler’s regime does not alter this fact and does not make him a courageous defender of democracy or an illuminated liberal.

Whereas Röpke never harboured sympathies for National Socialism, another ordoliberal sociologist and economist like Alfred Müller-Armack, inventor of the “social market economy” formula (1947), overtly did. In his 1933 *Staatsidee und Wirtschaftsordnung im neuen Reich*, he not only supported the rise of the National Socialist regime but also developed a critique of liberalism based on Schmitt’s (2007) *Concept of the Political* and inspired by the German Conservative Revolution. One year before the rise of Hitler, in his *Entwicklungsgesetze des Kapitalismus* (1932)—an unjustly ignored milestone of the birth of ordo- and neoliberal thought<sup>10</sup>—he wrote against parliamentarism. He considered this to be the crucial question on which “all fascist movements in Europe” rightly converge. The need to rely on an “authoritarian command [*Führung*]” (Müller-Armack, 1932, p. 32) stems from the fact that the party system has generated a dangerous pluralism that had torn the state apart. In this sense, it is not surprising that

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<sup>9</sup> On ordoliberalism’s racism, see Cornelissen (2022).

<sup>10</sup> There are obviously exceptions like Haselbach (1991).

Müller-Armack draws on *The Guardian of the Constitution* (2015):<sup>11</sup> if parliamentarism had been conceived as a weapon against absolutism, i.e., as a counterpower to limit the executive power of the government, with Weimarian democracy, it degenerates into a political and social pluralism that jeopardises the unity of the state: “With regard to the interests it represents, parliament does not remain what it was in the beginning. Originally, it was only supposed to ensure the non-intervention of the state, but now it itself becomes the vehicle of state expansion” (Müller-Armack, 1932, p. 107). The solution to the pluralisation of parliamentary democracy and economic interventionism lies not simply in the call for a strong state, which could appear as an empty and vague concept. Müller-Armack recovers the Euckenian analysis of the structural transformations of the State (Eucken, 1932) and identifies in the power gained by society over politics precisely what had generated excessive state interference in economic affairs. The remedy is offered by Fascist Italy, which, by totally incorporating the economy within the state, guaranteed private initiative greater room for manoeuvre. In this way, private economic activity “no longer restricts [...] the sphere of the state, but coincides with it” (Müller-Armack, 1932, p. 127). Fascist corporativism appears to Müller-Armack as an effective solution to make state power independent of interest groups. Its “inner inhibition” thus guarantees the state’s hegemony over the economy. In this way, the fascist model achieved a double objective: it reestablished the primacy of the private sphere “without diminishing the power of the state” (p. 127).

These suggestions were further explored in *Staatsidee und Wirtschaftsordnung im neuen Reich* (1933) of the following year. According to Müller-Armack, the ideal of a pacified state, both in terms of the relationship between politics and society and in terms of industrial relations between workers and employers, takes shape in the *Carta del lavoro fascista* passed on 21 April 1927. It is, in fact, a constitution understood in the Schmittian sense<sup>12</sup> as an apparent “commitment to a certain form of [political] life” (Müller-Armack, 1933, p. 46), which, however, overcomes the “merely formal political constitution” (p. 45) that proved incapable of guaranteeing the unity of the state from the attacks launched by the various social groups. The *Carta del lavoro fascista* thus represents for Müller-Armack an authentic *Wirtschaftsverfassung* (economic constitution) in the sense elaborated by the ordoliberal jurist Franz Böhm (1937), that is “a certain method and a certain form of eco-

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<sup>9</sup> On ordoliberalism’s racism, see Cornelissen (2022).

<sup>10</sup> There are obviously exceptions like Haselbach (1991).

<sup>11</sup> Especially see the chapter “The Development of Parliament into the Arena of a Pluralistic System” (Schmitt, 2015, pp. 125–146).

<sup>12</sup> Schmitt (2008) stated that “prior to the establishment of any norm, there is a *fundamental political decision* by the bearer of the constitution-making power” (p. 77). In defining the ordoliberal economic constitution, Franz Böhm draws precisely on this Schmittian explanation of the constitution as a fundamental *Grundentscheidung*.



conomic management [...] elevated to norm through a political decision” (p. 54; see Malatesta, 2021). Its purpose is not only to regulate the economic sphere but rather to give the state a constitution based on the economic model it has decided to adopt. In other words, the Fascist economic constitution guarantees the resilience and “integration” (Müller-Armack, 1933, p. 46) of the state by matching the latter’s interests with those of the workers and trade unions while at the same time surpassing the 19th century “class state” (p. 47).

The conceptual horizon of Müller-Armack’s *Wirtschaftsverfassung* is light years away from classical liberal principles: instead of guaranteeing individual rights against state interference, the *Carta del lavoro* is first and foremost concerned with defining the individual as a “carrier of duties” (Müller-Armack, 1933, p. 47) vis-à-vis the nation that can only receive state protection to the extent that it serves the purposes of a community. Free private enterprise is thus no longer a space for individual action preserved from state influence but rather a functional sphere for integrating individuals into the state and consolidating the latter’s power.

For this economic constitution to be achieved, it is then necessary to establish, as in fascist Italy, a “professional structure” that neutralises conflicts between “competing labour and employers’ associations” (Müller-Armack, 1933, p. 49) through unitary associations of the state. Hence, the task of the corporatist state is primarily political: it must remove both the multiplicity of economic associations, trade unions, and parties that competed within the state and parliamentarism, which continually caused undue influence of society on the economy. The goal of this economic constitution is “the unified formation of the will and integration of the entire working people into the state. Its task is to serve the integration of the state” (pp. 51–52).

Unlike his colleagues and friends Eucken, Böhm, Röpke, and Rüstow, by sustaining the corporatist state and the *Volkstum*, Müller-Armack draws heavily from the conceptual universe of the Conservative Revolution (Kondylis, 1986): not only does he quote Arthur Moeller van den Bruck (Müller-Armack, 1933, p. 8–9), but also Wilhelm Stapel and Hans Freyer, author of the famous *Revolution von Rechts* (1931), one of the milestones of conservative and national socialist thought. According to Müller-Armack (1933), the Nazi movement

sees Marxism as its arch-enemy [and] adopts the socialist idea in its name and programme. Marxism and socialism become elementary opposites. It fights against liberal democracy and speaks out more clearly in favour of folk laws, property, and private initiatives in economic life than the previous state. (pp. 7-8)

What Müller-Armack and many exponents of the Conservative Revolution have in common is undoubtedly the emphasis on a nation grounded on the *Volkstum* and the

criticism of the abstract universalism of Western liberal democracies (see, e.g., Stapel, 1928), which appear as a “sum of identical, i.e., abstract and unrelated atoms” artificially held together through “cerebral humanistic ideals” (Kondylis, 1986, p. 747). What needs to be emphasised is that for Müller-Armack and the majority of the conservative revolutionaries, the attack on *political* liberalism is not at all combined with criticism of *economic* liberalism but quite the opposite. In fact, none of these thinkers questions the social order of capitalism in the slightest: none of them proposes to change the social and productive structure, but only to emancipate the “concept of the worker” from the “class basis” (Gerstenberger, 1969, p. 55), creating a sense of belonging to the nation and its *Volk*. In this sense, Kondylis’ (1989) definition of “conservative’ neoliberalism” (p. 492) perfectly describes the thought of authors like Müller-Armack, Max Hildebert Boehm, and Edgar Julius Jung. Boehm (1933), for example, defends what he calls “sane’ liberalism” (p. 12) and imagines a community based on economic liberalism and corporatism, the aim of which is to overcome the induced atomisation of liberalism, as well as Marxist mechanicism. The same argument can also be found in the writings of Edgar Julius Jung (1930), who contrasted ‘bad’ liberalism based on individualism with true community based on higher spiritual ideals than the mere thirst for money.

If, in the thirties, Müller-Armack took on tones and contents typical of conservative revolutionaries, the same cannot be said of Walter Eucken, who did not even hint at the need for a corporatist state, nor did he attack liberalism as a political philosophy. And yet, it must be emphasised that the same criticism of the intertwining of state and society, as well as the criticism of parliamentary liberalism that both Röpke and Rüstow engage in, undoubtedly intersect with the approach of the conservative revolutionaries. Like the ordoliberals, the young conservatives also advocated “the restoration of the old liberal dichotomy of state and society” (Breuer, 1995, p. 63). They criticised the dangers of an overly broad expansion of the welfare state, which had eliminated competition as the best possible selection mechanism in the economic struggle.

It is precisely in the fight against pluralism that we can identify the *trait d’union* of all those theorists that can be described as authoritarian: Schmitt, some exponents of the Conservative Revolution, as well as the ordoliberals (despite their inner differences), conceived the Weimar crisis primarily as the result of the pluralistic state, i.e., of that state unable to assert its primacy in the face of the widespread politicisation of the economic sphere. In order to fight the alleged hypertrophy of the welfare state, a new separation of the state from the economy and politics from society was needed.

However, it is also necessary to point out the differences within the ordoliberal field: whereas Eucken, Böhm, and Röpke did not support the national socialist regime, their

political imaginary implied the complete depoliticisation of society and the transformation of politically active citizens into small entrepreneurs entirely devoid of any ideology. Müller-Armack, on the other hand, aimed at the same goal but emphasised a domesticated labour movement organically integrated into the nation. Rüstow, as we have seen, claimed a “dictatorship within the limits of democracy”, whereas Röpke saw the need to insulate the free market from any democratic pressure even if this implied the socio-political marginalisation of blacks on an ethnic basis (although disguised as an economic necessity). Finally, in 1932, Eucken’s (2017) fear of the masses caused him to conceive the strong state as an ineludible tool to fight “modern anti-capitalism [which] by contrast seeks to overthrow capitalism through a total state, a state that is as autarchic as possible, a state that has engorged the economy” (p. 58). And, finally, one should not forget Franz Böhm (2010), whose lifelong effort consisted precisely in the construction of a juridical order completely opposed to the Weimar Constitution, viewed as the result of a pernicious comprisal which made the “free market economy system” no longer the “dominant constitutional principle of economic life” (p. 322).

The analysis so far shows that the ordoliberal argumentative logic was miles away from the classical liberal conception of the state as an entity whose action should be restricted as much as possible to let individual action flourish without impediments. Ordoliberalism could therefore be defined as a kind of ‘illiberal liberalism’ to the extent that its interest did not lay in the need to protect a society consisting of private individuals from the omnipotence of the state but in the creation of a strong state capable of providing the *a priori* conditions of the market and of protecting the economy from the tentacles of the greedy society of the masses “struggl[ing] for power in the state” (Eucken, 2017, p. 57). In this way, the classical liberal scheme is wholly reversed, a fact that Foucault, despite his brilliant intuitions on neoliberalism, was only partially able to recognise.

### **With Foucault beyond Foucault**

Although Foucault’s analysis of ordoliberalism revealed some interpretative limits (cf. Villacañas, 2019) and was largely influenced by François Bilger’s (1964) seminal study, it is undoubtedly one of the most insightful ever. One should not forget something obvious but crucial: Foucault did not have the privilege of historical distance; quite the opposite. He lectured at the Collège de France shortly before Margaret Thatcher’s election and two years before Reagan’s. Considering the historical-political conjuncture, then, one could say that the French philosopher was precisely in the eye of the storm: neo-liberalism, which had been conceptualised in Germany and Austria even before Nazism, leaves academic circles and associations and becomes hegemonic throughout

Europe. Foucault seems to suggest that neoliberalism has been in the pipeline for a long time before finally being transformed into a practical instrument of government. He is, therefore, interested above all in defining the features of the neoliberal transformation of the West. In this respect, the post-war Federal Republic of Germany (FRG), with the governments led by Konrad Adenauer and Ludwig Erhard (1949–1966) under the aegis of the social market economy, rightly appears to him as an early experiment of the new way of the world, as to borrow the title of a famous work which owes much to Foucault (Dardot & Laval, 2017). The central argument of the philosopher is, in fact, that in the FRG, it was the economy that laid the foundations for the creation of the German post-war state. As Foucault stated: “Economic development and economic growth produces sovereignty [...]. The economy produces legitimacy for the state that is its guarantor” (Foucault, 2008, p. 84). As a matter of fact, the liberalisation of prices and the resulting success served as a means of political legitimisation of the new German state, so much so that this economic operation could be defined as the founding act par excellence of the FRG since the *Grundgesetz* was promulgated one year later, on 23 May 1949.

Given Foucault’s specific focus on the economic (and not political) foundation of the post-war German state, and considering not only the fact that in the aftermath of National Socialism, the ordoliberals presented themselves as champions of democracy against the defeated totalitarianism but also that the social market economy—as the political product of ordoliberalism—was systematically described in the CDU’s propaganda as the very source of the economic miracle and of the renaissance of Germany, it is understandable that Foucault was influenced by this interpretative scheme. He was unable to see that neoliberalism was not at all characterised by a “state phobia” by a deep-seated fear of the “intrinsic power of the state in relation to its object-target, civil society” (Foucault, 2008, p. 187).<sup>13</sup> As the present analysis has shown through the interpretative lenses offered by Heller, early neoliberalism in no way criticises the state in itself, nor a supposed hypertrophy of the latter, but rather the fact that it has been occupied by society, that it has become a party state and not a state devoted to the defence of the market. Hence, to understand authoritarian liberalism, one should reverse the Foucauldian scheme: the problem for neoliberals is not the state allegedly occupying, invading, and controlling society, but the fact that society, with its conflicts and disorders, has penetrated inside the state claiming to control and direct the economy (increasingly bureaucratised, planned, welfarist) according to its own interests. What neoliberals lament is a weak, powerless state, not a “polymorphous,

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<sup>13</sup> For a discussion on the state-society relation in Foucault, cf. Dean and Villadsen (2016).

omnipresent, and all-powerful” (p. 189) one. In their works, there is no “negative theology of the state as the absolute evil” (p. 116). Had Foucault focused on the rise of ordoliberalism during the Weimar Republic and its emphasis on the strong state, indeed, his analysis would have been different (see above all Marco, 2022; for the opposite point of view, cf. Brindisi, 2021, p. 262).

Moreover, also the following statement appears problematic: the “idea that the state has a specific, intrinsic dynamism which means that it can never halt its expansion and complete takeover of the whole of civil society” (Foucault, 2008, 189). Although ordoliberals were undoubtedly concerned about the expansion of the welfare state (see in particular Röpke, 1944, 1950, 1959), the starting point of their criticism is the expansion of society over the state. To really understand authoritarian liberalism without misunderstandings, one should turn Foucault’s argument upside down: it is society that assaults the state, that turns it into a “prey” (Rüstow, 2017, p. 147) and makes it no longer able to impose its autonomous will over the various economic groups.

The ordoliberal diagnosis is this: with the democratisation of the German state, the latter has been degraded to a mere tool in the hands of the various socio-economic groups. The point is to regain its pre-eminence over society by reconstituting the necessary division between state and society. It is necessary for the state to become not only the supreme guardian of the market by actively creating its conditions of possibility, i.e., *a priori*, but to depoliticise the economy, to draw a clear line between the economic norms it must create, implement, and protect and society with its class-based interests. The problem, as Eucken (2017) states in 1932 unabashedly, is that this “economic state” caused the “politicization of the economy” (p. 56), namely the fact that the masses, organised politically within parties, gained “much greater influence over the management of the state, and so upon economic policy” (p. 59). It is with the intention of fighting this phenomenon that Rüstow reversed the famous formula of the German industrialist and foreign minister Walther Rathenau: whereas for the latter, the economy represented Germany’s destiny, Rüstow (2017) emphasised the crucial role that the state must play in managing the economy by asserting that Germany’s destiny is the state and that, in turn, “the state also decides the fate of the economy” (p. 144).

Consequently, ordoliberals are interested in society not because of its presumed horizontality or because they conceive it as a sphere of freedom as opposed to a hypertrophic and dirigiste authoritarian state. On the contrary, it is precisely the extension of society over the state and its economy that needs to be fought. With its conflicting nature and class divisions, society must be transformed into a smooth space where economic subjects can realise their individual plans. Civil society, therefore, is not the elec-

tive dimension of political freedom but solely the space in which individual economic liberties can be exercised.

What, on the contrary, is of enormous heuristic value for the understanding of authoritarian liberalism is the question of the normative character of competition. After all, according to the ordoliberals, the problem of the economic state is that it attacks the beating heart of the market economy, i.e., competition. In this respect, Foucault's (2008) observations are extraordinarily useful and deserve to be quoted:

For what in fact is competition? It is absolutely not a given of nature. [C]ompetition is not the result of a natural interplay of appetites, instincts, behavior, and so on. [...] Competition is an essence. Competition is an eidos. Competition is a principle of formalization. (p. 120)

Foucault identifies the core principle of ordoliberalism, which could also be extended to other forms of authoritarian liberalism: the fact that competition does not occur spontaneously, that in neoliberalism, it is not enough for the state to delimit a space of economic freedom for there to be competition. On the contrary, a strong state is called upon to actively construct the market's framework conditions (*Rahmenbedingungen*). That is, competition is not a natural phenomenon but an artificial object that must be skillfully built. In this sense, the legal framework creates the *a priori* of the market, its very conditions of possibility: "The juridical gives form to the economic, and the economic would not be what it is without the juridical" (Foucault, 2008, 163). In this respect, Foucault provides incredibly acute reflections on the nature of ordoliberalism, which immediately recall the definition— contained in the ordoliberal manifesto —of the economic constitution "as a general political decision as to how the economic life of the nation is to be structured" (Eucken et al., 2017, p. 36). Following the Schmittian motto, the *Wirtschaftsverfassung* is to be understood as a depoliticising political decision insofar as the state constitutionalises the economic rules of liberalism, inscribing them in its own legal framework.

Therein lies the theoretical core of ordoliberalism and, at the same time, its political prescription for counteracting the influence of society on the economy: once the liberal laws of the economy have been inscribed within the constitution, it will no longer be possible for either the executive or the legislative to change their content. It is precisely on this constructivist character of the economy, identified by Foucault, that neoliberalism has been able to impose itself in Europe through a constitutionalisation of the economy that can rightly be called authoritarian insofar as it is devoid of any

democratic legitimacy (cf. Streeck, 2015). Beyond historical specificities that cannot be ignored, the reflections of Heller and Foucault—the former witnessing the birth of neoliberalism in Germany as a political-conceptual laboratory, the latter observing instead the post-World War II expansion of neoliberal policies on a European scale—offer precious insights that continue to help us to question the ever-changing, and still unbeaten phenomenon of neoliberalism (Callison & Manfredi, 2020).

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# SCHMITT AND HAYEK: ORIGINS OF AUTHORITARIAN LIBERALISM AND ITS CONTINUITY IN NEOLIBERAL THOUGHT\*

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# SCHMITT Y HAYEK: ORÍGENES DEL LIBERALISMO AUTORITARIO Y SU CONTINUIDAD EN EL PENSAMIENTO NEOLIBERAL

## Abstract

This article aims to outline what in philosophical and political literature can be termed “authoritarian liberalism.” The primary focus is to highlight the similarities between the political and economic thought of Carl Schmitt and Friedrich Hayek. The crisis of Weimar social democracy was largely followed by attacks on the notion

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of representative parliamentary democracy itself. In this context, Schmitt—famously anti-parliamentary—relied on the concept of qualitative total state, distinguishing it from what he termed quantitative total state, which characterized the Weimar period. Additionally, Hayek partly constructed his notion of (limited) democracy using Schmittian categories, and ordoliberal thought did not hesitate to push its “social market economy,” starting from the apparent Schmittian paradox, from a strong state to a “free” economy.

### **Keywords**

Carl Schmitt; Friedrich Hayek; Weimar Republic; ordoliberalism; social democracy; totalitarianism

### **Resumen**

El artículo pretende presentar los contornos de lo que puede designarse como “liberalismo autoritario” en la literatura filosófica y política. El principal objetivo del artículo es destacar las similitudes entre el pensamiento político y económico de Carl Schmitt y el de Friedrich Hayek. En gran medida, a la crisis de la socialdemocracia de Weimar sucedieron ataques a la propia noción de democracia parlamentaria representativa. En este contexto, Schmitt, conocido por ser antiparlamentario, se apoyó en el concepto de Estado total cualitativo para distinguir lo que denominó Estado total cuantitativo, que caracterizó el periodo de Weimar. Además, Hayek construyó en parte su noción de democracia (limitada) mediante categorías schmittianas, y el pensamiento ordoliberal no dudó en impulsar su “economía social de mercado” desde la aparente paradoja schmittiana de un Estado fuerte hacia una economía “libre”.

### **Palabras clave**

Carl Schmitt; Friedrich Hayek; República de Weimar; ordoliberalismo; socialdemocracia; totalitarismo

Carl Schmitt was a prominent figure in National Socialist law, and his thought has transcended the era of its creation, influencing various fields, including political science, constitutional law, and legal philosophy. However, Schmitt's association with National Socialism complicates the acceptance of his ideas. Despite being recognized as an architect of authoritarian thought, Schmitt's theories have been adopted by self-proclaimed democrats and intellectuals who claim to be free from ideological biases. One notable example is Friedrich Hayek, who publicly disavows Schmitt but incorporates fundamental elements of Schmitt's theory. Hayek explicitly denies Schmitt's influence, positioning the German intellectual on the "wrong side of history." However, Hayek's use of categories closely resembling those established by Schmitt, alongside his development of antipathy toward democracy, condemnation of multiparty systems, and embrace of a liberal-authoritarian perspective, indicates a significant, albeit unacknowledged, debt to Schmitt's ideas.

Carl Schmitt was, in many respects, more committed to Nazi ideology than a significant number of prominent party members. In the summer of 1934, Schmitt defended the extrajudicial killings of SA leaders orchestrated by Hitler during the *Night of the Long Knives* (Wolfe, 2009, p. 134), asserting that the Führer safeguarded the law through these actions. The Nazi regime acknowledged Schmitt's contributions and promptly invited him to collaborate, extending the invitation on April 1<sup>st</sup>, 1933, just two months after Hitler came to power. Referred to as the *Krownjurist*, Schmitt quickly ascended to influential positions within the government and the legal profession, even adopting explicitly antisemitic positions. In March 1947, Schmitt was detained and his case examined by the Nuremberg Tribunal, but he was released without formal charges (Cristi, 1998, p. 9).

Defenders of Carl Schmitt often assert that his works from the Weimar period should be distinguished from those of the Nazi era, suggesting that his alignment with the Nazi regime was merely opportunistic. This argument seeks to preserve Schmitt's intellectual legacy by separating the jurist from the politician (Cristi, 1998, pp. 25–26). However, Schmitt's allegiance to Nazism was not merely opportunistic; it was deeply rooted in his ideological alignment with the regime. Rather than a calculated move to secure prominent positions, Schmitt's involvement with Nazism reflected his genuine political beliefs and desires, which the regime effectively actualized.

Even among efforts to salvage Carl Schmitt's thought—at least his works from the Weimar Republic period—there is no denying his conservatism (Cristi, 1998, p. 4). This conservatism provides a lens through which to understand Schmitt's reasons for adhering to National Socialism. For instance, Schmitt had a close relationship with Leo

Strauss, a major figure in neoconservatism. During their period of closest association, Schmitt wrote a letter of recommendation for Strauss, which helped him leave Germany in 1932. That same year, Strauss critically reviewed Schmitt's book *The Concept of the Political*, arguing that Schmitt was not sufficiently antiliberal (Wolfe, 2009, p. 139). Political antiliberalism characterized the connection between certain conservative manifestations and the anti-democratic undercurrents in Schmitt's authoritarian thought. Indeed, it is primarily conservatives who attempt to rehabilitate Schmitt's ideas, seeking to cleanse his work of its political vices.

This discussion focuses on Carl Schmitt's anti-democratic thought and relationship with economic theories. Schmitt's significant critique of "mass democracy" is rooted in his concept of political theology. Political theology relates to political metaphysics concerning sovereign authority as a manifestation of legitimate regime power. According to Schmitt, political theology can reclaim elements of metaphysics that counter the era of mass democracy. Unlimited democracy, Schmitt argued, would abolish the distinction between the state and society, leading to the "socialization" of the state and the disappearance of the political as a sacred sphere of sovereign authority and power (Bonefeld, 2016, p. 41). Numerous works delve into the topic of Schmitt's political theology, highlighting its antidemocratic nature. This reference serves to understand how political theology exemplifies the antidemocratic tendencies in Schmitt's thought, reflecting his broader critique of mass democracy and its economic implications.

The immediate focus is examining what might be termed "authoritarian liberalism." To analyze this concept, it is crucial to consider some of Carl Schmitt's lesser-known texts, particularly those that address economic themes. In *Global Civil War*, Schmitt discusses industrial appropriation. He posits that the replacement of private land appropriation by a form of large-scale modern industrial appropriation marks a significant transformation. According to Schmitt, the ancient right of conquest over lands in pre-industrial times has been supplanted by the appropriation of industries. Schmitt argues that a global civil war (Schmitt, 2007a)—a conflict that is both political and economic—has replaced traditional interstate wars (Schmitt, 2007a, p. 60). In this context, Schmitt asserts that the economy represents the contemporary modality of politics. He contends that the division of labor constitutes, in his view, the actual constitution of the earth (Lazzarato, 2017, p. 43). As interpreted by Maurizio Lazzarato (2017), Schmitt's thought reveals that for the German jurist, "economy is politics" (p. 43). This perspective highlights Schmitt's conception of economic processes as fundamentally intertwined with political authority, reflecting his idea of authoritarian liberalism.



Carl Schmitt offered a significant critique of the Weimar Republic during his time, revealing an important alignment between his thought and neoliberal ideas, both in the Austrian and Ordoliberal versions. In his work *Legality and Legitimacy*, Schmitt asserts that governmental institutions were transforming and were marked by an “inevitable trend towards planning” rather than leaning towards freedom. Schmitt said this excessive governmental intervention was steering Germany towards becoming an “administrative state.” This critique underscores Schmitt’s concern with the increasing role of government in economic and social affairs, which he saw as a departure from true freedom and a movement towards a more controlled and bureaucratic state apparatus (Schmitt, 2007b, p. 5). This perspective resonates with neoliberal critiques of state intervention and emphasizes individual freedom and market mechanisms rather than state planning and control.

Carl Schmitt’s critique of the Weimar Republic shares foundational principles with neoliberal thought, particularly in opposing freedom and planning. Schmitt’s views align with the neoliberal doctrine that spread from the late 1930s onward. His writings during the final phase of the Weimar Republic primarily target multiparty systems, as seen in *Legality and Legitimacy* and *The Guardian of the Constitution*. In these works, Schmitt critiques what he calls “policracy” – the fragmentation of the parliamentary legislative state and the intense development of the state towards an economic state (Schmitt, 2007c, p. 136). Schmitt argues that the pluralistic state should be opposed as it represents a process of autonomization and depoliticization. He does not advocate for the extinction of politics but rather for a specific type of politics, opposing party politics. Schmitt envisions a “neutral state” strong enough to separate itself from civil society (Bercovici, 2004, p. 101). This perspective reveals Schmitt’s preference for a centralized, authoritative state over a pluralistic, multiparty system, reflecting a shared disdain with neoliberal thinkers for excessive government intervention and planning.

Carl Schmitt identified a significant problem with the multiparty state: its inability to distinguish between friend and foe, which is a fundamental principle of his doctrine on the political. He argued that constant democratic intervention threatens to transform politics into a kind of “civil war” (Scheuerman, 1997, p. 175). This perspective reveals a robust antidemocratic conception, particularly regarding the limits and role of the economy. This is evident in Schmitt’s articles, which are *The Theory of the Partisan* and *The Nomos of the Earth*. In these works, Schmitt contends that the pluralistic state’s failure to navigate the friend-enemy distinction effectively undermines its stability and coherence. The perpetual democratic involvement in state affairs, according to Schmitt, leads to a state of internal conflict akin to a civil war. This view underscores Schmitt’s broader

critique of democracy and his preference for a more authoritarian model of governance, where the economy plays a central role in maintaining political order.

Carl Schmitt blamed political parties for weakening state authority and advocated for a strong state to ensure the necessary protection for developing a free economy. He envisioned a “qualitative total state” in contrast to what he perceived as a “quantitative total state,” which he deemed weak. This concept would later be embraced by ordoliberal thinker Alexander Rüstow, who incorporated Schmitt’s framework. The notion that “only a strong state could guarantee a free economy” was prevalent in conservative circles during the Weimar period. This idea is reflected in the work of Walter Schotte, an ultra-conservative author who linked the multiparty state to corruption. Schotte recommended a new type of state that would be strong, free from vested interests, and both above and independent of political parties (Cristi, 1998, p. 31). Schmitt’s advocacy for a strong state aimed to transcend the fragmentation and inefficacy he attributed to multiparty systems, thereby establishing a stable and authoritative governance structure conducive to economic freedom.

Schmitt’s objective was to separate parliamentary institutions from their democratic constraints. In his books *Dictatorship and Political Theology*, Schmitt entrusted a counter-revolutionary dictatorship as the only means to safeguard the nation’s political unity and sustain a dual assault against humanitarian liberalism and atheistic democracy (Cristi, 1998, pp. 80–81). The political criterion of democracy in the 19th century, according to Schmitt, was contentious and anti-monarchical: the sovereignty of the people versus the sovereignty of the monarch. Once democracy lost its enemy (the king), Schmitt argued that the political had disappeared. The concept of democracy was grounded in the principle of equality between governors and governed (egalitarianism). Schmitt saw no incompatibility between democracy and dictatorship, as he believed the essence of democracy lay in identity rather than freedom (Schwab, 1989, p. 62). The crisis of parliamentarism described by the German jurist corresponds to the irreversibility of egalitarian trends in Western democracy, creating a natural incompatibility between democracy and liberalism. Schmitt also argued that, similar to neoliberals, fascism and Bolshevism could be viewed as democratic phenomena (Scheuerman, 2020a, p. 49).

Separating democracy and liberalism would be necessary to understand the heterogeneous construction that constitutes modern mass (Schmitt, 1990, p. 97) democracy. The parliamentary system would be produced by liberal ideas but not by democratic ideas. Moreover, it would connect to the discourse of the French aristocracy, which, through Enlightenment thinkers like Montesquieu and Voltaire, emphasized and supported such egalitarian postulates.

For Schmitt, real democracy is defined by the fact that not only are equal individuals treated equally, but also unequal individuals are treated unequally. In democracy itself, we find, firstly, homogeneity and, secondly, the destruction of heterogeneity (Schmitt, 1990, p. 98). In his words, “the political power of a democracy lies in knowing how to eliminate the foreign and the unequal that threatens its homogeneity” (Schmitt, 1990, p. 98). There is no democracy that does not know the concept of the foreigner (Schmitt, 1990, p. 99). The equality of all individuals bound by this quality does not correspond to democracy but to a specific type of liberalism; it is not a form of the State but rather a kind of morality and an individualistic and humanitarian worldview.

In this union of both categories, the current mass democracy (Schmitt, 1990, pp. 100–101) is solidified. For Schmitt, this democracy governed and distorted by political liberalism would not truly be a democracy nor a form of the State. It would correspond, above all, to a morality. Therefore, as a morality and as a particular worldview, this form of government would be individualistic, isolationist, and arguably anti-communal. In the author’s view, it is precisely on this ethic of liberalism that mass democracy is based.

Clearly, this understanding of the political phenomenon is neither naive nor antiteleological. Through Schmitt’s analysis of concepts such as democracy, liberalism, and authoritarianism, fascism would not appear in the usual attire attributed to it by political philosophy. Fascism, according to Schmitt’s conclusions, would be like any other dictatorship—anti-liberal—but not antidemocratic.

According to Schmitt, it would suffice to observe how some dictators are acclaimed by the people. The German thinker affirms the existence of forms of legitimizing political power that are independent of the popular vote. This includes popular acclamations, granting certain political charters, and so on. According to Schmitt, some dictatorships would be part of democracy. It was characteristic of 19th-century liberal ideas to consider that the people can only express their will through each citizen individually, in the deepest isolation and secrecy, by casting their vote (Schmitt, 1990, p. 102). Conceiving alternative forms of legitimizing political power, democracy, and fascism (or any other authoritarian phenomenon) would be reconcilable in Schmitt’s perspective. The decoupling of democracy and liberalism was revisited by Brazilian authoritarian thinkers, especially Francisco Campos.

The foundation for most of Schmitt’s arguments around “authoritarian liberalism” arises from the concept of the “total state.” In *Legality and Legitimacy*, Schmitt asserted that the multipartisan State becomes “total.” However, such transformation does not occur through force or vigor but rather through weakness, as it ends up intervening in all spheres of life, needing to satisfy the demands of all interested parties. In this State,

there would be a shift towards the economic dimension, which until then had been free from state interventions, even if it required these groups to relinquish political leadership and influence.

The total state would be a state that voluntarily abdicates adequate leadership, by its own will, in economic and technical development, precisely in an “economic-technical” era. This renunciation would result in declaring neutrality regarding political issues and decisions, inexorably leading to a renunciation of the pretension to dominate (Schmitt, 2007b, p. 100). After Hitler was appointed Chancellor, disciples of Carl Schmitt, such as Ernst Forsthoff, attempted to reconfigure the Schmittian concept of “total state,” particularly in its qualitative sense. For Forsthoff, the rise of National Socialism should impose obedience to principles derived from tradition rather than according to typically Nazi principles like racial homogeneity, for example (Franco de Sá, 2012, p. 147).

It is interesting to note that Schmitt, in *The Concept of the Political*, starts from a common point with the mentioned intellectual Clinton Rossiter and his theorization of constitutional dictatorship. For Schmitt, the functioning condition of normativism (characteristic of legal liberalism) relies on institutional normality. However, during the Weimar crisis and thereafter, already during World War II, this normality would cease to exist. Schmitt insists in this text on criticisms directed at pluralism and multiparty systems, which would distort national unity and could even lead, given that liberal forces do not align with democratic ones, to a total state (Schmitt, 2002, pp. 97–98).

For Forsthoff, the entire order of domination would be based on the difference between leading and being led, commanding and being commanded. Therefore, every order of domination would necessarily be non-democratic, as democracy is a “form of the State” characterized by equality between leaders and followers. This identity would ultimately undermine government authority, as it cannot develop within a system functionally oriented by democracy (Forsthoff, 2000, p. 320). In Schmitt’s words, “every democracy requires the complete homogeneity of its people [...] the true democratic method is not a method for integrating heterogeneous masses” (Schmitt, 2000b, p. 299).

For Schmitt, this State that seeks to intervene in broad and specific areas would be “total” only from a “quantitative” perspective. It would be divided, being a party State, while hegemonic complexes would end up usurping political influence, both of relative duration and transient. They would be driven by the use of their power, anticipating political opponents’ criticisms, and treating every justification as an argument in the inter-political struggle. Legality and legitimacy, under such conditions, would become strategic instruments used by every individual in an endless power game (Schmitt, 2007b, p. 100).

Schmitt's diagnosis is that the German state heavily depended on social groups, often appearing as a victim due to its agreements. The state would end up making agreements with various interest groups, such as unions, the church, etc., to balance heterogeneous interests. In this context, state power would be weakened if not emptied. It can be argued that the state would become a servant of a dominant class or party or simply the product of the always difficult balance among these heterogeneous groups that battle each other. At this point, the state would be a mere referee among various disputes, incapable of making authoritative decisions, losing control over religious, economic, and social conflicts, and often even omitting and denying their existence. Thus, for Schmitt, we would have the advent of the "agnostic state," criticized by fascist doctrine (Schmitt, 2000b, p. 303).

Schmitt argues that the State is weak even when it is omnipresent and deeply involved in its relationship with society and the economy. What Schmitt referred to as the authoritarian State was, obviously, a liberal State. Schmitt's authoritarian State would be a liberal-authoritarian State, one that, in the classical sense, would be strong and weak at the same time: strong in the sense of protecting the market and the economy from egalitarian and democratic demands for redistribution to the extent of using public force to ward off such claims; weak in its relationship with the market understood as the proper space for individual pursuit of benefits (Streeck, 2015, p. 362).

Thus, there was the projection of replacing the quantitative total state (a weak State inspired by social democracy) with a qualitative total state (an alternative form of interventionism that safeguards the economy), which ensures authentic sovereignty to the State while protecting the autonomy of capital owners. Schmitt identified his strong State with the Italian fascist totalitarian State, which would be strong in the qualitative sense (Cristi, 1998, p. 195).

The development of this transformation from a quantitative total state to a qualitative total state was detailed in a conference for German industrialists, later published under the name "Strong State and Solid Economy." For Schmitt, only a strong State could withdraw from matters not belonging to the State. For the jurist, depoliticization and the creation of spheres immune to state intervention certainly constitute a political process (Schmitt, 1998, p. 213).

Schmitt's total state would be strong in terms of its quality and energy, referencing the *Mussolinian Stato Totalitario*. In his view, the fascist State determined that coercive powers belong exclusively to the State, promoting the hierarchization of its power (Franco de Sá, 2012, p. 146; Schmitt, 1998, p. 217). This total state would not be confused with the type of state that penetrates every aspect of human life, disregarding

non-state spheres, as it would end up incapable of recognizing them. It would be only quantitative, signifying pure volume and not referring to the intensity of political energy (Schmitt, 1998, p. 218).

In his analysis of the Weimar Republic, Schmitt asserts that “the current German State is total due to weakness and lack of resistance, due to its inability to resist attacks from parties and organized interests” (Schmitt, 1998, p. 218). Only a very strong State would be able, therefore, to dissolve the intermingling of all types of non-state businesses and interests (Schmitt, 1998, p. 221). According to Schmitt, the process of separation between state and non-state spheres would unequivocally be a political process (Schmitt, 1998, p. 221).

However, according to Schmitt, this process could not be conducted based on the liberal opposition developed in the 19th century between the State and free individuals. According to the German jurist, there would be a very relevant terrain of the individually considered individual that would be essentially economic activity. In this way, one could no longer oppose individual interest to the State (Schmitt, 1998, p. 224). The inadequacy of classical liberal criteria would, in the author’s view, be replaced by a tripartite scheme that would surpass the duality of State and individual, firstly, by determining the economic sphere of the State, i.e., the content of what belongs to state privileges. Secondly, the dimension of everything opposed to the first state sphere would develop, i.e., the realm of the individual and free entrepreneur, or in other words, that of absolute privacy.

Finally, Schmitt suggests the development of a third instance, naturally intermediate and non-state, although still public (Schmitt, 1998, pp. 224–225). For the author, economic democracy exposed a mixture of politics and economy and tried to acquire economic power through political power while simultaneously increasing its political power through economic power. Schmitt refers to an “autonomous economic administration (economic self-management)” to identify this new segment of relations between the State and the economy. There would be an economic sphere that belongs to the public interest and should not be separated from it. This non-state sphere organized by business agents would function as a genuine independent administration (Schmitt, 1998, pp. 225–226).

This process of creating spheres is primarily a process of depoliticization. Furthermore, only a strong State would be capable of determining certain activities, such as traffic control, radio stations, and so on, to maintain its privileges. In his view, all other activities should be delegated to the self-management of the free economy. For Schmitt, the form of depoliticization would be an intensely political process, hence the requirement for a strong State. To acquire the capacity to carry out these functions, Schmitt

states that the State needs to “establish particularly authoritarian foundations in terms of new arrangements and institutions” (Schmitt, 1998, pp. 226–227).

It is known that Schmitt was a reactionary critic of the Weimar Republic (Scheuerman, 2020a, p. 11) since he saw Germany during this period as a quantitative total state as opposed to a qualitative one. In this second form, the State would continue to play a central role in economic matters, but it would also signify the end of *laissez-faire*. For Schmitt, the State should provide the legal and institutional preconditions for forming a system where capitalist owners could engage in economic supervision. Moreover, such intervention should be far from a “collectivization” of private property (Scheuerman, 2020a, p. 11).

The qualitative totality would imply that the objective of state action would be of secondary importance compared to the effectiveness and coherence of this action (Scheuerman, 2020b, p. 112). The strength of the qualitative total state would lie in its ability to effectively resist the demands made by political parties. This qualitative total state would not interfere with the economy. However, to ensure peace and stability, the State could not, in Schmitt’s view, refrain from regulating media, postal services, and other public bodies (Schwab, 1989, pp. 78–79).

According to Schmitt’s thought, the qualitative total state is more authoritarian than totalitarian. It would exercise its authority in the political realm (capacity to distinguish between friend and enemy) while maintaining individual freedom in the private economic, religious, and social spheres (Schwab, 1989, p. 86). In this sense, Arendt’s criticisms would be inapplicable to Schmitt’s proposal of a strong State, demonstrating once again the fragility of the notion of “totalitarianism.” Moreover, in 1936, Schmitt used the term “authoritarian liberalism” to describe the predominant constitutional systems in the 19th century (Cristi, 1998, p. 6). Schmitt sought to replace the notion of democracy with a “substantial democracy,” illiberal, based on the substantial homogeneity of the people (Bielefeldt, 1998, p. 23).

The quantitative total state corresponded, due to the threat of erosion of its authority by parties, to the self-organization of society itself. The proposal for depoliticization, therefore, characterizes the State’s overlap with parties, transforming into an authoritarian State. Here, Schmitt closely followed Heinz Otto Ziegler’s (Franco de Sá, 2012, p. 146) formulation: “An authoritarian State should manage to overcome the present party struggles in society.” The overlap between the State and society signifies the complete politicization of life, as referred to multiple times by Schmitt.

This total state would be a version of the legislative, pluralist, economic, bureaucratic, and policratic State, which would have become incapable of qualitatively differentiating itself from society (Franco de Sá, 2012, p. 193). As pointed out by Franco de Sá,

the total State will replace the Neutral State of the 19th century, bringing a series of new challenges with the transformation of all economic and social problems into potentially political issues. For Schmitt, the total state promotes the politicization of everything that is economic, social, cultural, and religious. (Bercovici, 2004, p. 93)

It is easy to notice that Schmitt's conception of liberalism was very close to that upheld by ordoliberals (Cristi, 1998, p. 176). Schmitt's vision of a strong State and a free economy coincided with the "new liberalism" of certain German economists like Alexander Rüstow, Walter Eucken, and Wilhelm Röpke. This conservative-liberal school of thought argued that only a strong State could guarantee market self-regulation, initiate depoliticization, and ensure the creation of spheres free from State intervention (Cristi, 1998, p. 194). This aligns precisely with Schmitt's framework. The ordoliberal State is also a strong State. Only this form of State could distinguish itself from society (Bonefeld, 2017, p. 3).

The *Vitalpolitik* advocated by ordoliberals relates to a business society where competition is second nature. *Vitalpolitik* involves the integration of competition into the "total way of life" (Bonefeld, 2017, p. 6). Alexander Rüstow called for a strong state reaction against the Weimar Republic and supported it based on Schmitt's political theology. Ultimately, he was exiled to Turkey (Bonefeld, 2017, p. 10) due to political persecution, a fact that ordoliberal advocates point to as "proof" that the economic policies of the *Third Reich* were different from those advocated by ordoliberals.

Franz Böhm and Walter Eucken were the main figures of the Freiburg School and solidified German ordoliberal economics during the Nazi period (Bonefeld, 2017, p. 11). Another prominent figure, Müller-Armack, published a book in 1933 in honor of Nazism called *Ideas of the State and Economy Order in the New Reich* and worked as a consultant for the Nazi regime (Bonefeld, 2017, p. 10). Ordoliberalism is a theoretical expression of economic liberalism, representing a program for legitimizing private property (Bonefeld, 2017, p. 13). Similarly, Neumann argued that the rule of law is necessary as a precondition for capitalist competition.

The freedom of competition necessitates separating from the law because it is one of the highest expressions of formal rationality. The primary task of the State would be to establish legal frameworks and ensure contract enforcement (Neumann, 1996, p. 116). In this sense, the ordoliberal position aligns with Schmitt's, as it advocates "authoritarian intervention in the economy, not planning, nor a project of social emancipation" (Bercovici, 2004, p. 102). Schmitt's total state would be, in addition to an administrative State, an economic State (Bercovici, 2004, p. 96).



Both ordoliberalism and Schmitt's authoritarian liberalism did not believe in alternatives to a market economy outside of an authoritarian State (Streeck, 2015, p. 363). This scenario could be seen as a kind of "economic-financial state of exception" or even the transformation from "guardian of the Constitution" to "guardian of the free market." As Bonefeld (2020) points out, "The strong State is a security State. It combines freedom with surveillance." Schmitt enthusiastically supported the Nazi labor reform of 1934 as a manifestation of concrete order thinking. These reforms stripped away minimal labor protections, reclassifying workers as disciples. This was because "the economy must be liberal, private, and depoliticized." (Bercovici, 2004, p. 102).

According to Bercovici (2004), "political liberalism is discarded by Schmitt, but not economic liberalism. The Schmittian economic model seeks to strengthen capital, freeing it from the Social State" (p. 107). As Neumann emphasizes, Carl Schmitt's "totalitarianism" became palatable even to major industrialists, discussing in his conference the "invention" of two forms of totality: the Roman and the Germanic, where the Roman would be quantitative and the Germanic qualitative. This correlation between economic liberalism and political authoritarianism had been previously exposed (even more clearly) by Pareto, whose thinking influenced the initial phase of Mussolini's economic policy (Neumann, 2009, p. 49). Schmitt's strong State would favor private property and initiative (Neumann, 2009, p. 50). This is beyond doubt.

At the time, the main criticism against Schmitt's position came through Herman Heller's thoughts, who saw in the German jurists' proposals the emergence of authoritarian liberalism. Heller argued that "what is decisive, then, for the social and political character of the authoritarian state is its vision of the capitalist form of the economy" (Heller, 2015, p. 298). According to Heller, this authoritarian state would result from a subsequent development consistent with nationalist liberalism, thus only being identifiable as "authoritarian liberalism" (Heller, 2015, p. 299).

Heller's primary contention with this form of state is its withdrawal from social politics, the liberalization of the economy, and the dictatorial control of the state over political-intellectual functions (Heller, 2015, p. 300). Authoritarian liberalism views a free economy as a state order and recognizes the economic constitution of freedom as a practical political order (Bonefeld, 2020). It emerged in the early 1930s as one of the causes leading to the blurring of lines between society and the state, envisioning how to renew this separation between state and economy in a mass democratic society (Bonefeld, 2020). The content of the authoritarian state outlined by Schmitt aligns in many aspects with Hayek's critiques of collectivist perspectives, which would lead to "totalitarianism." Thus, the ideas of these two authors share numerous points of contact, including certain concepts.

The first similarity between the thoughts of Schmitt and Hayek emerges in their distinction between law (*recht*) and legislation (*gesetz*). Both believed that creating law by an elected parliament would lead to the degeneration of the Rule of Law into a Legal (Slobodian, 2018, pp. 205–206) (or Administrative) State, as Schmitt pointed out. Hayek developed a differentiation between general laws and individual commands, arguing that the Rule of Law could not be subject to the wills and desires of individuals (similar to the content developed by Schmitt).

When addressing norms, Schmitt stated that the concept of rule required by a liberal perspective depended on its conformity to four criteria: a) generality; b) predictability and measurability of all political and legal decisions; c) an administration subject to judicial review; d) equality before the law. In his book *The Constitution of Liberty*, Hayek defends the same four criteria (Cristi, 1998, p. 152). Thus, for both, the Rule of Law would be a purely procedural condition rather than a substantial one for the validity of legal norms. The similarities do not end there. The “Law for the Protection of German Blood and Honor” and the “Reich Citizenship Law,” both from 1935, aimed to cancel German nationality for Jews and prohibit marriage between Jews and Germans, even sexual relations. Schmitt referred to these laws as “the Constitution of Liberty,” curiously the same title as Hayek’s famous book. According to Schmitt, these laws transformed German blood and honor into key legal concepts. These laws were seen as “the first German Constitution of Liberty” (Llobet Rodríguez, 2019, pp. 71–72).

Similarly, Hayek asserts that increased state intervention would lead to a total state (a term introduced by Schmitt in the 1930s to describe the same phenomenon). In *The Guardian of the Constitution*, Schmitt argued that the liberal neutral state of the 20th century was being replaced by a total state, where the state and society would be identical. Hayek reaffirms this thesis throughout his life, thus sharing Schmitt’s view that an interventionist state resembles more a plebiscitary dictatorship (here referring to voting). Another point of intersection between Hayek’s and Schmitt’s thoughts lies in the critique of the multi-party state.

The “unlimited democracy” of Hayek is equivalent to the quantitative “total state” highlighted by Schmitt as a weak state. The transformation of this state into a kind of neutral arbiter that must resolve different conflicts of interest and relinquish social control was similarly addressed by both Schmitt and Hayek. As mentioned earlier, Schmitt identified social democracy as the decline of state authority, criticizing the subordination of the state to different social groups. Hayek also criticized democracy in this regard, highlighting that the democratic constitutional structure leads politicians to buy the support of these groups.

Hayek openly endorses the core of Schmitt's critique of the so-called "pluriparty state" (Scheuerman, 1997, p. 180), as highlighted by Scheuerman. Furthermore, Schmitt's perspectives against democratic liberalism align with Hayek's attacks on the welfare state (Cristi, 1998, p. 153). Hayek echoes many of Schmitt's theses on liberalism, emphasizing that democracy should be considered antithetical under certain circumstances (Mirowski, 2013, p. 107).

Schmitt's Strong State was not supposed to intervene in any way in civil society matters. His conservatism was combined with a liberal view that ensured society enjoyed the absence of state intervention and should be regulated by spontaneous market mechanisms. The strength of the State depended on its ability to remain neutral, depoliticizing society. Schmitt's strong State was a qualitative total state compared to the totalitarian state of the fascist regime (Cristi, 1998, p. 20). For Hayek, unlimited democracy would lead to socialism, to a totalitarian regime. Hayek echoes Schmitt's thesis that liberalism and democracy are antithetical (Mirowski, 2009, p. 443).

Schmitt's distinction between liberalism and democracy allowed him to develop a space to manifest the political. Thus, the political could manifest itself not only through the democratic form but also through the monarchical or aristocratic form (Cristi, 1998, p. 21). In *Legality and Legitimacy*, Schmitt argued that the total state was confronted with an authoritarian State. As mentioned earlier, this conclusion was previously elaborated by Heinz Ziegler, who opposed democracy to authoritarianism and liberalism to totalitarianism (Cristi, 1998, p. 23). This distinction was drawn by Hayek and all his followers, who ended up reconfiguring the political and economic doctrine of Nazism through an economic lens.

Authoritarian liberalism, as developed from Schmittian and ordoliberal thought, reappears, albeit in a more blurred and less crystalline manner, in the ideas of Hayek. Both thinkers have several similarities, although Hayek operates a kind of performative contradiction, constructing his thought through categories similar to those of Schmitt while simultaneously disavowing any political influence from the German jurist. Hayek formally denounced Schmitt in both *The Road to Serfdom and Law, Legislation, and Liberty* (Cristi, 1998, p. 146).

Hayek, despite condemning Schmitt's work, extensively used Schmittian concepts, especially those from the Weimar period. He clearly accepted Schmitt's distinction between democracy and liberalism, as well as another central element of Schmitt's thought: the difference between totalitarianism and liberalism (Cristi, 1998, p. 147). A limited liberal policy bound by abstract general rules would be open to authoritarian rule, which does not seem contradictory to Hayek. Like Schmitt, he appeals to the

distinction between authoritarianism and totalitarianism, consciously following Heinz Otto Ziegler. Furthermore, in a Schmittian fashion, he opposed state planning and any form of intervention in economic matters to liberalism (Cristi, 1998, p. 166).

Joseph Raz emphasized the compatibility of Hayek's Rule of Law with non-democratic systems.<sup>1</sup> Hayek believed that strongly authoritarian governments could ensure the depoliticization of civil society. His liberalism was politically conservative, allowing for a strong state and a liberal society. As Cristi points out,

in his California manuscript, Hayek seemed much more receptive to dictatorship. In a passage he expressly deleted from his final version, he wrote, 'Today, even dictators could come to power by a genuine breakdown of democracy and be genuinely anxious to restore it if they knew how to safeguard it against the forces that destroyed it.' (Hayek, 1998, p. 168)

There is no doubt that Hayek was referring here to the Pinochet regime.

One could also argue that Hayek's *Model Constitution* advocated for emergency powers to suspend freedom for a certain period, echoing Carl Schmitt and Clinton Rossiter, who emphasized that there can be no democracy in abnormal times. For Hayek, in a government facing a breakdown, it is practically inevitable that someone would have absolute powers. As Cristi (1998) points out, "In truth, Hayek owes much to Schmitt, more than he acknowledged" (p. 23). Indeed, Hayek builds on some concepts developed by Schmitt (Scheurman, 1997, p. 172). He criticizes some of Schmitt's texts from the Nazi era but overlooks how his own thinking aligns with the *Krownjurist*.

It could be said, in conclusion to this topic, that the greatest inconsistency in the collective neoliberal thought is that the alleged new facets of freedom share a common criticism of old liberalism exposed by authoritarian thought developed by Italian and German political scientists during the interwar period (Mirowski, 2013, p. 106). Neoliberals closely followed Schmitt in order to establish a strong state with a technocratic government immune to social demands (Brown, 2019, p. 61). The same criticisms addressed to the ordoliberalism and the Austrian School should be applied to the Chicago School, as the difference between ordoliberalism and the Chicago School is not doctri-

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<sup>1</sup> "A non-democratic legal system, based on the denial of human rights, widespread poverty, racial segregation, sexual inequalities, and religious persecution, can, in principle, conform to the requirements of the Rule of Law more than any of the legal systems of the more enlightened Western democracies. This does not mean that it will be better than those Western democracies. It will be an immensely worse legal system, but it will excel in one thing: its conformity to the Rule of Law" (Raz, 1977, p. 196).

nal but lies in emphasis, that is, in the social and historical contexts of private property. It is merely a matter of nuances (Bonefeld, 2017, p. 14), not a political platform.

It seems that by reviving the ordoliberal and Schmittian construction of authoritarian liberalism, Chantal Mouffe (1998) is correct in arguing that democracy denies liberalism and liberalism denies democracy (p. 161), given the “elective affinity between free-market economics and authoritarian policies that have become increasingly common in the contemporary political landscape” (Scheurman, 1997, p. 184).

Authoritarian liberalism is not just about emphasizing liberal economic policies alongside political repression aimed at quelling dissent against the regime. It is characterized by the concentration of economic and financial decision-making (Chamayou, 2020, p. 14) in the hands of the executive branch. According to Chamayou, neoliberal discourse engaged in historical revisionism by highlighting the connections between democracy and totalitarianism precisely because National Socialism represented a model of state based on an “Economic State,” which could be termed “authoritarian liberalism” (Chamayou, 2020, p. 17). When analyzing Latin American policies, Paul Samuelson used the term “capitalist fascism” to describe the combination of market openness with political repression (Samuelson, 1981, pp. 35–44).

Critiques of state welfare programs developed by Hayek stemmed from his aversion to “social justice” (Gamble, 1996, p. 46). However, Hayek never provided evidence for his claims linking totalitarianism and democracy. Instead, he engaged in historical revisionism that reversed the connections between liberalism and National Socialism. It is worth noting that the social democracy of Weimar was crushed by the authoritarian perspective of National Socialism. There was not a progressive transformation from social democracy to totalitarian socialism. Additionally, the National Socialist Party found support and backing precisely from conservatives, which makes Hayek’s thesis an unprecedented historical falsification.

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# LIBERALISM VERSUS DEMOCRACY. HAYEK AND DEMARCHY\*

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## LIBERALISMO VERSUS DEMOCRACIA. HAYEK Y LA DEMARQUÍA

### Abstract

The end of an order shapes our contemporaneity. The continuous production of crises challenges the neoliberal form of government. Some interpreters see the emergence of authoritarian liberalism and illiberal democracies as a response to the excesses of the market. In this article, however, through the figure of Friedrich A. Hayek, we show how the neo-liberal proposal itself originated as an attack on the Keynesian liberal democracy that emerged after World War II. Hayek's work on the political and legal lexicon highlights the intention to untie liberalism from democracy. The analysis focuses on Hayek's institution: "demarchy," as a form that limits the will of the people through the rules of private law.

### Keywords

neoliberalism; crisis; Hayek; demarchy; rule of law

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## **Resumen**

Nuestra contemporaneidad está marcada por el fin de un orden y la producción continua de crisis pone en tela de juicio la forma neoliberal de gobierno. Algunos intérpretes ven en el surgimiento del liberalismo autoritario y de las democracias antiliberales una respuesta a los excesos del mercado. En este artículo, sin embargo, a través de la figura de Friedrich A. Hayek mostramos cómo la propia propuesta neoliberal se originó como un ataque a la democracia liberal keynesiana que surgió tras la Segunda Guerra Mundial. El trabajo de Hayek sobre el léxico político y jurídico pone de manifiesto la intención de desvincular el liberalismo de la democracia. Por lo tanto, el análisis se centra en la institución que propuso Hayek: la “demarquía” que limita la voluntad del pueblo a través de las normas del derecho privado.

## **Palabras clave**

neoliberalismo; crisis; Hayek; demarquía; Estado de derecho

## 1. Illiberal Democracy as a Response to the Crisis of Neoliberalism

On July 26, 2014, in Băile Tușnad, Viktor Orban declared, “We have to abandon liberal methods and principles of organizing a society, as well as the liberal way to look at the world.” The Magyar form of government—assuming the death of the Western democratic model—has embraced the authoritarian turn:

the new state that we are building is an illiberal state, a non-liberal state. It does not deny foundational values of liberalism, such as freedom, etc. But it does not make this ideology a central element of state organization, but applies a specific, national, particular approach in its stead. (Orban, 2014)

Hungary’s illiberal turn has been the focus of several political and legal analyses (Carlino, 2019; Trentin, 2024). What surprised many authors was that a country that was part of the European order and a member of NATO had changed its constitutional arrangements in favor of an authoritarian shift (Campati, 2022). Authoritarian liberalism, like the one that emerged in the countries of the former Soviet Union, has challenged the rhetoric and practices of what Nancy Fraser (2017) has called “progressive neoliberalism.” The normative reach of the latter underpinned much of the European Union’s legislation and policies between the 1990s and early 2000s. As stressed by the Council of Europe, the eastward enlargement of the European Union was imposed through “democratic and economic reforms” capable of promoting “greater stability and prosperity in Europe” (European Council – Council of the European Union, 1993).

Initially, in this essay, we investigate the genealogy of the turning point that led to the legitimacy crisis of a specific government order. Orban (2014) himself has stated that the roots of the shift toward authoritarian liberalism and illiberal democracy must be found in the “sunset”—or sense of crisis—of the liberal-democratic form of government, especially in the version we might call “neo-liberal democratic” that emerged in the wake of the Cold War (Campati illiberal).

In agreement with Adam Tooze’s interpretation, we identify the starting point of the “crash” (Tooze, 2018) of that specific “art of government” (Gentili, 2021) in the financial crisis exploded in 2008 with the bursting of the subprime mortgage bubble. It was the first questioning of the ideological and governmental processes that supported neoliberal legitimacy. This phenomenon was further accentuated by the continuous production of crises that followed the failure of the Lehman Brothers investment bank—effectively described and conceptualized with the notion of “poly-crisis” (Scanga, 2023; Tooze, 2021).

The beginning of the new decade—with the spread of the COVID-19 pandemic and the multiplication of war scenarios—has been the second turning point. The introduction into the political and economic lexicon of terms such as the crisis of neoliberal globalization, deglobalization, decoupling, re-shoring, friend-shoring, and near-shoring traces a path (Limes, 2023; Maronta, 2024; Ottaviano, 2022). That form of government that has been hegemonic for forty years has been increasingly challenged. Specifically, it is the particular equilibrium that neoliberalism has imposed, since its genesis, on the relationship between the spheres of political and economic sovereignty that is questioned and re-defined (Zanini, 2008).

Following this interpretation, the debate has revolved around the “return of the state” (Gerbaudo, 2022) and the possibility that the state can protect society from the excesses and drifts of the market. Alessandro Somma (2021), for example, has taken a “reactive” proposal by pointing out that the emergence of illiberal, authoritarian, and populist forms is an expression of the “Polanyi moment”: a reaction to the crisis of legitimacy of neoliberalism. In this scheme, as Mulieri (2024) has shown, illiberal democracy has come to assume a “normative dimension” and “refers to an idea of politics and a vision of society that brings it close to the thinking of right-wing populisms and makes anti-liberalism its main ideological motive” (p. 11).

In this article, however, we will take a different stance while we still assume that neoliberal governance is challenged by the continuous production of crises. In fact, we will address the emergence of authoritarian liberalism by urging a line of reading internal to the neoliberal theoretical proposition itself instead of highlighting what we have termed as the “reactive” dimension, the re-proposition of the state form as a levee to the market. The suggested reading is that authoritarian liberalism responds not to the crisis of order but to the neoliberal proposition itself (Slobodian, 2023). The neoliberal mode of government presented itself as the response to the inflation of democracy expressed by Western societies thirty years after World War II (Crozier et al., 1975). In particular, it did so by untying the notion of liberalism from that of democracy through a distinct theoretical and institutional model.

Through the analysis of Friedrich A. Hayek’s text, it will be shown that the relationship between liberalism and democracy, like that between Economic and Political, is resolved in terms of a “neutralization” of democracy in favor of the catallactic order (Scanga, 2021). For this reason, the essay demonstrates the deeply antidemocratic root of Hayekian neoliberalism. After showing the constitutive fragility of the liberalism-democracy pair and analyzing how neoliberalism is a response to the liberal-democratic model that emerged from the ashes of World War II, we will see how Hayek, the

best-known exponent of the Austrian School, rethought the relationship between liberalism and democracy through work on the political and legal philosophical lexicon (De Carolis, 2017). Specifically, we will show how the notion of liberalism has been rethought and removed from nineteenth-century tradition. The notions of competition, individualism, and the rule of law are crucial to rethinking it. It is precisely from the conceptual jus-philosophical dimension that institutional proposals such as “demarchy” emerge. We will then see how authoritarian neoliberalism is not (only) a “reaction” to crises endogenous to the order as much as it is a theoretical perspective internal to the Hayekin tradition itself.

## 2. Liberalism and Democracy: What Kind of Relationship?

The relationship between liberalism and democracy has historically presented itself with the characteristics of instability and compromise. Although the liberal-democratic theoretical proposition has led to the belief that the two terms were interdependent, the problem of their relationship is far from linear. Norberto Bobbio (2006) recalled that just as a liberal state is not necessarily democratic, “it is historically realized in societies in which participation in government is very restricted, limited to the wealthy classes.” At the same time, a democratic government does not give rise to a liberal state; indeed, “the classical liberal state has now been undermined by the progressive process of democratization produced by the gradual enlargement of universal suffrage” (Bobbio, 2006, p. 29). In a recent essay, Carlo Galli (2023) showed how the liberal democracy of the second half of the twentieth century, the one “with social content and predominantly state-run.” In fact, it resulted from a precise geopolitical context in a macroeconomic paradigm dominated by the decisions made in 1944 at Bretton Woods. The Keynesian political, economic, and legal rule—which determined a definite relationship between liberalism and democracy—was held for thirty years; then, this fragile balance between the economic and political spheres was shattered by neoliberalism’s political rise.<sup>1</sup>

The 1973 Chilean coup marked the first moment in this history (Harvey, 2005). Much is said about the well-known statement made by Friedrich A. Hayek to the Chilean newspaper *El Mercurio* in an interview in 1981 at the height of the Pinochet dictatorship. It reveals the transformation of the relationship between liberalism and democracy imprinted by neoliberalism. Hayek (1981) argues:

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<sup>1</sup> For the genealogies of neoliberalism, we refer to Dardot and Laval (2017), Ferrara (2021), Foucault (2004), Mirowski and Plehwe (2015), and Slobodian (2018).

I am totally against dictatorships. But a dictatorship may be a necessary system for a transitional period. At times it is necessary for a country to have, for a time, some form or other of dictatorial power. As you will understand, it is possible for a dictator to govern in a liberal way. And it is also possible for a democracy to govern with a total lack of liberalism. Personally, I prefer a liberal dictator to democratic government lacking liberalism. My personal impression—and this is valid for South America—is that in Chile, for example, we will witness a transition from a dictatorial government to a liberal government. And during this transition it may be necessary to maintain certain dictatorial powers, not as something permanent, but as a temporary arrangement.

In just a few lines, the Austrian theorist expressed all his aversion to democracy, which was understood as a liberation project, building a furrow between democracy and liberalism. So much so that in the same interview, urged by the journalist, he argued that unlimited democracies are such that “what we call majorities are able to turn into discriminatory groups which favor certain people to the detriment of others.” Conversely, limited democracy “ought to be able to give its own group of supporters the same possibilities as the rest” (Hayek, 1981). The preference toward a “liberal dictator” rather than a “democratic government lacking liberalism” thus opens the way toward fundamental questions for the analysis of “neoliberal democracy” or what we might call “authoritarian neoliberalism.” The aim of the essay is thus to highlight how the neoliberal proposal must be understood in the separation, including conceptual separation, between democracy and liberalism.

In highlighting how the neoliberal form of government determined the relationship between liberalism and democracy, we consider it central to show what Hayek meant by “liberalism.” The thesis we propose is that Hayekian neoliberalism was an ambitious project of conceptual and lexical rethinking. As we shall see, at the heart of the renewal of liberalism—which distances itself from late nineteenth-century *laissez-faire* and some acquisitions of classical theory—there is an “anti-democratic” trait. This theoretical trait preceded the form of a political-institutional system. It derives “from a determination to shield the rules of the market from the policy orientation of governments, whatever its electoral majority” (Dardot & Laval, 2019, p. 39). The neoliberal project was formed from the war on democracy, on constitutionally guaranteed democracies, in an attack on labor rights and popular participation (Laval et al., 2021).

Precisely since the 1970s, neoliberalism has crept into the tension between capitalism and democracy, dissolving the marriage that had been imposed on them after World War II. Since “the legitimation problems of democratic capitalism” had become

“accumulation problems,” “a progressive emancipation of the capitalist economy from democratic intervention” was deemed necessary (Streeck, 2014, p. 19). Wolfgang Streeck (2014) described this development “as the transformation of the Keynesian political-economic institutional system of postwar capitalism into a neo-Hayekian economic regime.” A process of “de-democratization of capitalism through the de-economization of democracy” (p. 20). The neoliberal solution called for progressive emancipation of the capitalist economy from democratic intervention became even more acute after the 2008 crisis to achieve “the institutional hegemony of market justice over social justice” (Streeck, 2014, p. 120). The rewriting of a new material constitution, which, in Europe, can be described as a “*Jus publicum economicum europeum*” (Dardot & Laval, 2019, p. 68), in which de-democratization or Hayekian democracy was the way liberalism made itself immune to mass democracy.

### 3. The Hayekian Lexicon

Within this framework, we are interested in investigating what theoretical roots allowed for the development of a concept of democracy alien to that which the post-World War II era bequeathed to us. In 1944, with the war still in progress, Hayek published a well-known text, which became a bestseller and introduced him to the world as a social and moral sciences theorist and no longer exclusively as an economist. In this book, titled *Road to Serfdom*, Hayek began to clarify some of the points of neoliberal doctrine, starting with his opposition toward “classical socialism; aimed mainly at the nationalization or socialization of the means of production” (Hayek, 1994, p. 95). According to the Hayekian reconstruction, many socialist parties, by the mid-1940s, had apparently abandoned these aims and turned to “redistribution/fair-taxation ideas” and the realization of a welfare state. The policies of the welfare state—the redistributive aspect in particular—would lead, however, to the same result: “destroying the market order and making it necessary, against the will of the present-day socialists, gradually to impose more and more central planning” (Hayek, 1994, p. 95). To free himself from what he called “a mortal danger to the survival of freedom,” Hayek reconstructed a liberal lexicon capable of disarticulating the liberalism-democracy relationship.

According to Hayek, the concept of freedom, which is always to be regarded as individual liberty, is to be understood as protection by law against all forms of arbitrary coercion, unlike that conception of freedom that attaches prominence to the claim of the right for each group to self-determine through its own form of government. And it is precisely this individual freedom that, in *The Road of Serfdom*, he opposes “socialists of all parties.” However, this freedom cannot be sufficiently determined unless three

other determinants are taken into consideration: competition, individualism, and the rule of law.

First, the liberal Hayekian thesis is expressed as one that favors the best possible use of the forces of competition as a means of coordinating human efforts (Hayek, 1967, 1990). This thesis distances itself from *laissez-faire*: indeed, it is based on the conviction that where effective competition can be created, this, *vis-à-vis* other solutions, is the best way to direct individual efforts. It stresses that for competition to work in a way that brings benefits, “a carefully thought-out legal framework is required, and that neither the existing nor the past legal rules are free from grave defects” (Hayek, 2006, p. 37). Hayekian liberalism regards competition as superior, not only because in most cases it is the most effective method, but even more so because it is the only method by which activities can be adapted to one another without coercive or arbitrary intervention by authority. Competition, by eliminating the need for “conscious social control” (Hayek, 2006, p. 38), allows individuals to decide whether the prospects of a given occupation are sufficient to offset the disadvantages and risks it entails. As a principle of social organization, effective competition precludes certain kinds of coercive interference in economic life but admits others that can sometimes, in a really considerable way, help its functioning and even require “certain kinds of government action” (Hayek, 2006, p. 38). The functioning of competition not only requires the proper organization of certain institutions such as currency, markets, and channels of information, but it depends before anything else on the existence of an appropriate system of laws, a system of laws designed in such a way as to preserve competition and to make it function as profitably as possible.

Second, alongside competition, central to constructing a purely liberal movement, we find individualism (Hayek, 1948). It starts from the observation that

the limits of our powers of imagination make it impossible to include in our scale of values more than one sector of the needs of the whole society, and since scales of values can exist only in the minds of individuals, there is then nothing but partial scales of values, scales which are inevitably different and mutually incompatible. (Hayek, 1948)

What is really important is the fact that it is “the basic fact that it is impossible for any man to survey more than a limited field, to be aware of the urgency of more than a limited number of needs” (Hayek, 2006, p. 62). For Hayek, this is the “fundamental fact on which the whole philosophy of individualism is based” (Hayek, 2006, p. 62). The



essence of the individualist conception is, therefore, the recognition of the individual as the sole ultimate judge of his own ends, the belief that, as far as possible, his views should govern his actions.

Finally, as the third constituent element of Hayekian liberalism, we identify the normative framework. In fact, for the Austrian theorist, nothing more clearly distinguishes the situation of a free country from that of a country subjected to an arbitrary government than the observance that one has, in the free one, of the great principles known as “the rule of law” (Tedesco, 2002). Liberal government is bound by rules established and announced in advance: “rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances, and to plan one’s individual affairs on the basis of this knowledge” (Hayek, 2006, pp. 75–76). The distinction between the creation of a stable framework of laws, within which productive activity is guided by individual decisions, and the direction of productive activity exercised by a central authority is a specification of the more general distinction between “the Rule of Law and arbitrary government” (Hayek, 2006, p. 76). What Hayek, in *The Road of Serfdom*, calls “formal rules” inform in advance what action the state will take in certain kinds of situations, defined in general terms, without reference to time, place, or particular persons. They are purely instrumental rules in that they are expected to be useful for people one does not yet know and in circumstances that cannot be predicted in detail. These kinds of rules, Hayek continues, have two aspects, the first of which is economic. The state should limit itself to establishing the rules that apply to general types of situations and should allow individuals freedom in whatever depends on the circumstances of time and place, for the reason that “only the individuals concerned in individual cases can fully know these circumstances and adapt their actions to them.” If individuals are to be placed in a position to effectively use their knowledge in formulating their plans, they must be able to predict the state’s actions that may affect these plans. The second aspect of the issue, however, is moral and political. If we are to create new opportunities open to all, and that is to provide possibilities of which people can make use as they see fit, the “effect on particular ends or particular peoples cannot be known beforehand” (Hayek, 2006, pp. 78–79). As Hayek (2006) writes in a footnote:

The form which the Rule of Law takes in criminal law is usually expressed by the Latin *tag nulla poena sine lege*—no punishment without a law expressly prescribing it. The essence of this rule is that the law must have existed as a general rule before the individual case arose to which it is to be applied. [...] But while the Rule of Law has become an essential part of criminal procedure in all liberal

countries, it cannot be preserved in totalitarian regimes. There, as E. B. Ashton has well expressed it, the liberal maxim is replaced by principles *nullum crimen sine poena*—no “crime” must remain without punishment, whether the law explicitly provides for it or not. (p. 87)

It is only through general rules—which are genuine laws in that they are distinct from specific orders, to be understood as operating in circumstances that cannot be foreseen in the particulars and whose effect on particular ends or particular individuals cannot be known in advance—that the legislature can be impartial. This produces economic inequality, but “all that can be claimed for it is that this inequality is not designed to affect particular people in a particular way” (Hayek, 2006, p. 82). For the rule of law to be effective, the existence of an enforced norm “always without exceptions” is more important than the content of the norm itself. Often the content of the norm is of second order if the norm is “universally” observed. This is a fundamental notion that, as will be seen in the next section, will be developed in the neoliberal debate. Moreover, the unpredictability of particular effects, which is the defining characteristic of the formal laws of a liberal system, also allows Hayek to clarify one of the central themes of his theory that clashes with much of his contemporary liberal tradition, namely, the belief that its underlying characteristic consists in the non-action of the state. The issue of whether or not the state should “act” or “interfere,” according to Hayekian liberalism, leads one to posit an entirely wrong alternative, so much that he goes so far as to argue that “the term *laissez-faire* is a highly ambiguous and misleading description of the principles on which a liberal policy is based” (Hayek, 2006 p. 84).

#### **4. Defending Private Law: The Demarchy Proposal**

Neoliberal authors have often used the analogy with the highway code to define the difference between the rule of law and the arbitrary rule of law. The difference between these two types of rules is “the same as that between laying down a Rule of the Road, as in the Highway Code, and ordering people where to go: or, better still, between providing signposts and commanding people which road to take” (Hayek, 2006, p. 78). The stability of these rules is essential to the function of the code. If the rules change at a certain periodicity according to traffic conditions, drivers would be unable to orient themselves in advance, creating great disorder. The same, according to Hayek, happens with rules of law: they are imposed on all governments regardless of electoral alternations.

But what kind of rules of law does Hayek mean? The reference is not to the obligation of states to respect fundamental human rights; instead, the rules of law, whose

supremacy neoliberalism asserts, are exclusively the rules of private law. Such law “has validity only in the sphere of private property and market exchange, where contracts assert their particular logic” (Dardot & Laval, 2019, p. 42). The generality of the rules of law does not only mean being “always and without exception,” rather, for a system of freedom to work, “it is not sufficient that the rules of law under which it operates be general rules, but their content must be such that the market will work tolerably well” (Hayek, 2011, p. 338).

For this reason, the rules of private law are fundamentally different from those of public law that define the specific organization of the state. The individual can only obey the rules of private law, which has a fundamental consequence: “The only coercion which the state can legitimately exercise is compelling individuals to respect the rule of private law” (Dardot & Laval, 2019, p. 42). The state fulfills this function by, for example, imposing these rules on itself. While not merely likened to a private person, the state “has to conduct itself like a private person by applying to itself the rule it imposes on private individuals” (Dardot & Laval, 2019, p. 43). In this way, the Hayekian definition of the rule of law emerges as the a priori limitation that private law imposes on any legislation and government.

In modern Western legal thought, it is the constitution, understood as the fundamental law or supreme legal norm, that is responsible for delimiting the various powers established within the state. Following the principle of separation of powers, “the state’s various powers (executive, legislative, judicial) must be allocated to different bodies in order to avoid their concentration in the same hands” (Dardot & Laval, 2019, p. 43). Clearly, the Montesquieuian conception does not undermine the place occupied by private law: In its preamble, a constitution may recognize property rights as a fundamental right, but it is not its task to fix private law *a priori*.

It is with this conception of the constitution that neoliberalism breaks. Hayek, in fact, accords the rules of private law, the catallactic order, a very special status, that of true constitutional norms. In *Constitution of Liberty*, the goal pursued was to propose a new political organization, an “economic constitutionalism” (Rosanvallon, 2015, p. 201), given that existing constitutions fail to guarantee individual liberty. In addition to the inevitable tendency for executive power to be strengthened to the detriment of legislative power,

the political problem arises from confusion regarding the tasks of legislators, who are responsible, at the same time, for ratifying general rules of conduct, thus laws in the proper sense of the term, and for formulating the particular decrees and

regulations that constitute ordinary governmental work, applied to particular problems. (Dostaler, 2008, p. 139)

In response to this problem, Hayek proposes a detailed institutional mechanism to ensure the survival of the rule of law and an effective separation of powers through the combination of three bodies: a constitutional court, a legislative assembly, and a governmental assembly. This involves assigning the legislative function to different assemblies in a strict sense, that is, the making of permanent legal rules and the direction of the day-to-day government business. As Hayek (2021) points out in *Law, legislation and liberty*,

if those who decide on particular issues can make for any purpose whatever law they like, they are clearly not under the rule of law; and it certainly does not correspond to the ideal of the rule of law if, whatever particular group of people, even if they are a majority. (p. 386)

As Dostaler reconstructs, only such a device could ensure the rule of law. In it, “there is no sovereignty” (Dostaler, 2008, p. 140), except, and only temporarily, in the representative body responsible for the permanent framework of the constitution. Again Hayek (2021) argues:

We shall have to reconcile ourselves to the still strange fact that in a society of freemen the highest authority must in normal times have no power of positive commands whatever. Its sole power should be that of prohibition according to rule, so that it would owe its supreme position to its commitment with every act to a general principle. (p. 486)

Ultimately, it is the liberal principle of the balance of powers that is sacrificed on the altar of the constitution of private law. We have in the Hayekian constitution a dual submission: on the one hand, the governmental power to the legislative power, and on the other hand, the legislative power to the higher instance that looks after the constitutionality of new laws. The ideal for Hayek consists of the “replacement of government by people with government by law” (Dardot & Laval, 2019, p. 44). Hayek, unlike Jean-Jacques Rousseau, intends to separate law from the will of the people in order to elevate it above the people. In fact, true law is never the work of the legislature but is imposed in the form of a pre-existing custom that judges merely validate. Private law, being a spontaneous order, stems from recognizing the rules of just conduct that have enabled certain societies to survive and develop more effectively than others. It is a “nomocracy”: “For the activity of governing, laws thus construed are not means, but exclusively limits” (Dardot & Laval, 2019, p. 44).

It is precisely for this reason that Hayek distinguishes between democracy and “demarchy”: While the word democracy takes on the sense of absolute power of the people, the word demarchy, on the contrary, has the function of meaning the limitation of the will of the people through the rules of private law. As Hayek (202) insists in *Law, legislation and liberty*:

What we need is a word which expresses the fact that the will of the greater number is authoritative and binding upon the rest only if the former prove their intention of acting justly by committing themselves to a general rule. This demands a name indicating a system in which what gives a majority legitimate power is not bare might but the proven conviction that it regards as right what it decrees. (p. 399)

Substituting archè for kratos, Dardot and Laval point out, is not an innocent operation: “archè is the word for legitimate power, whereas kratos is the name for the power obtained by a victory over opponents—power deemed illegitimate by the oligarchy” (Dardot & Laval, 2019, p. 44). This means that in demarchy, before belonging to the people, the archè belongs to the laws. “Demarchy” is actually a kratos exercised by a minority of the rich over the mass of the poor in the name of the rule of law. Indeed, the laws of the “demarchy” are selected by judges, “an institution of a spontaneous order” (Hayek, 2021, p. 124), entirely devoted to private property.

## 5. Conclusions

Taking neoliberalism as an anti-democratic project capable of separating liberalism from democracy leads to the consequences from which we started: the emergence of authoritarian liberalism. As demonstrated in the essay, the defense of a legal structure of the market order passes through the institutional production of rules capable of producing, governing, and prospering competition, the only “mode of discovery.” This, however, does not lead to excluding the role of governmental and state interventionism. Nor does it lead to excluding the role of governmental and state interventionism. On the contrary, as ordoliberal authors following Carl Schmitt have shown, it requires a “strong state” (Malatesta, 2019; Mesini, 2019; Schmitt, 2019). By neutralizing the sphere of democracy, even in its most authoritarian version, the state is functional in guaranteeing the catallactic order. For the neoliberals, “not only is democracy not synonymous with liberalism, but one can conceive of a liberal society without democracy” (Dostaler, 2008, p. 137). Hayek (1990), in this regard, was never in doubt: “Although there is good reason for preferring limited democratic government to a non-democratic one, I must confess to preferring non-democratic government under the law to unlimited (and therefore essentially lawless) democratic government” (p. 154).

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# THE AUTHORITARIAN DOWNSIDE OF A NEW STRATEGY. FOUCAULT, MARCUSE, AND THE NEOLIBERAL TRANSFORMATION\*

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## LA DESVENTAJA AUTORITARIA DE UNA ESTRATEGIA NUEVA. FOUCAULT, MARCUSE Y LA TRANSFORMACIÓN NEOLIBERAL

### Abstract

In light of the recent debates about the authoritarian turn of neoliberalism, this article focuses on how Foucault and Marcuse critically reckoned with the emergence of a new political rationality in the wake of the crisis of governmentality that occurred in the early 1970s. Both thinkers pointed to the problematic relationship between liberal freedom and security. While Foucault tended to describe neoliberalism as an indirect art of government and did not foreground its conservative and anti-egalitarian aspects, Marcuse's reflections help to illuminate how the successful emergence of neo-liberal strategies in response to the contestation of the postwar Keynesian and social

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democratic framework was linked to the mobilization of a conservative and authoritarian sensibility that tends to re-emerge when the functioning of the governmental management of society is challenged.

## **Keywords**

critical theory; governmentality; neoliberalism; capitalism; crisis

## **Resumen**

A la luz de los recientes debates sobre el giro autoritario del neoliberalismo, este artículo se centra en las formas en que Foucault y Marcuse analizaron con ojo crítico la aparición de una nueva racionalidad política tras la crisis de la gubernamentalidad que se produjo a principios de la década de 1970. Ambos pensadores señalaron la problemática relación entre la libertad liberal y la seguridad, pero mientras Foucault tendía a describir el neoliberalismo como un arte indirecto de gobierno y no ponía en primer plano sus aspectos conservadores y antiigualitarios, las reflexiones de Marcuse ayudan a aclarar cómo el surgimiento exitoso de estrategias neoliberales en respuesta a la impugnación del marco keynesiano y socialdemócrata de posguerra estuvo vinculado a la movilización de una sensibilidad conservadora y autoritaria que tiende a resurgir cuando se cuestiona el funcionamiento de la gestión gubernamental de la sociedad.

## **Palabras clave**

teoría crítica; gubernamentalidad; neoliberalismo; capitalismo; crisis

“History had it that in 1968, the last disciples of the Frankfurt School clashed with the police of a government inspired by the Freiburg School, thus finding themselves on opposite sides of the barricades” (Foucault, 2008, p. 106). This observation made by Foucault in his lectures at the Collège de France of 1979 on the *Birth of Biopolitics* concludes a cursory reflection about the “double, parallel, crossed, and antagonistic fate” shared since the 1920s, by a decisive strand of contemporary neoliberalism such as the ordoliberal Freiburg School and an equally crucial strand of critical theory such as the Frankfurt School. As Foucault notes, both of them addressed the Weberian “problem of the irrational rationality of capitalist society” (Foucault, 2008, p. 105), but they did so from two opposite perspectives: During the crisis of the Weimar experience, in a striking parallel with Carl Schmitt, the ordoliberals advocated a “strong state” in order to depoliticize the economic sphere and guarantee the competitive order of the market against the unruly mass democracy and the social constitution of the short-lived German Republic;<sup>1</sup> in those same years, the Frankfurt scholars focused on the emergence of new authoritarian forms of domination as a symptom of the contradictions of modern and capitalist rationality, and they continued to reflect on this phenomenon both during their exile in the United States and in the postwar period up to the 1960s and 1970s.<sup>2</sup> The relevance of their positions has sometimes been reaffirmed in recent times<sup>3</sup> concerning the ongoing tensions between capitalism and democracy that have strongly manifested after the financial crisis of 2007, the successes of right-wing populist or nationalist political actors and parties, the global backlash of conservative values and the persistent defense of class, gender and racial privileges, the escalation of geopolitical tensions, but also the rise and the difficulties of new progressive and radical social forces.

Among the scholars who, in the wake of Foucault, have identified neoliberalism as the dominant political rationality of contemporary societies, the question has been raised of whether these phenomena can be seen as a collateral effect and a nihilistic “Frankensteinian creation” of a governance that has always identified markets and traditional morality as indispensable to freedom (Brown, 2019), or whether neoliberal politics has always been a kind of relentless demophobic war against all those forms of collective action and all those claims to social justice, equality, and democratic self-rule that have been perceived as an obstacle to economic freedom (Dardot et al., 2021).

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<sup>1</sup> See, among others, Bonefeld (2017), Malatesta (2019), Mesini (2023), and Zanini (2021). For the differences between Schmitt and the ordoliberals, see Galli (2019).

<sup>2</sup> The very notion of “authoritarian liberalism” dates to the last years of the Weimar Republic, as it was coined by Hermann Heller (2015) to describe the German situation in the period of von Papen’s cabinet.

<sup>3</sup> See, for instance, Brown et al. (2018), Hines et al. (2023), Lamas et al. (2017), Maley (2021), and Morelock (2018, 2021).

In this essay, I will argue that while Foucault's lectures of 1979 have undoubtedly provided seminal insights for the strands of critical theory that see the emergence of neoliberalism as a crucial factor for understanding how the coordinates of politics and society have been redefined since the last decades of the twentieth century, some aspects of his interpretation can be reconsidered by drawing from the contribution of the Frankfurt School and particularly from the later reflection of Herbert Marcuse. The "crisis of governmentality" experienced after 1968 has a crucial genealogical relevance insofar as it gave rise to new strategies of power that are still active today (Chamayou, 2018). Both Foucault and Marcuse have critically grappled with this process at the moment of its emergence, but while the former was essentially interested in analyzing the new governmentalization of the state, the latter focused on the continuities between neoliberal rationality and capitalist domination.

The first section will discuss Foucault's positions and contextualize them to show why, despite his awareness of the possible authoritarian implications of the problematic relationship between liberal freedom and security, he tended to describe neoliberalism as an indirect art of government and did not foreground its conservative and antiegalitarian aspects. In the second section, I will turn to the Frankfurt School's perspective to show how the successful emergence of neoliberal strategies in response to the crisis of the postwar Keynesian and social-democratic framework has been linked to the mobilization of a conservative and authoritarian sensibility that tends to re-emerge when the functioning of the governmental management of society is challenged.

### **Against an "Inflationary Critique": The Indirect Government of Freedom**

Although Foucault is not the only relevant thinker who can provide intellectual tools for describing the genealogy and the features of neoliberal politics, his analyses have proved crucial for at least three interrelated reasons.<sup>4</sup> First, his perspective allows us to interpret neoliberalism as a "constructivist" project that has entailed an overall reconfiguration of the state rather than its simple retreat and has promoted new institutional practices and political logic rather than mere economic deregulation. Secondly, Foucault's analysis helps to reveal the discontinuity between classical liberalism and neoliberalism: While the former sought to impose a limitation on state action in order to let the "natural" and beneficial dynamics of the market unfold according to a *laissez-faire* principle, neoliberalism considers "the free market as organizing and regulating principle of the state,

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<sup>4</sup> See on this point Bazzicalupo (2010), Brown (2005), Dardot and Laval (2013), and Lemke (2001).

from the start of its existence up to the last form of its interventions” (Foucault, 2008, p. 116). Thirdly, Foucault has pointed out that the scope of neoliberal rationality cannot be “confined by definition to a precise domain determined by a sector of the scale,” but concerns “the whole scale,” from the level of micro-powers to the state’s management of the “whole social body” (Foucault, 2008, p. 186): The economy and the market become the medium to reshape the entire realm of social existence and produce specific forms of life. From this viewpoint, *The Birth of Biopolitics* has contributed to creating and keeping alive a new “Foucault effect” several decades after his death.

Although Foucault’s positions have been intensively debated only after his lectures were published twenty years ago, they cannot be dissociated from the main threads of his reflection and the political debates he engaged in at that time. *The Birth of Biopolitics* represents a turning point in his intellectual trajectory, for it was the conclusion of his investigations on modern governmentality and the only moment in his teaching when he focused directly on contemporary issues before turning to the problem of the government of the self and others through a lengthy investigation of Christian and ancient ethics. In 1979, Foucault was also at the turning point of a long decade of political activism that paralleled his theoretical research. About a year earlier, in the autumn of 1977, he got involved in the affair of Klaus Croissant, the lawyer of the German terrorist group Red Army Faction, who had been suspected of complicity with his clients and had sought asylum in France. Foucault took part in the demonstrations against the decision to extradite him, defended his right of “perpetual dissident” and criticized the exceptional measures taken by the West German government<sup>5</sup> but refused to sign a petition promoted by Felix Guattari that defined the German *Bundesrepublik* as “fascist” and dissociated himself from any justification of terrorism.<sup>6</sup> An echo of these events—which led to a bitter disagreement with Deleuze—can be perceived in Foucault’s lectures: One of the conclusions of his discussion of the ordoliberal theories was that “if there really is a German model, it is not the frequently invoked model of the all-powerful state, of the police state, which, as you know, has so frightened our compatriots,” but the “rule of law” understood as *Wirtschaftsordnung*, a constitutional legal framework designed to guarantee the dynamics of market competition (Foucault, 2008, p. 179).

More generally, Foucault sought to reject what he described as an “inflationary critique of the state,” that is, the fear of the “unlimited growth of the state, its omnipotence, its bureaucratic development” and the constant evocation of the “seeds of fascism” beneath any

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<sup>5</sup> See Foucault (1994a, 1994b, 1994c, 1994d, 1994e).

<sup>6</sup> See, for instance, Hannah (2012) and Senellart (2009).

state's intervention (Foucault, 2008, pp. 186–187). In his perspective, this “state-phobia” was paradoxically shared both by the neoliberals and by their far-leftist opponents but was actually introduced by the former in their struggle against Keynesian, welfarist, and socialist policies. Concurrently, Foucault attacked the idea—which he ascribed to Sombart and more implicitly to Marcuse and Debord—that the capitalist economy was destined to produce a condition of “one-dimensionality” in which individuals were entirely subject to a centralized administrative apparatus, forced into standardized mass consumption, and condemned “to communicate with each other only through the play of signs and spectacles” (Foucault, 2008, p. 113), because—as he observed—the goal of the “art of government programmed by the ordoliberals [...], and which has now become the program of most governments in capitalist countries” was not a society oriented towards “the uniformity of the commodity, but towards the multiplicity and differentiation of enterprises” (Foucault, 2008, p. 149).

This does not mean that Foucault was fascinated by neoliberal discourses or that he more or less implicitly endorsed them, as several scholars have recently argued.<sup>7</sup> He was certainly convinced that the power strategies existing in Western societies were changing, and consequently, new critical frameworks were needed to deconstruct their underlying “regimes of truth.” In his 1978 lectures on *Security, Territory, Population*, he presented his analysis as an attempt to provide “tactical pointers” about the “lines of forces” and the possible “constrictions and blockages” for potential resistances rather than proposing normative or value judgments (Foucault, 2009, p. 3). In line with the discontinuist approach that characterizes all his research, Foucault’s *wirkliche Historie* programmatically “deals with events in terms of their most unique characteristics” as emergences of forces that “do not obey destiny or regulative mechanisms, but the luck of the battle” (Foucault, 1998a, pp. 380–381). As he explained in his writings on the Enlightenment, the purpose of this work of “eventalization” was to identify the conditions that make a certain system “acceptable” as well as the “lines of rupture” that “make it difficult to accept” (Foucault, 2024, p. 43; see also Lorenzini, 2018). Genealogical critique must always “separate out, from the contingency that has made us what we are, the possibility of no longer being, doing, or thinking what we are, do, or think” (Foucault, 1984, p. 46) in a field of power relations that is always “subject to reversibility and possible reversal” (Foucault, 2024, p. 47). In this sense, the call for a “critical morality” expressed in *The Birth of Biopolitics* was an invitation to grasp the specificity of the neoliberal governmentalization of the state and to avoid repeating the same fallacious arguments used

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<sup>7</sup> See, for instance, Pestaña (2011) and the essays collected by Behrent and Zamora (2016). A more nuanced debate can be found in the essays collected by Sawyer and Steinmetz-Jenkins (2019).



by the neoliberals themselves against Keynesian policies:<sup>8</sup> If the latter appeared to Hayek as the beginning of a slippery slope toward totalitarianism, Foucault—in line with Franz Neumann and Hannah Arendt—saw totalitarian regimes as a kind of “governmentality of the party” which was something different from the modern state and the interplay of powers and resistances that have characterized its history.

In his attempt to identify the novelty of neoliberalism, Foucault essentially presented it as an “art of government” that aims to work “according to the rationality of the governed themselves” (Foucault, 2008, p. 313) and essentially relied on indirect strategies of regulation. Foucault’s account of the German social market economy mainly focused on what Müller-Armack defined as *Gesellschaftspolitik*, which identifies society as “the target and objective” (Foucault, 2008, p. 146) of a multiplicity of legal and political interventions operating on the framework of economic competition, for example, on “population, technology, training and education, the legal system” (Foucault, 2008, p. 141). This “framework policy” was aimed at preventing “the possible anti-competitive mechanisms of society” (Foucault, 2008, p. 160) rather than directly interfering in the market competition. While the French philosopher mentioned the ordoliberalists’ emphasis on the necessity of safeguarding a set of “warm” moral and cultural values that could compensate for what was “cold” and “mechanic” in the economic game (Foucault, 2008, p. 242), he did not insist on the communitarian and hierarchical moral perspective underlying their program, especially in the case of Müller-Armack, Röpke, and Rüstow:<sup>9</sup> In his interpretation, the ordoliberal strong state was essentially conceived as a guardian of the economic constitution. As for the American neoliberals of the Chicago school, Foucault essentially focused on the anti-disciplinary implications of their theory of “human capital,” which allowed them to use economic and entrepreneurial logic as “a principle of intelligibility and a principle of decipherment of social relationships and individual behavior” (Foucault, 2008, p. 243), even in non-economic spheres such as marriage, crime, or education. For Foucault, the goal of this economization of life was not “the internal subjugation of individuals” in a society based on a “general normalization and the exclusion of those who cannot be normalized” but “an optimization of systems of difference, in which the field is left open to fluctuating processes, in which minority individuals and practices are tolerated” (Foucault, 2008, pp. 259–260). As the philosopher recognizes, neoliberal subjects are “eminently governable,” but their supposedly

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8 In the lecture held on 7 March 1979, Foucault (2008) clearly takes the distances from Hayek’s position by stating that “the welfare state has neither the same form, of course, nor, it seems to me, the same root or origin as the totalitarian state, as the Nazi, fascist, or Stalinist state” (p. 190).

9 See on this point, Zanini (2021), particularly pp. 315–370.

free behaviors can be controlled and directed by operating on the social environment and modifying its variables (Foucault, 2008, p. 270). The economic game itself becomes the source of a kind of voluntary servitude, but it also entails a production of “games of truth” and subjectivity, which was the most relevant aspect for Foucault. The lectures on *The Birth of Biopolitics* suggest that the notion of human capital, understood as a set of skills and qualities that cannot be separated from their individual bearer nor reduced to abstract labor (Foucault, 2008, pp. 219–227), underlies a framework in which the whole of life and subjectivity is involved in the process of valorization.

Thanks to this interpretation, Foucault identified the struggles against the “government of individualization” and the invention of new forms of subjectivation as a fundamental political stake. The more power appeared as a set of actions that operate “on the field of possibilities in which the behavior of active subjects is able to inscribe itself,” the more politics could be described as an agonistic interplay in which the “conduct of conducts” is constantly challenged and provoked by an “intransigence of freedom” (Foucault, 2000c, pp. 341–342) that cannot be reduced to market freedom but is always “an actual relation between governors and governed” (Foucault, 2008, p. 63; see also Chignola, 2006, 2014).

To be sure, Foucault was far from denying the possibility of authoritarian rather than consensual forms of rule (Foucault, 2000c, p. 340), and by the same token, in his perspective, the emergence of new apparatuses and tactics of power never linearly replaces the other configurations that preceded them: Sovereignty and disciplines can be articulated with neoliberal governmentality in multiple ways according to necessity (Foucault, 2009, pp. 11, 107–108). The liberal arts of government cannot be univocally characterized as more flexible and tolerant, for at their core, there is always a complex interplay between freedom and security: Liberal and neoliberal freedom must be produced and organized through “the establishment of limitations, controls, forms of coercion” (Foucault, 2008, p. 64), whose extent must be calculated each time. As the French philosopher explained in some interviews that shortly preceded his lectures on governmentality, contemporary states tended to extend their apparatuses of power beyond the rule of law precisely in the name of a new “pact” of security (Foucault, 1994c, pp. 385–387). Danger and anxiety are integral to the liberal and neoliberal economy of power when seen as government practices (Brindisi, 2020), and the delicate balance between freedom and security can be easily disrupted.

This perspective was consistent with Foucault’s attempt to understand power in productive rather than repressive terms and to go beyond Marxist critique of ideology. Nonetheless, it remains that—notwithstanding these aspects and probably in response

to the political controversies that surrounded his inquiries on modern governmentality—at least in *Birth of Biopolitics*, Foucault did not emphasize the conservative, reactive, or authoritarian features of neoliberal theories and the role these aspects have played in their political implementation. In this sense, he overshadowed certain aspects of the genealogy of neoliberalism, such as the role played by the so-called Chicago Boys in Pinochet's Chile or the invitation to limit “the indefinite extension of political democracy” expressed by Crozier et al. (1975, p. 115) in the first report of the Trilateral Commission. More generally, Foucault's lectures did not explore how, behind the libertarian façade and the depoliticization of society, neoliberal programs restrict the agency and the means of pressure of the subaltern groups and intensify power asymmetries throughout the entire field of social relations, as recently observed, among others, by Gregoire Chamayou (2018), who also noted that the neoliberal strategy was not so much “an alternative to the welfare state” but to the radical demands that were challenging it (p. 267). The theoretical elaboration of the Frankfurt School, and especially Marcuse's later reflections, can provide some useful elements to complement Foucault's insights and shed light on the authoritarian trends that have emerged in reaction to the crisis of governmentality that gave rise to neoliberal rationality.

### **The Reactive Nature of a Capitalist Transformation**

Foucault's inquiry on governmentality involved a shift in focus from the microphysics of power relations to the broader level of the political rationalities underlying the development of the modern state and an attempt to reintroduce the latter as a meaningful object of analysis, though not as an autonomous source of power.<sup>10</sup> Not coincidentally, then, the French philosopher began to situate his research in the same lineage of those reflections that, starting from Kant's writings on the Enlightenment, had tackled the problem of a rationalization that has characterized “Western thought and science” as well as “social relations, state organizations, economic practices drilling right down to individual behavior” (Foucault, 2024, p. 35). Although this approach to “political reason” sometimes led Foucault to acknowledge his debt to the Frankfurt scholars, his relationship with them, and with Marcuse in particular, has always been marked by a considerable distance: As it is well known, he constantly criticized his German colleagues for understanding power essentially in terms of repression (Foucault, 1978, 2003), for adopting a humanist notion of subjectivity (Foucault, 2000a, p. 274), and for proposing a monistic and unilinear interpretation of the process of rationalization (Foucault, 1998b, pp. 340–42; 2000b, pp. 299–300).

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<sup>10</sup> See Jessop (2010) and Lemke (2012, pp. 25n-dash40).

This critique was essentially based on the masterpieces written by Horkheimer, Adorno, and Marcuse, such as *Dialectic of Enlightenment*, *Eros and Civilization*, or *One Dimensional Man*. However, since the 1930s, the Frankfurt scholars developed a thorough analysis of how the exercise of governance in contemporary societies had changed after the economic and political crisis of the interwar period, the fall of the Weimar Republic, and the rise of new authoritarian and totalitarian regimes in Europe, although they never reached a common position.<sup>11</sup> While they all recognized the decline of the liberal and bourgeois political framework inherited from the nineteenth century, some of them, such as Horkheimer and Pollock, described the emerging domination as a new form of state capitalism that, in the attempt to hypostatize its systemic contradictions and the threat of class conflicts, had done away with the free initiative of individual entrepreneurs, thus replacing the anarchy of the market and the “primacy of production” with the rigid control and the “primacy” of political power (Horkheimer, 1978; Pollock, 1978). For other members, such as Neumann, Kirchheimer, and Marcuse, the crisis of the earlier liberal order and the tendency toward a regimented economy did not involve a structural transformation of capitalist relations of production, nor did it alter the competitive nature of the social system. In Germany, the dominant groups had to share their power with the new party elite but never lost “their decisive social and economic functions” (Marcuse, 1998, p. 69) and merged their economic power with political power beyond the formal structures of the modern state. The Nazi regime was thus interpreted by Marcuse as a tendentially “direct and immediate self-government by the prevailing social groups over the rest of the population,” which, however, was not solely controlled by repressive means but “by unleashing the most brutal and selfish instincts of the individual” (Marcuse, 1998, p. 70), by transforming “stimuli for protest and rebellion into stimuli for coordination” (Marcuse, 1998, p. 88) as well as through a new “technical rationality” based on a brutal principle of efficiency.

From Marcuse’s perspective, it is possible to sketch a different interpretation of the “general crisis” of liberal governmentality (Foucault, 2008, p. 70) caused in the 1930s by the problematic relationship between the “production of freedom” and the necessity of security. While Foucault was mainly interested in showing how the ordoliberal and the American neoliberal discourses had originated by this crisis as reactions to totalitarian and Keynesian solutions, for Marcuse, once the liberal separation between state and society, the rule of law and the intermediate institutions became ineffective, both the

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11. See Galli (2023a), Kellner (1989, pp. 55–82), and Laudani (2005, pp. 88–93).

traditional privileged groups and the lower classes accepted the new regime to protect some threatened interests. The former gave up the independence of their businesses to secure capital accumulation, pursue economic expansion through imperialistic war, and keep the labor force under control; the populace exchanged “the dangerous ideal of freedom” associated with the troubles and the uncertainty of the Weimar period “with the protective reality of security” (Marcuse, 1998, p. 83). It can be remarked that the ordoliberals did not frontally oppose this totalitarian transformation, although they rejected it in the postwar period. Despite their distance from Hitler’s ideology, most of them kept their academic positions in Germany and collaborated with the regime’s administration, attempting to influence its agenda in accordance with their approach. Although they criticized the interventionist and planning policies of the Nazi Party, they de facto welcomed the neutralization of the workers’ movement and its dangerous claims for social justice (Mesini, 2023, pp. 77, 92–124).

The late capitalist and advanced industrial countries of the postwar period did not put an end to the exchange between freedom and security and never restored the features of the earlier liberal and individualist bourgeois order. The Frankfurt scholars essentially described them as administered and monopoly capitalist societies, characterized, as Marcuse concisely pointed out in his *One Dimensional Man*, by the “concentration of the national economy on the needs of the big corporations, with the government as a stimulating, supporting, and sometimes even controlling force; hitching of this economy to a world-wide system of military alliances, monetary arrangements, technical assistance and development schemes”; by the “gradual assimilation of blue-collar and white-collar population, of leadership types in business and labor, of leisure activities and aspirations in different social classes,” by the “invasion of the private household by the togetherness of public opinion; opening of the bedroom to the media of mass communication” and by the convergence of traditionally opposite political forces (Marcuse, 1991, pp. 21–22). In this way capitalism “discovered resources within itself that have postponed its collapse until the Greek Calends” thanks to “the immense growth in technical potential” and “the vast increase in consumer goods available to all the members of the advanced industrialized nations” (Adorno, 2003, p. 112), but at the cost of a “decline of individuality” which would be dominated by impersonal economic and social forces among high and low groups alike (Horkheimer, 2013, pp. 100–101).

This critical reflection on the totalizing social structures and ideologies that characterized both the Western capitalist countries and the Soviet bloc during the Cold War may seem very distant from the current trends of global capitalism. As we have seen, the idea of one-dimensional domination was strongly questioned by Foucault, who was

definitely right in identifying neoliberal policies as something different from the earlier model of welfare and consumer societies and their “comfortable, smooth, reasonable, democratic unfreedom,” as well as from their technocratic planning and the integration of labor into the capitalist system guaranteed by economic growth and full employment policies. However, the neoliberal “mobilization” does not represent in itself a radical break with the logic of the administered society: Marcuse’s “performance principle,” as well as the values of “profitable productivity, assertiveness, efficiency, competitiveness,” have been pushed to the extreme and govern the entire field of social relations as well as the experience and even the psyche of individual subjects. The economy itself constitutes a permanent tribunal for evaluating individual choices and behaviors, as well as public decisions. However, the economic order must be backed by political powers and institutions, which are involved in close cooperation and negotiation with prominent economic actors and corporations. At the same time, the market acts as a medium that regulates their differences of interest according to its inherent laws. Science and technology are deeply embedded in the organization of capital production and the exercise of economic and political governance. The appropriation and destruction of nature—as well as the instrumental manipulation of human needs and the artificial production of scarcity and exploitation—are even more intense. The overall configuration of the existing social system tendentially “paralyzes people’s ability to imagine the world in concrete terms as being anything other than it appears to be” (Adorno, 2003, p. 120).

But if neoliberalism has succeeded in imposing a new “closure of the political universe,” this has been done through new discourses and practices. The relative stabilization achieved in the so-called golden decades of Keynesianism through the political regulation of capitalism and the institutional mediation of social interests was only, in fact, a “transitional balance” (Galli, 2023b, p. 72) that was soon declared unsustainable due to its fiscal costs and ultimately disruptive of the entire capitalist order. The inclusive project described by the Frankfurt scholars—which had at least allowed for “an increasing satisfaction of material needs” and made tangible the possibility of “a life without deprivation,” as Adorno (2003, p. 118) had noted—has been progressively abandoned in the last five decades. As a result, social and political inequalities have been reasserted behind the seemingly neutral dynamics of the market: Today’s capital relies on “heterogeneous forms of value extraction” that “organize the social in dissymmetrical ways” (Bazzicalupo, 2020, p. 111, more generally Mezzadra & Neilson, 2019). Neoliberal theories and policies justify these asymmetries as unavoidable outcomes of the economic game, while political institutions are called upon to guarantee the governability of the social system and to limit the “excessive” demands that could disrupt its supposedly

smooth functioning. Social conflicts are no longer watered down by granting social rights the “industrial citizenship” but through the fragmentation and the precariousness of labor and the individualization of everyone’s risks and conditions. While such a condition breeds discontent, disaffiliation, cynicism, and insecurity, these elements are easily exploited for the implementation of regressive policies. As Wendy Brown has pointed out, the neoliberal attack on the social has generated “an *antidemocratic culture from below*, while building and legitimating *antidemocratic forms of state power from above*” (Brown, 2019, p. 28).

Marcuse was the only member of the first generation of the Frankfurt School who reckoned with the initial moments of this transformation, partly because he was the only one who continued to write and intervene in the public debate until the end of the 1970s, and because, he saw the wave of social struggles that began in the 1960s and the political and economic crisis of the following decade as the beginning of a new phase that required a readjustment of the analytical categories of critical theory. While Horkheimer and Adorno remained skeptical about the possibility of effective practical opposition to late capitalist society, Marcuse generally sided with the oppositional movements that emerged around 1968 (Laudani, 2005, pp. 251–308) and—like Foucault—took their resistance as a “catalyst” to illuminate and question power relations and strategies (Foucault, 2000c, p. 329). For the Frenchman, these movements contributed to the generation of an “immense and proliferating criticizability of things, institutions, practices and discourses” (Foucault, 2003, p. 6). For Marcuse, too, the New Left had primarily initiated a “transvaluation” of existing society’s values and opened up a myriad of terrains of struggle on all fronts against the structures of domination of existing society (Marcuse, 2001a, p. 115). The pacifist protests, the environmentalist, feminist, and anti-racist movements for black liberation, and the anti-colonial and anti-imperialist struggles of the Third World were not strong enough in themselves to overthrow the foundations of the system. Still, they had shown that it was possible to go beyond the one-dimensional political universe of the advanced capitalist societies and created a severe crisis in its apparatuses on both the local and the global level. Throughout the 1970s, Marcuse increasingly emphasized that these new liberating forces were not simply expressive of new ideological tendencies but of a new social composition. Due to the inner development of the productive system, the scope of capital valorization had expanded far beyond the traditional productive activities to involve new groups of educated laborers and people employed in the tertiary sector or in nonmaterial activities, which would now form “an ever more essential base of capitalist reproduction” (Marcuse, 2005, p. 145). In this context, the capital tends to “organize the entire society in its interest and

image” (Marcuse, 1972, p. 11), and the majority of the population “become the direct servants of capital, [...] while being separated from control of the means of production” (Marcuse, 1972, p. 9), but this situation also generates new vital needs that could not be satisfied in the existing configuration of society and threatened “to explode the capitalist framework” (Marcuse, 1972, p. 6).

Precisely for this reason, new forms of control were being devised by the ruling classes “to counteract liberation at its very roots in the mind of man” (Marcuse, 2001a, p. 118) and reimpose the “operational values” and the work ethic that had been contested. Especially after the re-election of Richard Nixon and the Watergate scandal, Marcuse argued that the establishment was responding to the potential threat of subversion and the increasingly acute contradictions of the capitalist system with a preventive counterrevolution. This manifested itself as a direct repressive attack on the centers of the opposition, such as universities and ghettos, and on those groups of black and brown activists, hippies, radical students, and intellectuals, who appeared as “disturbing aliens” (Marcuse, 1972, p. 28). However, more importantly, it entailed a comprehensive reorganization of the political and economic spheres: In order to reassert itself, the capitalist technostucture was intensifying labor exploitation and enlarging “investments in waste and profitable services [...] while neglecting and even reducing nonprofitable public services,” such as education and welfare (Marcuse, 1972, p. 20). This was destined to create a sharp division in the working class between “a privileged population in the advanced capitalist countries, and an underprivileged population both in these countries and abroad” (Marcuse, 2014a, p. 394). On the political level, the ruling groups were trying to throw off the “legal, moral and political brakes” of traditional liberal democracy (Marcuse, 2001c, p. 176).

According to Marcuse, this preventive counterrevolutionary strategy was not ultimately a revival of past forms of fascism, although, in the global peripheries, it has often been implemented through military dictatorships. In the United States and the Western world, it essentially took the form of a gradual erosion of democratic principles. The “union of big capital and the state” was becoming so “immediate and overt” that “the notion of a conflict between private interest and public government is no longer taken seriously, and, if necessary, abolished by administrative fiat,” and this “monopolization of the economy asserts itself in the concentration of power in the executive branch of the government.” Moreover, there was a growing tendency to identify the persons of the leaders and the institutions they represented (Marcuse, 2001c, pp. 175–176).

This “regressive development of bourgeois democracy” was by no means a conspiracy of the establishment since it had a significant degree of popular support from the



“silent majority” and could rely on a widespread popular sentiment of “hatred against long hair and beards, any kind of Hippie life, against homosexuals, etc.” and “a long tradition of accepting authority” (Marcuse, 2001b, p. 135). The same process that subordinates the lives and activities of the majority of the population to the apparatuses of capital valorization transforms the “amorphous masses” that “form the human base of American democracy” into “the harbinger of its conservatives’ reactionary, even neo-fascist tendencies” (Marcuse, 2001c, p. 178). The people were willing to accept “inflation and unemployment, war crimes and corruption, a grossly inadequate health service, the continued rat race of the daily existence. (Marcuse, 2001c, p. 168)

Referring to the earlier studies of the Frankfurt School on the authoritarian personality, Marcuse focused on the instinctual and libidinal affinity that binds the subjects to their rulers and the sadomasochistic tendency that, in times of insecurity, leads the conservative and conformist majority to identify themselves with “institutionalized brutality and aggression” and with their rulers: “The real issues recede before the instinctual affirmation of the image,” the “sex appeal” and “the business morality” of political leaders (Marcuse, 2001c, pp. 170–171). As the electoral process was increasingly dominated by economic power, the abuses and the corruption of those in power were no longer perceived as such: They were crimes only from an extrinsic “moral point of view—otherwise, they are requirements of national security, free enterprise, self-preservation” (Marcuse, 2001c, p. 171). Therefore, the ruling classes were becoming “a vast network (or chain) of rackets, cliques and gangs, powerful enough to bend the law or to break it where existing legislation is not already made or interpreted in their favor” (Marcuse, 2001d, p. 190).

For Marcuse, it had to be recognized that for the time being, the initiative was “with the force of repression” (Marcuse, 2001e, p. 201). Therefore, the New Left had to defend democratic freedom “while attacking its capitalist foundations” (Marcuse, 2001c, p. 177) and pursuing a “revolution of subjectivity” in order to liberate an emancipatory consciousness, transform the instinctual structures and the values that underpin the existing society (Marcuse, 2014b). This necessarily was a long struggle of resistance and reinvention, not so different from the critical politics of the self that Foucault envisioned in the last period of his life.

## Conclusions

Both Foucault and Marcuse recognized that their contemporary political reality was transforming in response to a general crisis of the existing practice of government. They also observed that the disruption of the previous systems of regulation and integration

was due to the emergence of new demands and pressures from below, as well as the invention of new strategies of control from above. In the midst of the Nixon era and the immediate aftermath of the abandonment of the Bretton Woods system and the *Big Society* project in the USA, Marcuse could only perceive the beginning of a process that revealed its most apparent consequences only after his death and, consequently, he probably was less able than Foucault to grasp its novelty. However, his later reflections show that neoliberal capitalism did not merely set up a new strategy to conduct people's conducts through market-driven rationality and indirect actions on their social environment but also required a supplement of authoritarianism as a response to the contradictions and the cultural and material challenges that had emerged on a global scale during the previous decades.

This aspect was somewhat overshadowed in Foucault's account, but it helps to highlight that the rehabilitation of conservative rhetoric and morality, the verticalization of political power, the identification of "the people" with the figure of the leaders, and the promotion of authoritarian forms of subjectivation were not accidental in the implementation of neoliberal policies and state strategies. Looking at the context of the United States, Marcuse interpreted this process as a counterrevolution promoted by right-wing political actors such as Nixon. Still, neoliberalism permeated the entire political space in the decades following his death. Its policies have been widely implemented by liberal and social democratic governments and by the transnational economic institutions that laid the foundation for the processes of globalization and financialization of the economy in that period. As governmental rationality, neoliberalism can be combined with different programs and agendas: At times, it has exhibited libertarian traits identified by Foucault and has been presented as a modernizing force, not incompatible with the assertion of new cosmopolitan values and rights or with new forms of social justice and self-improvement for the disadvantaged groups. However, the possibility of a progressive neoliberalism has proved increasingly illusory, given neoliberalism's constitutive tendency to transform inequality into a "constitutional factor," to erase the social dimension and to prevent any possible modification of existing social relations through collective democratic action (Ricciardi, 2020, pp. 285, 289). Leftist programs and values can converge with this framework only when they can fully accommodate its requirements and underlying assumptions, that is, when they are deformed and presented as moral, symbolic, or cultural claims, liberal identity politics, or demands for recognition (Galli, 2022). On the other hand, neoliberal policies have "prepared the ground for the mobilization and legitimacy of ferocious antidemocratic forces" (Brown, 2019, p. 7) on the far right, whose mix of libertarianism, populist resentment, ethnic

and male supremacism and virulent disdain for vulnerable and minority subjects, as well as for all forms of social, racial, and environmental justice, sounds definitely more realistic, credible and consistent with competitive logic of the system and with the current tendency towards a “refeudalization” of society (De Carolis, 2017). Of course, this process is not without resistance: The constant rise of social and radical movements of protest around the globe over the last twenty years shows possible spaces for opposition. However, each time social demands and oppositional claims prove too incompatible with the existing order of the market and the existing forms of exploitation and accumulation, conservatism and authoritarianism re-emerge as a viable preventive strategy to “repel challenges to inequality” (Brown, 2019, p. 14).

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# AUTHORITARIAN LIBERALISM AND THE POLITICAL THOUGHT OF NICOS POULANTZAS: RESTRUCTURING THE FORM OF THE STATE AS THE CHALLENGE OF AUTHORITARIAN STATISM\*

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## EL LIBERALISMO AUTORITARIO Y EL PENSAMIENTO POLÍTICO DE NICOS POULANTZAS: LA REESTRUCTURACIÓN DE LA FORMA DEL ESTADO COMO DESAFÍO DEL ESTATISMO AUTORITARIO

### Abstract

The conceptual focus of our paper is the role and contours of the theoretical category of the state in relation to authoritarianism and the articulation of democracy and liberalism under a capitalist economy. In particular, we refer to Nicos Poulantzas' conceptualisation of "authoritarian statism" and the "decline of democracy." In his last book, *State, Power, Socialism*, published in 1978, Poulantzas argues for a shift in the form of statehood in

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Western Europe and the United States of America, one that is going towards authoritarian statism. The transnationalisation of the economy and the state form entails changes in the labour process, the deterioration of working-class conditions, and a de-linking between democratisation and labour. At the same time, there is a growing instability of the elites and their reconfiguration at all scales. The decline of the state does not entail a structural crisis but rather a sharpening of elements of the political crisis that calls for the transformation of the role of the state itself.

## Keywords

authoritarian liberalism; authoritarian statism; Nicos Poulantzas; class; democracy

## Resumen

El enfoque conceptual de nuestro artículo es el papel y los contornos de la categoría teórica del Estado en relación con el autoritarismo y con la articulación de la democracia y el liberalismo en la economía capitalista. En particular, nos referimos a la conceptualización de Nicos Poulantzas del “estatismo autoritario” y el “declive de la democracia”. En su último libro, *Estado, poder, socialismo*, publicado en 1978, Poulantzas defiende un cambio en la forma de Estado en Europa Occidental y Estados Unidos de América, que se orienta hacia el estatismo autoritario. La transnacionalización de la economía y de la forma del Estado conlleva cambios en el proceso laboral y el deterioro de las condiciones de la clase trabajadora, así como una desvinculación entre la democratización y el trabajo. Al mismo tiempo, se produce una creciente inestabilidad de las élites y de su reconfiguración en todos los niveles. El declive del Estado no implica una crisis estructural, sino más bien una agudización de los elementos de la crisis política que exige la transformación del papel del propio Estado.

## Palabras clave

liberalismo autoritario; estatismo autoritario; Nicos Poulantzas; clase; democracia

The work of Nicos Poulantzas is identified as one of the sources of contemporary debates on authoritarian liberalism (Bruff, 2012, 2014; Bruff & Tansel, 2019, 2020). Bruff and Tansel explicitly recognise the work of Antonio Gramsci, Stuart Hall, and Nicos Poulantzas as the three sources of inspiration for their work on authoritarian neoliberalism. The expression has been used to qualify the “disciplinary, coercive and anti-democratic governance practices that political actors have used in the wake of the global and European financial crises to curtail opposition and close down alternatives” (Beck & Germann, 2019). The term, though, is either used to refer to the growing authority of private actors, especially corporations, in contemporary capitalist societies or to articulate the state and the role of markets, such as in ordoliberal debates. In this article, I focus on the second one, that is, the relation between the concept of the state, its articulation with contemporary liberalism and the deepening tensions between “embedded liberalism,” or capitalism and democracy. Debate on “authoritarian liberalisms” encompasses and goes beyond the diagnosis of “actually existing neoliberalism” (Brenner & Theodore, 2002). Still, authoritarian liberalism goes back to debates on the relationship between liberalism and democracy in late Weimar (Heller, 2015; Wilkinson, 2021).

The conceptual focus of our paper is the role and contours of the state’s theoretical category in relation to authoritarianism and the articulation of democracy and liberalism under a capitalist economy. In particular, we refer to Nicos Poulantzas’ conceptualisation of “authoritarian statism” and the “decline of democracy.” Authoritarianism needs to be understood here in opposition to democracy.

In his last book, *State, Power, Socialism* (hereinafter *SPS*), originally published in French in 1978, Poulantzas (2014) argues for a shift in the form of statehood in Western Europe and the United States of America, one that is going towards authoritarian statism. Poulantzas’ work is marked by controversies around the state internal to Marxist theory, as well as by the political conjuncture of his time (Ducange & Keucheyan, 2018; Jessop, 1985; Keucheyan, 2013). Still, he writes in a peculiar time: the neoliberal shift did not begin yet, Poulantzas could not witness the fall of the Berlin Wall, and still, *SPS* stands out for an extremely original and even untimely since, in the late seventies, it was still difficult to see the decline of liberalism and democracy. We witness the drifting away of the “national-popular” political body composed of individuals-citizens and the division between the public and the private sphere. What distinguishes Poulantzas’ understanding of the new, individual, and collective subject of power is the material nature of these transformations and the centrality of state power. Authoritarian statism reflects a deeply problematic relationship between liberalism and politics. It can only be resolved through the democracy-working class relation, even

though it is always mediated by the dimension of government and the specific modes of representative democracy.

## 1. Authoritarian statism

Authoritarian statism, as defined by Poulantzas (2014), indicates “important changes in democracy.” They are manifested by:

- the greater distance between the centres of decision-making and the masses, which are excluded from them;
- the widening of the distance between citizens and the administration of the state;
- the expansion of the state in the life of society;
- the creation of plebiscitary and manipulatory circuits, such as through the media, and the attempt to direct the masses through participatory schemes;
- the sharpening of the authoritarian character of political mechanisms and the rise of new power techniques;
- finally, the production of a new materiality of the social body upon which power is exercised.

These dimensions of authoritarian statism may seem paradoxical. One of the main features of the transformation of democracy is the alteration of two main dimensions of liberal and republic understandings. As it is in the case of the form of the type of state, Poulantzas employs the category of “matrix” for the shifts within democratic forms of power. As he writes:

Rooted in the very processes that govern the new role of the state administration-bureaucracy, and lodged in the main exemplary center of the administration, the new matrix of the exercise of power radiates through every sphere of social life. (Poulantzas, 2014)

Unlike Foucauldian interpretations of the expansion of governmentality beyond the institutional spheres of politics, for Poulantzas (2014), “in the last analysis, the matrix refers to a new form of the social division of labour,” which articulates social relations into the state administrative structure.

Authoritarian statism can be understood according to the dual, or triple, structure of the theory/practice nexus: it responds to how power steers and condenses, through the state, relations of production and the social division of labour and, finally, class relations; as well as to the political dimension of democracy as rooted in the materiality of

class relations. Authoritarian statism speaks of the fundamentally political dimension of the economy and not the other way around. Better, the state as a set of social relations articulates class relations with the dimension of power, which includes the dimension of work relations and relations of production (or capitalist regime). The state is not thus completely reducible to the political dimension, which nevertheless is at the heart of it. We will get back to the question of the crisis in its relation to authoritarian statism. In very dense passages, Poulantzas sets out the specificity of statism with respect to totalitarianism. Authoritarian statism reflects a deeply problematic relationship between liberalism and politics, which can only be resolved through the democracy-working class relation, even though it is always mediated by the dimension of government and the specific modes of representative democracy. We will also return to this essential question of the inside/outside relation between popular movements and the state. Poulantzas (2014) sketches this point in a somehow enigmatic manner: “Political crisis is never reducible to the economic crisis, nor a crisis of the State to political crisis.”

According to Poulantzas (2014), in Western Europe and the USA at the end of the Seventies, a “new form of State” emerged.<sup>1</sup> The change implies an extension of state control over “every sphere of socio-economic life,” thus, a blurring of the distinction between a public sphere and a private one, together with a “radical decline of the institutions of political democracy” and a reduction of “formal” liberties (Poulantzas, 2014).

What are the causes of this transformation of the form of the state? Poulantzas can be understood as a theorist of globalisation: the transnationalisation of capital relations of production and the division of labour is a central element in structural changes to the state form, both at the national and global levels. This last point is extremely important: changes in the stages of capitalism are transversal to national and world labour and capital relations, they invest the state form at its different scales. At the global level, Poulantzas recognises the creation of dependent states, which is other (dissimilar) with respect to “the new form of State in the dominant countries.” Authoritarian statism is thus a phenomenon of advanced, liberal countries that hold a prominent position in the uneven world economy. For Keucheyan, in his introduction to the new French edition of *L'Etat, le pouvoir, le socialisme*, Poulantzas’ main intuition against Lenin is the divergences between capitalism and democracy. In *L'Etat et la révolution* (Lenin, 2012), Lenin, writes Keucheyan (2013), argues that democracy is the best political form for capitalism, one that gives it stability. Capitalism would thus be inscribed within democratic institutions. We need

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<sup>1</sup> “In western capitalist societies, the State is undergoing considerable modification. A new form of State is currently being imposed (...). For lack of a better term, I shall refer to this state form as *authoritarian statism*” (Poulantzas, 2014)

to understand Poulantzas' claim that socialism will be democratic or will not be against this thesis. At the end of the 20th century, "democracy becomes a handicap for capitalism" (Keucheyan, 2013). Still, Poulantzas has a more complex vision: the problem of the state form and its national/international articulation is central to the renewed confrontation between the plurality of both democratic demands and institutions and the fragmented capitalist elite.

Let us now look in detail at these two points, which are indeed three.

## **1. The role of the state in the changing relationship between capitalism and democracy: political crisis and the crisis of the state**

The internationalisation of production relations and the division of labour is a political problem, thus affecting the structure of the state itself, or, better yet, its form, which is transnational. Still, we are very distant from international cosmopolitanism, *à la* Kant, or theories of the withering away of the state living its place to the global reign of the economy and the free market. The state is, for Poulantzas, already the expression of economic relations, and authoritarian statism is strictly connected to the economic role of the state. Still, the state's economic role is a question of its political content. Authoritarian statism concerns the political content of the state in mediating the transformation of social classes, political struggles and relations of forces at the national and international scales. The decline of democracy in Europe and the USA is, thus, for Poulantzas, a political issue pertaining to the changing form of the state and not a matter of the political dimension being eroded by the economic one. Only in the last years the issue of European integration has started to be analysed in terms of transformations of statehood rather than as the obsolescence of the problem of the state. Poulantzas' work has been used to reflect upon the contemporary transformation of the state and the state system and the supranationalisation of political and economic integration.

Hirsch and Kannankulam (2011) discuss the centrality of the political form of capitalism in relation to the state's institutional structure and apparatus and the transformation of the state system at the international level. For the two authors, structural constraints on the concrete institutional shape of the state derive from structural constraints (form) concerning relations of production and exploitation. Different institutional configurations, depending on social and political struggles, class relations and historical paths, can be determined by the political form of capitalism.

The relation between institutions, what Hirsch and Kannankulam (2011) name the political form of capitalism and the social form, entails the question of the possible divergence between capitalist relations of production and existing social and institutional

forms. This is, I claim, the problem posed by Poulantzas when discussing the decline of democracy and the conflict between democracy and capitalist relations. The problem is how we theorise the role of the state within it and the issue of the “form” of the state itself.

Hirsch and Kannankulam (2011, p. 17) locate the theoretical question of the “form” on the side of capitalist and social relations, and the state, more precisely the nation-state, is “one possible mode of institutionalisation of the capitalist political form.” Following a Weberian line of argumentation, then Hirsch and Kannankulam (2011) argue that the modern state needs to be defined “not by any historically changing means (function) but through its ends (form) alone.” Thus, the form constitutes the function, and the function problematises the form. Still, here it is unclear if “form” refers to the political form of capitalism or to the dimension of the institutions. How shall we understand the Weberian “form” of the state and its difference with its function? I would suggest naming it the question of the “form of the State” as theoretically different from the political form of capitalism. I propose to define the political form of capitalism as referring to how relations of production and the division of labour influence and condense in the state’s institutions (function). Meanwhile, by “the form of the state,” I would refer to the specific form the condensation of power takes in a given state’s form and in the configuration of the system of states. This is also what Hirsch and Kannankulam (2011) refer to as “the way in which the apparatus of force has become centralized and autonomous makes it a central element of the capitalist political form.” The form of the state refers to the condensation of a “dynamic of power and conflict” that rests on a relational understanding of power. The power dimension, its asymmetries and dynamics, as well as the relative autonomy of power dynamics from relations of production, constitutes the problem of the form of the state and the issue of the crisis of the state’s form as a central element of authoritarian statism. As Poulantzas (2014) writes:

While the economic role of the State, which is inseparable from its political content, has to constitute the guiding thread of an analysis of authoritarian statism, it is very far from providing a sufficient explanation: for we are talking now of an institutional reality that can only be examined in its own right. Authoritarian statism hinges upon those transformations in social classes, political struggles and the relationship of forces which mark the present phase at both the world and national level. (p. 232)

Representative political democracy is declining and leaving place to authoritarian forms, and the form of the state is a central element for transforming this dynamic:

Unless real changes are made to the factors which have induced this new form

of State it scarcely seems possible to realize the Left's aim to challenging authoritarian statism though not only defense but also development and extension of democratic liberties. (Poulantzas, 2014)

The contemporary decline of democracy is not just a crisis of the state but also a political crisis, and I interpret this point as one of the relation among democratic politics, the form of the state, and the political form of capitalism. This is the point at which the issue of authoritarian liberalism comes in.

Authoritarian statism "refers us to the *political crisis and the crisis of the State*" (Poulantzas, 2014).

## 2. State's transformation

The state's role in managing economic relations and its relation to the different stages of capitalism is central to authoritarian statism. The stages of the liberal and the interventionist state are beyond us, and in the late 1970s, Poulantzas saw European and American countries in the stage of monopoly capitalism. The liberal state has a role of "strict *non-intervention*" in the economic sphere. Thus, the liberal state does not partake in the organisation of the division of labour. This is regulated through economic class struggles between the working class and the market forces (Jessop, 1985). The state becomes interventionist to cover for market losses in productivity. The state, with public services such as education, training, health, and scientific research, helps reproduce the labour power and redistributes profits. The interventionist state largely corresponds to a state applying social policies and to the welfare state. It not only intervenes in economic class relations but also aims at building hegemony with respect to the "popular masses" (Jessop, 1985). As Jessop (1985) convincingly argues, the shift of Poulantzas in *SPS* to theories of monopoly capitalism, which he contested in his previous work, does nevertheless not go in the direction of seeing the state as an instrument in the hands of monopoly capital.

The sphere of the state is never external to the economic one, but the specific issue of the form of the state also concerns the articulation of these two spaces, economic and political, as a political demarcation, thus one pertaining precisely to the theorisation and regulation of the role of the state in the relations of production. The changing role of the state is concerned with precisely how it shifts the boundaries between the space of politics and the economy. Sectors that pertained to the social dimensions, such as education, training, but also transport, planning, and health, "are directly integrated, in an expanded and modified form, into the very space-process of the reproduction and



valorization of capital” (Poulantzas, 2014). He continues: “It is this transformation of the economic space-process which shifts the targets of the state activity and brings the state increasingly to bear on the heart of the reproduction of capital” (Poulantzas, 2014). Valorisation of capital and reproduction of labour power constitute new areas that are “directly inserted in the State.”

Poulantzas’ observations go in the direction of an increased role of the state in economic activities and the sphere of social relations. My reading is that the process of authoritarian statism entails a stronger role of the state in sustaining an economic action that blurs the boundaries between the economy and society. Indeed, “The totality of operations of the State are currently being reorganized in relation to its economic role” (Poulantzas, 2014). Still, this does not entail a subordination of the state’s role to its economic functions; rather, I would read it as a political transformation of the economic space through the state’s strategies. Monopoly capitalism is characterised precisely by increasing state intervention (Jessop, 1985). This poses a problem of hegemony:

Every state economic measure therefore has a political content - not only in the general sense that it is necessarily adapted to the political strategy of the hegemonic fraction. Not only are the State’s politico-ideological functions now subordinated to its economic role, but its economic functions directly involve reproduction of the dominant ideology. (Poulantzas, 2014, p. 169)

It is the permanent crisis of hegemony of the phase of monopoly capitalism that leads to the dismantling of traditional democratic forms. Poulantzas sees one central transformation of the state’s form as the reshaping of the national state, which does not dissolve but rather undergoes a process of transnationalisation. The changing global form of the state entails the changing role of individual states in the global structure of the system of states and the crisis of hegemony of monopoly capitalism linked to the latest phase of capitalism. Thus, the state’s role within economic and political globalisation is transformed, as is the form of the state beyond the national scale.

What does the transnationalisation of the state in relation to the globalisation of the economy but more interestingly for our argument in relation to a shift in the state form and the scale of the state (Brenner, 2004) entail for the decoupling of statism and democracy?

The transnationalisation of the economy and the state form to be connected to changes in class relations and within classes. Authoritarian statism is characterised by growing inequalities between the working classes and the dominant classes and by a

growing number of categories of people within the working class, such as old people, youth, and women, who are “left out” of economic growth and social progress, thus threatening popular consensus to representative democracy (Poulantzas, 2014). Changes in the labour process thus imply the deterioration of working-class conditions and a de-linking between democratisation and labour.

Another central shift produced by the internationalisation of the economy and the state is the “sharpening of contradictions within the dominant classes” (Poulantzas, 2014). There are divisions between economic elites that are domestic and those who are more involved with international capital. Struggles, tensions and conflicts arise within the elites at various scales, and these conflicts concern, I add, the form of the state itself and the restructuring of the current state system.

Moreover, the rise of authoritarian tendencies is linked to the instability effect over elite classes in relation to the transnationalisation of the economy and the state. Poulantzas (2014, p. 212) writes: “Taken as a whole. These factors define a structural characteristic of the present phase: namely, *the hidden but permanent instability of the bourgeoisie’s hegemony in the dominant countries.*” Very interestingly, Poulantzas (2014) clearly contests the hypothesis that rising inequalities within the nation-state are to be connected with the formation of a supranational superstate; they rather develop into the opposite, that is, the “awakening of ethnic and national minorities” that fuels the crisis.

Authoritarian statism, in its connection to the transnationalisation of the two regions of the economic and the political, is characterised by a destabilisation and instability of the state itself. The process of the shifting boundaries of the state is central to its development in authoritarian forms in contemporary Western states, and it is linked to its own instability:

In fact, the State’s economic role only assumes the present authoritarian forms because of a paradoxical circumstance. Incompressible beyond certain limits, that role no longer acts as a stabilizing force; on the contrary, it is itself an important factor of destabilization. The paradox lies in the fact that authoritarian statism is not simply the means with which the State equips itself to tackle the crisis, but the response to a crisis which it itself helps to produce. (Poulantzas, 2014)

Political instability and conflicts within the various groups making up the elite are strengthened by successive economic crises and a crisis of hegemony of the elite itself and its project. The universal nature of the law, which is central, according to Poulantzas (2014), to legitimate democratic state power, is undermined by “particularist regulation.” He writes:

I am referring here (...) to the present-day hegemony of monopoly capital, and even to the hidden instability which characterizes that hegemony in the context of structural economic crisis. (...) However, the growing contradictions within the power bloc actually determine the *instability* of monopoly hegemony. (Poulantzas, 2014)

Education and the judicial system, among other institutions, are central arenas of the crisis of hegemony and, at the same time, institutions in which new forms of power and domination emerge (Poulantzas, 2014). The internationalisation of the state system is to be compared to the instability of the elites and their reconfiguration at all scales, including the transnational one. This is a central point for understanding the crisis of hegemony of the parliamentary democratic state.

Authoritarian statism is linked to a specific political crisis and a crisis of the state, and thus, it has the paradoxical configuration of what Poulantzas describes as a strengthening but, at the same time, a weakening of the state itself. The dual movement of strengthening and weakening of the state is related, and, he adds, “it develops in an uneven manner” (Poulantzas, 2014). The decline of the state does not entail a structural crisis; rather, it involves a sharpening of elements of the political crisis that calls for the transformation of the state’s role itself.

Together with the instability of the dominant classes and the strengthening-weakening of the state, there is another trait that Poulantzas attributes to the authoritarian transformation of the Western democratic state, which is original and interesting. It is the category of the “duplication of the state” (*dédoublement* is the original French word):

Probably, for the first time in the history of democratic States, the present form not only contains scattered elements of totalitarianism, but crystallizes their organic disposition in a permanent structure running parallel to the official State. Indeed, this duplication of the State seems to be a structural feature of authoritarian statism, involving not a watertight dissociation between the official State and the structures in question, but their functional overlapping and constant symbiosis. As a result, any fascist-type process that may be unleashed will undoubtedly not take the form that it did it in the past. (Poulantzas, 2014)

The transformation of the democratic state will not come from the outside of it but through it “as a break within the State following lines that have already been traced in its present configuration” (Poulantzas, 2014). The weakening of the state is characterised by the growing role of the state’s administration, with respect to both the parliament and the government, and this produces a crisis of legitimacy.

We shall retain at least three elements from these theoretical considerations:

1. The form of the state is a central site and object of struggles, and it structures political cleavages and the relation between groups, or classes, and power within the democratic state;
2. The form of authoritarian statism Poulantzas reflects upon constantly shifts the border between the inside and the outside of the state. This is true for the national/inter- or transnational dichotomy and the one between the political and the economic sphere. The contemporary state is not only moving across these boundaries, but it is transforming its role and power precisely through shifting these frontiers between the inside and the outside of the state itself;
3. A central feature of what Poulantzas names authoritarian statism and one element that connects it to contemporary debates on authoritarian liberalism is the fact that authoritarian forms that entail an erosion of democracy do not come from forces that are outside of the political sphere of the institutions, but from their internal transformation. This is a central point to make sense of the expression “authoritarian liberalism,” which otherwise would rather seem the union of contradictory terms.

The duplication of the state structure allows for a bifurcation of the institutions of the state from the ones of democracy. Given the weakening of the state as an institution and its universalist character, the duplication of the state serves the purpose of preventing “a rise in popular struggles” (Poulantzas, 2014). Such function is not evident *prima facie*; it becomes visible only in specific moments, exceptional ones, “through sudden jolts” to the functioning of the state’s institutions.

Authoritarian statism is thus radically different from fascism, totalitarianism, or the state of exception, although it can contain elements of these theoretical formations and although there can be historical continuity among them.

Totalitarianism is seen as a radical break in the structure of the state and liberalism. Poulantzas distinguishes authoritarian statism from totalitarianism at the theoretical and political levels. Theoretically, Poulantzas refers to the Frankfurt school, for which totalitarianism is an “all-powerful Moloch-State” breaking up separations between the subjects and the political community itself. Thus, the totalitarian state conceptually differs from authoritarian statism, separating and foreclosing the institutional sphere from citizens. From a political perspective, Poulantzas sees a relation between possibly totalitarian power techniques of the modern state, including the individualisation process, and the spatial and temporal matrices of the nation and the state, still, totalitarianism is not a gradual process, but a radical break with liberalism, characterised

by individualism as well as by Law. Indeed, “Authoritarian statism does not constitute the fulfillment of the totalitarian buds inherent in every capitalist State” (Poulantzas, 2014). Fascism is identified by Poulantzas with the exceptional state, and in this case, too, there is the need for a break in terms of temporal relation as well as in terms of political structures between the democratic state and the exceptional state or fascism, which “is never established in cold blood” and “involves a real *break* in the State.” Another central condition for the outburst of fascism is the defeat of the working class and of popular movements. The growing distance between the popular masses and the state’s structural elements is instead a feature of authoritarian statism: the decline of democracy is also produced by the fact that popular struggles locate themselves against and outside the state rather than within it. This creates what Poulantzas names as “major dislocatory effects within the State itself,” pushing for direct democratic measures rather than for integrating popular democratic demands within the state’s dynamic itself.

In 1933, Hermann Heller published a text entitled *Authoritarian Liberalism?* as a critical response to Carl Schmitt’s conference on *Strong State and Sound Economy* (Cristi, 1998). According to Schmitt, liberalism and fascism can coexist, since the state, being the expression of interests and struggles, is not neutral and can extend in the social sphere beyond the specificity of the political state. The state thus becomes an auto-organisation of society (Da Silva, 2021). The state is thus the interventionist state, assigning to the political the task of regulating the social, through social interventions, for example. Against this “total state,” Schmitt calls for a stronger state capable of diminishing its interferences in the economic, social and cultural spheres. This is how Hermann Heller (2015) summarizes Schmitt’s vision of authoritarian liberalism:

Through these references, a rough estimate of the substance of authoritarian liberalism appears to have been more or less adequately characterised: retreat of the ‘authoritarian’ state from social policy, liberalisation (*Entstaatlichung*) of the economy and dictatorial control by the state of politico-intellectual functions. According to Schmitt’s quite credible reassurances, such a state has to be strong and ‘authoritarian’, for only a state of this type is able to sever the ‘excessive’ connections between the state and the economy. Of course, the German people would not tolerate for long this neoliberal state if it ruled in democratic forms. (p. 299)

Among the spheres of social intervention in the state, education is key for both Heller and Poulantzas. For Heller (2015), public compulsory schooling is precisely one of the key fields from which authoritarian statism would retreat:

Today we hear from Mr. von Papen that one will have to examine the tendencies of cultural policy from the standpoint of downsizing state activity. Indeed, the state was 'not obliged to offer general education as a "handout"; those entitled to it should make sacrifices on their own. That the expenses for elementary school education have tripled since the time prior to the War is, I believe, an untenable situation. (p. 300)

Heller (2015) also refers most of the time in his text to the authoritarian "state" versus the democratic state, and it is only towards the end of the text that he employs the expression of authoritarian "liberalism." I will not discuss Schmitt's position here, and I only retain that the total state to which he refers is a completely different category from Poulantzas' authoritarian statism. Still, Heller's understanding of authoritarian liberalism has some elements in common with Poulantzas' analysis, the most salient of which concerns the tendency of the state to retreat from social policies. The fracture between the social conditions of the working classes and the popular masses and democratic legitimacy is one of the structural causes of authoritarian statism.

The term "liberal state" is used by Poulantzas as the first stage of capitalism, and it signals a non-interventionist state. Poulantzas defines liberalism as a political ideology in *SPS*'s part on the institutional materiality of the state, and more precisely, on individualisation. The representative state is the one that associates the exercise of power with the atomisation of the body politics in individuals, upon whom the institutional material structure of the state, and thus the political space, is exercised. This division of the political body is directly related to the social and material division of labour and the creation of the figure of the citizen-worker. The political form of the state, which translates into the unity of the modern people-nation, and its organisation structure in the shape of bureaucratic and hierarchical centralism translate the matrix of the state and of the corresponding relations of production (Poulantzas, 2014). The process of individualisation related to the division of labour is not only material but also related to ideas and their hegemonic role. This is the point at which liberalism, as a political philosophy, enters into the analysis of Poulantzas (2014) in *SPS* (p. 66). The role of knowledge is central in shaping the state, especially in forging the relations among institutions, social relations and the division of labour. Here, Poulantzas refers to the work of Michel Foucault. Knowledge, ideas and their hegemonic role (or ideology) "find expression in a materiality consubstantial with its (the State) own structure: namely, the materiality of the techniques for exercising power which shape even the corporality of the subjects over whom this power is exercised" (Poulantzas,

2014). Poulantzas identifies two classical traits of political liberalism. One of them is the limitation of power and the need for its legitimation by citizens. The second point, original and counter-intuitive, understands the liberal principle of the separation between public and private power as the specific liberal “dialectic of the state,” understanding the individual and the private sphere as the blind spot and the effect of state power itself. Indeed,

(...) the private individual’s freedom suddenly appears to vanish before the authority of the state which embodies the general will. Indeed, for bourgeois political ideology *there can be no limit based on law or principle to the activity and encroachment of the state* in the so-called sphere of the individual/private. In the last analysis, this sphere appears to have no other function but that of providing a reference point, which is also a *vanishing point*, for the omnipresence and omniscience of the political instance. (Poulantzas, 2014, p. 70)

Poulantzas refers here to “liberal political ideology” and, in particular, to Hobbes’s influence on Locke, Bentham, and John Stuart Mill, among others. Thus, the state is a central structure for political liberalism, and its *locus* is the political construction of the private and the individual.

Poulantzas then closely connects the role of the state, democracy and the question of the limits to power as present in understandings of representative democracy. Indeed, if the individual-private is “the very conduit of the power of the modern State,” the proper limit of power derives from democracy, that is, from

popular struggle and the class relationship of forces. The individual-private (...) limits that power (of the State) through being one of the privileged modern representations of the class relationship *within* the State. The nature of this limit is well known: it is called *representative democracy*. (Poulantzas, 2014, p. 72)

In recent times, Wolfgang Streeck analysed the Schmitt-Heller debate dating back to the Weimar Republic in terms that echo the later analysis of Poulantzas. For Streeck (2015), “the depoliticised condition of a liberal economy is itself an outcome of politics, in the sense of a specific use of the authority of the state for a specific political purpose.” Schmitt argues against representative democracy and its social penchants precisely because it risks giving the working class too much leverage and space.

I propose to understand Poulantzas’ analysis of authoritarian statism and the decline of democracy within Western Europe and the United States as a precious contribution

to contemporary political theory and political philosophy elaborations of authoritarian liberalism according to these possible interpretations:

- A. Authoritarian statism, as defined by Poulantzas, points to the tension between representative democracy and political liberalism: if the power of the state is insulated from the working class and democratic demands, there can be an authoritarian torsion within political liberal nation-states that separates the political space and institutions of the state from democratic struggles;
- B. Understanding the role of the state in relation to the “vanishing point” of politics in liberalism as a political ideology is key to building the relation between authoritarian statism and authoritarian liberalism;
- C. There is an empirical connection between authoritarian liberalism and authoritarian statism, and it can be found in the changing role of the liberal elite (here, we understand “liberal” in a class-related sense and not as a political philosophy) within the state structure. The instability of the liberal elites, their internal conflicts, and the weakening of the state itself that is linked to the crisis of the state as a crisis of the leading class translates into shifts in the state’s structure, precisely in what Poulantzas names the “duplication” (*dédoublement*) of the state apparatuses. Authoritarian liberalism stems thus from the political crisis of the liberal elites and from the changing role of class relations within the material structure of the state itself;
- D. Authoritarian statism, as elaborated by Poulantzas and as it can be related to past (Schmitt-Heller) and recent debates on authoritarian liberalism, describes a transformation that is internal to the representative democracy, at the difference of fascism or totalitarianism, which always requires a radical break with it;
- E. As Poulantzas’s two questions of the inside/outside relation to the state and of its transnationalisation show, authoritarian statism contributes to the role that restructuring the form of the state plays within authoritarian liberalism; and
- F. The decline of democracy within authoritarian statism concerns the political role of the state and its transformation in the articulation between the political and social dimensions of democracy. The role of class struggles and class relations within the matrix of the state is a central feature of representative democracy, and the relationship between the changing stages of capitalism and the form of the state should be read, keeping this issue in mind.



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# CRITICAL REMARKS ON THE CONTEMPORARY EUROPEAN LIBERAL PARADIGM\*

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## COMENTARIOS CRÍTICOS SOBRE EL PARADIGMA LIBERAL EUROPEO CONTEMPORÁNEO

### Abstract

The concept of authoritarian liberalism formulated by Hermann Heller in the twilight of the Weimar Republic illuminates an epochal change: it is not what he sarcastically called the “miracles wrought by a dictatorship,” but what would precede it, namely the undermining of democratic achievements by the liberals. The state intervenes in the economy to solve the crises caused by “democratic disorder” and elevates the democratic frontier to an ineradicable precondition of the liberal economy. On the one hand, this article aims to demonstrate the relevance of the concept, in particular by addressing the possible existence of an authoritarian European liberalism. On the other hand, it aims to show that repression aimed at restricting individual freedoms is not a necessary component of this concept: for liberalism to be labelled authoritarian, it is sufficient that it removes the sphere of economic freedoms from the availability of democratic deliberation.

### Keywords

authoritarian liberalism; Hermann Heller; ordoliberalism; neoliberalism; democratic deficit

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## Resumen

El concepto de liberalismo autoritario formulado por Hermann Heller en el crepúsculo de la República de Weimar ilustra un cambio de época: no se trata de lo que él llamó con sarcasmo los “milagros que obró una dictadura”, sino de lo que le precedería, a saber, el menoscabo de los logros democráticos por parte de los liberales. El Estado interviene en la economía para resolver las crisis que ocasionó el “desorden democrático” y eleva la frontera democrática a condición previa inerradicable de la economía liberal. Por un lado, este artículo tiene por objeto demostrar la pertinencia del concepto al abordar, en particular, la posible existencia de un liberalismo europeo autoritario. Por el otro, pretende mostrar que la represión destinada a restringir las libertades individuales no es un componente necesario de este concepto: para que el liberalismo se pueda calificar como autoritario, basta con que sustraiga la esfera de las libertades económicas de la disponibilidad de la deliberación democrática.

## Palabras clave

liberalismo autoritario; Hermann Heller; ordoliberalismo; neoliberalismo; déficit democrático

## Brief notes on the genealogy of authoritarian liberalism

In order to understand the implications of the concept of authoritarian liberalism today, it is essential to briefly mention the context of its maturation.

In his short essay—which could be described as a pamphlet, so fierce is his political and theoretical critique of the final years of the Weimar Republic—Heller (2015) questions whether what the policy achieved, undoubtedly supported by the approval of the intellectuals of the time, can be defined as authoritarian liberalism.

Although he is not the only one, the main recipient of Heller's criticism in *Authoritarian Liberalism* is Carl Schmitt. Under the pretence of reflecting on the economic and administrative problems of the Prussian state, Schmitt introduces the idea of a strong state and a sound economy. Carl Schmitt made both clear on 23 November 1932 at the conference *Sound Economy in a Strong State*, which took place in Düsseldorf in front of the Langnamverein, the most representative association of the Rhineland bourgeoisie at the time (Cristi, 2018). The double track on which Schmitt's idea of depoliticising the economy is moving is clear: "The process of depoliticization and the creation of state-free spheres is a political process" (Schmitt, 1998, p. 213) and as such cannot be achieved by the economy itself, a neutral territory that does not represent a political subject in itself due to its lack of decision-making capacity. The subject appointed for this purpose must be the state, whose authority is embodied in its political ability to establish a free-market economy and defend it against "non-liberal, market-subverting objectives" (Streeck, 2015, p. 362). Only if it is strong can the state guarantee a healthy economy. Faced with an epochal crisis gripping society and reverberating across the German economy in the wake of the 1929 collapse—most clearly visible in a sharp rise in inflation and rampant unemployment—the Prussian political will hypothesise a new economic and, at the same time, political model.

Indeed, Heller emphasised how the myth of the neutral state and "night watchman" state was defused (Neumann, 1986, p. 173): for the first time in the liberal tradition, the state was no longer called upon to intervene in the economy only when the market exhibited distortions but had to actively participate in the process of defending economic freedoms by taking positive measures that guaranteed their exercise.

Well, it is precisely in the specification of this last aspect that Heller's acumen is revealed. The lucid and polemical concept of authoritarian liberalism finds its justification in a reappropriation of authority by power, which presents itself as undermined by democratic pluralism and acts through an institutional de-democratisation of the parliamentary sphere of influence of economic freedoms (Wilkinson, 2021, p. 22). Relying on the supposed inevitability of crisis management, the Brüning-Papen government's

policy was to move impetuously towards the private sector and the almost total promotion of its flexibility.

In authoritarian liberalism, however, there is no undifferentiated depoliticisation of the economy: it is the sphere of power of a certain type of state, the welfare state, that must be depoliticised. An expansion of state intervention to protect the private economic sphere and the market must be matched by a consolidation of institutional protection in economic-social matters: “The ‘authoritarian’ state is characterised by its retreat from economic production and distribution [and the] authoritarian dismantling of social policy” (Heller, 2015, pp. 185–186). This complex of actions must be implemented through a policy of cuts in public spending in the areas of labour and education and is simultaneously supported by a by no means invisible hand that removes the power of political and economic decision-making from parliament and thus from the masses.

The following section will show that the developments of today’s liberalism—in the form of *ordo*/neoliberalism—owe much to the authoritarian liberalism outlined by Hermann Heller<sup>1</sup> and that the practical-political applications at the supranational level, from the process of European integration to recent times, also seem to have much to do with his assumptions.

### **The “problem” of liberalism. The European liberal paradigm**

The profound transformation that Europe has undergone since the Second World War has taken place from two perspectives: from an internal perspective, in the constitutionalisation of nation-states and the moralisation of individual legal systems, and from an external perspective, in the reorganisation of international relations and the rethinking of state sovereignty.<sup>2</sup>

The theoretical elaboration around the European integration process tends to follow two directions. The first aims to explore the realisation of possible political projects (Weiler, 2011): it was the functionalist proposal that prevailed, aiming at the construction of an economic, even before political, European unity through small and gradual cessions of sovereignty by individual states in favour of a supranational structure.<sup>3</sup> The second direction draws on the theoretical complex of liberalism, particularly—but not exclusively—in the forms of *ordoliberalism* and *neoliberalism*.

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<sup>1</sup> On Carl Schmitt’s influence on German *ordoliberalism*, see Young (2017, pp. 129–142).

<sup>2</sup> See Ansuátegui Roig (2013).

<sup>3</sup> A particular feature of functionalism was thus the construction of a Europeanist idea based on the pooling of economic resources, which overturned the traditional criterion that economic unity should be preceded by political unity. Therein lies the pragmatism of the functionalists, undoubtedly including Jean Monnet, who was involved in drafting the Schuman Declaration in 1950 and in formalising the first form of European sovereignty in 1951: the European Coal and Steel Community. See Isiksel (2016).



From the perspective of legal philosophy, the attempt to implement democratisation and constitutionalisation practices at the European level comes up against the limits of post-conflict geopolitical relations and the practice of inter- and supranational relations. This applies in particular to the construction of the most important attempt at integration of the 20th century through the law, namely the European integration process—a term that generally refers to how supranational law has, in practice, become part of the legal systems of the individual nation-states (Bickerton, 2012; de Witte, 2012). This new paradigm should have led to a conception of the process of organising inter-state relations aimed at creating multi-level constitutionalism (Pernice, 2015) and a constitutional pluralism (Poiares Maduro, 2012) that, starting from the dictates of individual contemporary constitutions, would advance the path of integration between states. However, both models have only been partially realised and have even been radically questioned in the last decade. It was assumed that liberal democracy was the only political system that could be soundly justified from the standpoint of a rationally orientated moral philosophy and that only the institutional arrangements of political liberalism would fulfil the conditions of social justice typically associated with a constitutional democratic regime (Magalhães, 2021, p. 2). The integration process should, therefore, have led not only to a system of legal harmonisation between states but also to an ethical harmonisation of states, in particular, one that would have guaranteed conditions of democratisation and social justice to make the dictatorial experiences that had pervaded the European continent unrepeatable.

However, it is undeniable that ordoliberalism and neoliberalism have taken an absolutely prominent position in the developments that liberalism has undergone in modern times. And both have contributed significantly to the progressive de-democratisation of the European political and economic sphere (Dardot & Laval, 2017, p. 167; Turner, 2008, p. 63).

Interestingly, it is possible to find certain features of ordoliberalism rooted in the Schmittian assumptions analysed by Heller; for example, the view of the state entity as the fundamental institution of the free economy understood as the main instrument for a market policy based on economic freedoms and total competition (Bonefeld, 2017b). It is precisely in redefining the state's role in the economy that contemporary liberalism adopts Schmitt's view that the democratic state is "weak" in that it is incapable of limiting the erosion of individual freedoms and, in particular, economic freedoms. When it comes to determining the question of who should be legitimised to decide on the free management of the economy and what the content of the decision should be, there are two theoretical nodes that form the linchpin of ordoliberal and neoliberal thinking: the concept of "order" and the concept of "economic constitution."

The concept of order defines a framework of rules and norms that ensure the smooth running of the economic process by excluding all externally determined interventions. In other words, it is an order that informs the politics of law through strategic rationality. For ordoliberalism, theory and legal policy must go hand in hand and accompany each other in pursuing the goal they see as inherent in the economic order: the construction of a competitive order endowed with normative character. The theoretical centre of the order lies in the idea of an economic constitution, which represents the general political decision on national economic life (Rüstow, 1932). Just as the legal order can presuppose a basic law from which it derives its foundation, the economic constitution forms and establishes the economic order. The legal order and the economic order do not overlap, yet they are mutually dependent: one, the legal order, characterises the economic facts, and the other, the economic order, influences the substantive legal order. The economic constitution also has its own principles and rules: within the framework of a market economy, elements such as private property, free competition and freedom of contract form the principles of an economic order based on an economic constitution.

The (apparent) neutrality of the ordoliberalism's arguments regarding the necessity of an economic order and constitution reveals a political strategy that runs counter to the Marxist critique of the capitalist production system. The ordoliberals react by disqualifying historical-economic analyses, branding them as ideological and declaring them invalid since, in their opinion, they cannot arrive at correct overall solutions but remain one-sided and omit the *essentials*. The "essentials" that the ordoliberals intend to grasp lie precisely in the de-democratisation of politics and the economy, in the neutralisation of burgeoning conflicts.

We call neoliberalism<sup>4</sup> the complex of ideas characterising liberalism that developed after the Second World War (Brown, 2003; Jackson, 2010). There are undoubtedly objective differences between the various schools, starting with the geographical location where they developed—the Freiburg School, the Vienna School, the Chicago School—and the different periods in which their thinking flourished. However, there is a convergence in their theoretical programmes in their approach to the relationship between the political and economic spheres and in the general idea that individual freedoms can only be fully realised in a free and openly competitive market economy.

There is a common worldview between ordoliberalism and neoliberalism, underpinned by the idea that in the presence of a certain order created by institutional action, the ideal dimension for a market economy that allows individuals to maximise the exercise of their

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<sup>4</sup> On the semantic difficulties associated with the term neoliberalism, see Biebricher (2019).

freedom can be constituted. Neoliberalism is thus imbued with the thinking of the ordoliberals, particularly their reflections on the inseparable nexus between the state, science and politics in the functioning of the economy (Rüstow, 1961). Like Carl Schmitt's authoritarian liberalism and the ordoliberals, the neoliberals saw protectionism and the welfare policies typical of the democratic state as a threat to the individual's freedom.

Interestingly, limits have been placed on constitutional democracy since the Second World War. These limits are a central institution of modern democracies in order to avoid the so-called “democratic suicide” (Wilkinson, 2019), i.e., the idea that the guarantee for the proper functioning of democracy is provided by the necessary imposition of limits on the exercise of freedom.<sup>5</sup> In this context, there has been talk of “militant democracy,” an idea developed by Karl Loewenstein (1935) and taken up again by Jan-Werner Müller (2012) to describe how certain institutional practices aim to construct a European constitutional architecture to depoliticise governance. According to Müller, the social market economy played an important role in this operation. Democracy, therefore, had to become militant not to repeat the mistake of the Weimar Constitution: the basic provisions strived to exact material justice, which is why stronger constitutionalism with stricter checks and balances was needed. As Wilkinson (2021) notes, such conclusions seem “curiously Schmittian” (p. 74).

These considerations lead to the assumption that a legal system that relies on a strong state—and thus, for example, engages in government practices that restrict pluralism—need not necessarily be totalitarian. One can speak of authoritarian practice in a sense that focuses specifically on its potentially repressive implications (Bruff, 2014; García & Frankenberg, 2019; Meyer, 1995) in the sense of an exercise of coercion ultimately aimed at restricting individual freedoms. However, the authoritarianism of liberalism analysed here is not expressed exclusively in these terms; rather, it makes “authoritarian rule [...] a useful, if not necessary, management strategy for the economy” (Wilkinson, 2017). Liberalism becomes authoritarian the moment it removes the area of economic freedoms from democratic decision-making. Even if it should not be completely ruled out that liberal regimes can take on authoritarian traits (Chamayou, 2018, pp. 215–247), authoritarian liberalism can be summarised as follows: “Repression is not one of its necessary components. If people have enough trust, authoritarian rule can have a much friendlier face” (Somek, 2015, p. 357).

The trace of authoritarian liberalism in the integration process would then be seen in the ability of fundamental economic freedoms to define the rules of the market and re-

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<sup>5</sup> The *counter-majoritarian difficulty* must also fit into this framework (Bickel, 1962).

move them from democratic political discussion. And since the main instrument through which integration between states has taken place—and is taking place—is the law, it is precisely the law that is responsible for defining the necessary conditions for the construction of the European economic order. The fundamental law of the Union, which is based on both the Treaties and the decisions of the European Court of Justice, would thus explain its tendency to institutionalise the economic constitution and suggest that the ordoliberal soul of the European Union is not to be found in individual provisions, individual treaties or individual reforms, but in the way in which integration has been conceived (Malatesta, 2023). On the other hand, ordoliberalism has been scrutinised from several angles in recent years, a tendency that manifests itself in the multiple definitions of Europe as ordoliberal or neoliberal (Joerges & Kreuder-Sonnen, 2018).

### European authoritarian liberalism

The negative integration “that has composed the societies of the Member States through market freedoms” does not really seem to have translated into a “positive, politically generated standardisation of citizens’ political decision-making processes” (Habermas, 2014, p. 528). The crises that have plagued the European Union over the last fifteen years have called into question many structural elements of the European project (Atzeni, 2023) and have made it clear that certain decisions made by the institutions in recent years have failed to achieve the objective of creating a normative political fabric.<sup>6</sup> Thus, the prolonged crises have called into question the sustainability of the economic integration process and the benefits of economic and monetary union, on whose altar the project of political integration that should have been taking shape since 1957 would have been sacrificed.

Competition policy, in which the Commission and the Court of Justice played a key role, was the main lever of the first integration phase. Competition rules became the instrument that gave the Treaties a quasi-constitutional status and gave rise to the economic constitution. The Treaties of Rome of 1957 already clarified what the newly founded European Economic Community’s aim was: the Community’s foundations include the free movement of goods, persons (labour), services and capital. These are the four fundamental economic freedoms traditionally regarded as the most important

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<sup>6</sup> These are the financial assistance mechanisms set up by the European Union in response to the crisis. The aim of these mechanisms is to maintain the financial stability of the European Union and the euro area in particular, as the economic and financial vulnerabilities of one Member State can concretely undermine the macro-financial foundations of the entire Union. The financial assistance provided by these funds is not in the form of a transfer of public funds, but in the form of a loan or credit line. The granting of any financial support is subject to strict conditionality. See Kirst (2021).

instrument for European integration and the realisation of the *ever-closer union* called for in the preamble to the EEC Treaty (Atzeni, 2022). At this stage, supranational cooperation still seemed to emphasise democratic and social constitutionalism, as already mentioned: the options for the effective functioning of economic freedoms remained firmly anchored in the socio-economic preferences of the Member States and the democratic and self-governing principles emphasised in most national constitutions after the Second World War (Menéndez, 2018). From the second half of the 1970s, freedoms were redefined with regard to the project of a monetary union that could better concretise the common market and thus support the self-stabilising forces of the financial markets (Dani & Menéndez, 2023). The free movement of goods was given a special and enhanced status, exposing the national economies to other European economic players; the free movement of capital, which was essentially limited to the free movement of payments, was given a much broader role than was originally granted.<sup>7</sup>

Following the realisation of the customs union and the establishment of the common market—both measures aimed at consolidating the foundations on which monetary union could be built—it was indeed necessary to extend the European project to a plan that was not exclusively economic and commercial in nature. Positive integration should have been achieved primarily through measures aimed at reducing the existing regulatory heterogeneity, both at the fiscal level and with regard to the different economic and social policies of the Member States. However, the fiscal heterogeneity of the EU member states, combined with the high consensus requirements within the supranational decision-making processes, appeared from the outset to limit effective measures aimed at the political and economic integration of the states into the European project.

The crises of the last fifteen years have not only intensified the critical issues surrounding the integration process, such as the nature of the interaction between monetary and fiscal policy, the distribution of competences between the European Union and the Member States, the horizontal relations between the Member States in terms of fiscal responsibility and mutual solidarity. They have also increased European citizens' dissatisfaction with the lack of an institutional space to challenge supranational political authority. The rise of an increasingly intergovernmental supranational decision-making model,<sup>8</sup> the growing

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<sup>7</sup> See *Rewe-Zentral v Bundesmonopolverwaltung für Branntwein* (1979) Case C-120/78, popularly known as *Cassis de Dijon*; see also Directive 1988/361 - Council Directive 88/361/EEC for the implementation of Article 67 of the Treaty.

<sup>8</sup> The intergovernmental method falls within the remit of the European Council and the Council of the European Union. It leads to a significant redefinition of relations between the supranational institutions and those of the Member States, particularly those in the eurozone. While on the one hand, the “governance of the economy” has been emphasised, on the other hand, there has been a mirror image strengthening of the supranational executive and a drastic reduction in the size of the European Parliament, which is increasingly involved in the decision-making dynamics—a *fait accompli* (Sciocluna, 2012).

legal-institutional fragmentation of the Union, the uncertain fate of political and social rights and the questionable democratic legitimacy of the Union's policies—as well as those of its Member States—are just a summary of what we can reconcile with the claim that a genuine political union would have required—and would require—much more (Dawson & de Witte, 2015).

The preference for austerity,<sup>9</sup> labour flexibility,<sup>10</sup> and liberalisation processes would represent a political-economic line directly related to the so-called macroeconomic constitution introduced in the Treaties in 1992 (Tuori & Tuori, 2014, pp. 13–18). In other words, the choices underlying the structure of the monetary economic union—from the focus on price stability<sup>11</sup> to the ban on monetary financing—would lead to convergence towards the dead end of a liberal-authoritarian economic model (Offe, 2013; Somek, 2014).

It has been argued that the European Union would be a “contemporary manifestation of a tradition of authoritarian liberalism that goes back to the political theology of Carl Schmitt and expresses the political project of the founding ordoliberal thinkers” (Bonfeld, 2017a, p. 13). With the euro crisis, an explosion of liberalism would manifest itself in all its supremacy: a policy dictated by the state of emergency would replace the democratic practices of the legislative production process (Joerges & Weimer, 2012, p. 32).

The lack of active participation of citizens in supranational deliberative processes, the constitutionalisation of economic freedoms, and the construction of a purely formal democratic structure based on formally functioning procedures but, in fact, limited in its substantive exercise are aspects that allow us to use the term “authoritarian liberalism” to describe the European framework since its origins and that are exacerbated by the new governance policies introduced in Europe after the crisis.

An indispensable prerequisite for any political community is that any legitimate and stable institutional structure recognises an “irreducible plurality of conceptions of the

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<sup>9</sup> For an overview of the critical issues relating to the relationship between austerity and *moral hazard*, see Blyth (2013). See also Biebricher & Vogelmann (2017, pp. 1–22).

<sup>10</sup> The claim to the protection of economic freedoms is absolutised by the Court when they conflict with socio-economic rights. This tendency is evident in the Viking and Laval judgments. See C-438/05 The International Transport Workers' Federation and The Finnish Seamen's Union v Viking Line ABP and OÜ Viking Line Eesti [11/12/2007] and C-341/05 Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avd. 1, Byggettan, Svenska Elektrikerförbundet [18/12/2007].

<sup>11</sup> Price stability is not only one of the convergence criteria but also a genuine principle of European Union law, expressly enshrined in Article 3.3 of the Treaty on the European Union. Non-compliance with the balance of payments equilibrium by individual states, especially those with significant delays in economic and financial recalibration could entail a potential declaration of unconstitutionality of budgetary laws that do not reflect economic policies fully compatible with price stability control.

‘good’” (Dawson & de Witte, 2016, p. 209) and takes into account the inevitable differences between the diverse normative claims. For this reason, constitutional balance is only fully realised when it institutionalises the discussion processes around these different conceptions. Only through this process can both the work of the institutions and the citizens’ capacity for self-determination be channelled towards constructing the normative project of their own political community. In this respect, one understands the importance of transferring distributive choices to democratic availability. For this reason, in the construction of the European institutional balances established by the distribution of competencies at the supranational level as laid down in the Treaties, the Union’s primary law has anchored the citizens’ ability to decide on important political issues—including redistributive policies—at the national level, which is responsible for economic policy. However, the Union’s response to the crises has altered this balance and blurred the boundaries on fiscal and budgetary issues. This can be seen both in the general inclination towards austerity that the regulations granting support measures for crisis countries would have instilled in the European constitutional structure and in the specific measures that result from this, particularly with regard to the conditionality criteria that debtor states must accept in return for financial support.

The exercise of decision-making seems to be completely separated from that of citizenship, based on a logic of the system that is reduced to a conflict of interests between states and seems to completely exclude the perspective of the ultimate recipients of European political action. As Dawson and de Witte (2013) state

Such redistributive and allocative decisions invariably have very clearly identifiable winners and losers and challenge the paradigm of the EU as a polity based on consensual decision-making. Redistributive discussions, in the current EU, cannot be made in the context of a conflict of interests between (say) banks and pensioners. (pp. 818–819)

This condition is evident in today’s European politics, where the interests of the weakest groups of individuals are often neglected, if not sacrificed, in favour of other and foreign demands, which often coincide with those of the market and the exchange of capital. The instrumentalisation of agreements concluded with recourse to international law—to circumvent the qualified majority rule applicable to treaty changes when adopting the European Stability Mechanism—and the innovations in the exercise of voting rights introduced by the Fiscal Compact—proportional to the amount of Member States’ financial contributions and not based on the legal parity of their respective

political status—would be two of the most glaring examples of this. The crises have been a test of the system's resilience, which has indeed held up by showing how the supranational and intergovernmental structure regenerates itself despite its inability to combine the European dimension of common objectives with the political and social dimension.

This shows that the crises that have arisen are not just a formal conflict between emergency policy and the state of political normality. Rather, they manifest a much greater problem that should push the European institutions to regain their legitimacy, especially in a context that emphasises and fuels conflicts and contributes to the divisions that may arise regarding economic policy decisions.

Resolving conflicts and recognising the resulting identities require effective participation in decision-making and a problematisation of the political changes that society is seeking. Crises exacerbate citizens' unease with public affairs, and this feeling can only be directed against institutions entrenched and distant from the social body, a state of affairs that feeds the fear of a real democratic challenge at various levels, in which the liberal and authoritarian European order will gain the upper hand.

### **Concluding remarks**

The liberal political model that has developed in much of the West since the end of the 18th century has slavishly adhered to the cardinal dictates of its theory and equally faithfully applied its principles within the political and social relations of the reality it expresses. Until then, the instrumental recourse to liberal principles had led the bourgeoisie to contain aristocratic power: it is the limitation of power that makes liberalism "political" and, therefore, worthy of esteem. But the same principles, the same philosophy, were also applied downwards by the same middle class: to preserve their property rights and thus contain the masses. Property rights and labour are, in themselves, fundamental components of economic rights.

Since the end of the 19th century, what has significantly affected the democratic capacity of communities based on liberal systems has been the relationship between the state and the economy: the process of industrialisation has led to an obvious development of property rights, trade relations and, consequently, labour relations. However, the development of instruments never changed the balance of power, as Karl Polanyi (2001) explains well at the end of the first part of *The Great Transformation*. In the 20th century, however, the relationship between politics and the capitalist economy changed. In the face of the revolutionary impulses that came from the East in the first two decades of the last century and threatened to severely disrupt the process of capitalist development on the old continent, the relationship between state and economy became



inseparable. In this connection between politics and economics lies the actual paradigm shift that took place in the 20th century. Neither the process of constitutionalisation of ethical and moral principles that entered the systems of individual states after the Second World War nor the “end of history” (Fukuyama, 2000) that took place from 1989 onwards: in both moments, which were undoubtedly epochal, the anomalies produced by the system were immediately reabsorbed.<sup>12</sup>

The decision to constitutionalise economic freedoms after the Second World War, without providing for an approximation of the corresponding regulations that would process these impositions through internal democratic systems, prevented a discussion of the constraints imposed first by economic unions and later by monetary unions. The democratic deficit begins here.

Aware that different historical contexts complicate any attempt at comparison, it would be possible to identify similarities between the Weimar context and the current European context, both at the economic level (political-economic crisis, high unemployment, wage issue) and at the political level (adoption of emergency practices, cuts in public spending, austerity policies, centralisation of decision-making functions, problems of democratic legitimacy in both input and output). Indeed, the economic crisis allows for parallelism between the two different contexts from the perspective of authoritarian liberalism: in both cases, the crisis—the *exceptional* moment—generates a new idea of political authority, reflected in a new rhetoric of the constitutionalisation process. To counter the effects of the crises that have hit the European Union since 2008, and the eurozone countries in particular, the supranational institutions have equipped themselves with stringent economic policy measures and made particularly invasive interventions in the democratic sphere of the Union: think of the strengthening of governance, the application of the intergovernmental method and soft law (Láncos, 2018), the conditionality regime underpinning the system of macroeconomic aid funds, and the constitutionalisation of the balanced budget rule. In this sense, the concept of authoritarian liberalism can highlight the critical issues underlying the relationship between democracy and liberal economics: the de-democratisation of the European Union continues to manifest itself—at the Community level, but also internally—in the fact that a large part of political-economic affairs is removed from the democratically elected institutional bodies.

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<sup>12</sup> The “typical economic means” to which Guérin (2000, p. 231) refers in *Fascism and Big Business* can help to prove that the economic policy of the fascist state fits perfectly into the system to which we refer, both in its attitude towards the masses and in its protection of private property—for example, in the restitution of certain monopolies to private capitalism—and of medium and large-scale agrarian property.

The European Union is fertile ground for the authoritarian application of a liberal political-economic model. A political-economic model that must be dominated by authoritarian liberalism. The relationship between politics and economics, even at the supranational level, is based on a friend-foe relationship. As Streeck (2015, p. 365) emphasises, the system that enables the exercise of market freedoms cannot give way to the state of nature but must be politically constructed, publicly established and enforced by those in power.

The problematic link between liberalism and democracy refers here and now to excluding groups that are the bearers of differentiated interests. The contestation of how the European liberal regime applies in practice the economic freedoms on which it is based inevitably means that the legal-economic sphere is affected by individuals who are increasingly excluded from decision-making processes. At the same time, the restriction of democratic participation certainly takes place today through the denial or restriction of the exercise of the right to vote for certain categories of people—through the denial of citizenship, documents, or residence permits—but it becomes even stronger and at the same time less obvious when the role of the bodies exercising functions representing the interests of the people is restricted. Finally, without going into the merits of the exercise of the right to vote—also with regard to the representativeness of the political classes and the various configurations of today’s electoral systems—it must be emphasised that the depoliticisation of decision-making functions proves to be a necessary instrument, especially in times of crisis, so that the measures taken do not appear illegitimate or unpopular. In the case of the 2008 crisis, the practice of the state of emergency contributed to the credibility of the idea that de-democratisation was necessary, resulting in the conviction that democratic institutions should step aside in an emergency and make way for technicians, a circumstance that also creates further automatism in the citizenry: mechanisation is not only necessary but also just.

Domenico Losurdo (2011) wrote that liberalism is an appeal to free people who are “genuinely free, or people who had the privilege of being free” (p. 245). All in all, in Western societies based on labour, roles, and hierarchical relationships played out in models of production and consumption, the liberal ideal is out of reach for a very large part of the population, who are inevitably excluded from its dictates.<sup>13</sup>

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<sup>13</sup> Chamayou’s (2020) question is revealing in its sense: “Heller nous adresse un autre conseil de méthode: face à un pouvoir autoritaire, ne pas se laisser abuser par l’image totalisante qu’il projette de lui-même [...] La bonne question à poser est celle-ci: cet État “autoritaire”, envers qui au juste l’est-il, et avec qui ne l’est-il pas?” (p. 25).

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# THE WAR FOR THE FREE MARKET. NEOLIBERALISM AND AUTHORITARIAN VIOLENCE IN GUATEMALA (1954–1983)\*

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## LA GUERRA POR EL MERCADO LIBRE. NEOLIBERALISMO Y VIOLENCIA AUTORITARIA EN GUATEMALA (1954–1983)

### Abstract

The article aims to investigate the intellectual origins of neoliberalism in Guatemala and the relationship it maintained with authoritarianism between 1954 and 1983. Identifying Guatemala as a crucial yet neglected site for the dissemination of neoliberal theory in Latin America, the article examines the political thought of Manuel Ayau, who played a prominent role both in the Mont Pelerin Society and other international neoliberal think tanks, as well as in the original spread of neoliberalism in the country. Thus, the first part analyzes the battle of ideas fought by Ayau through the establishment of the Centro de Estudios Económico-Sociales and the Universidad Francisco Marroquín to counter developmentalist policies and the spread of communism. By discussing both the political relationships Ayau maintained with the regimes of Arana Osorio and Ríos Montt and his writings on dictatorship, guerrilla warfare, and human rights, the second part shows how, while critical of the economic policies adopted by the military regimes, he justified the violence they exerted as a necessary defense of property and market order.

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## Keywords

neoliberalism; Guatemala; authoritarianism; violence; economic freedom

## Resumen

El artículo investiga los orígenes intelectuales del neoliberalismo en Guatemala y la relación que mantuvo con el autoritarismo entre 1954 y 1983. Mediante la identificación de Guatemala como un lugar crucial para la difusión de la teoría neoliberal en América Latina, el artículo examina el pensamiento político de Manuel Ayau, que desempeñó un papel destacado tanto en la Sociedad Mont Pelerin y en otros centros de pensamiento neoliberales internacionales, así como en la difusión original del neoliberalismo en el país. En la primera parte, por lo tanto, se analiza la batalla de ideas que libró Ayau a través del establecimiento del Centro de Estudios Económico-Sociales y la Universidad Francisco Marroquín para contrarrestar las políticas económicas desarrollistas y la propagación del comunismo. Al estudiar tanto las relaciones políticas que Ayau mantuvo con los regímenes de Arana Osorio y Ríos Montt como sus escritos sobre dictadura, guerrilla y derechos humanos, la segunda parte muestra cómo, si bien fue crítico con las políticas económicas adoptadas por los regímenes militares, justificó la violencia que ejercían como una defensa necesaria de la propiedad y el orden del mercado.

## Palabras clave

neoliberalismo; Guatemala; autoritarismo; violencia; libertad económica

In recent years, scholarship on neoliberalism has increasingly focused on its political core, investigating the political infrastructure of the market (Dardot & Laval, 2009; Brown, 2015; Biebricher, 2018). Engaging with this scholarly debate, an increasing number of works have identified an authoritarian core in the neoliberal conception of the state. Scholars such as Renato Cristi (1998), Wolfgang Streeck (2015), Werner Bonefeld (2017), Grégoire Chamayou (2018), and Michael Wilkinson (2021) have reintroduced the category of “authoritarian liberalism,” coined by the German jurist Herman Heller in 1932 to critically define Carl Schmitt’s notion of a “qualitatively total state,” meaning a state that “draws a sharp line of separation vis-à-vis the economy, although ruling, on the other hand, with the strongest military means and the means of mass manipulation” (Heller, 1933/2015, p. 300). By identifying in the strong Schmittian state an attempt to limit interventionism in the economy and shield the government from popular claims, these scholars pointed to a continuity between Schmitt, German ordoliberalism, Friedrich von Hayek, and the Treaty of Rome creating the European Economic Community. Contrary to this interpretation, Serge Audier (2022), and Pierre Dardot (2022) questioned the direct connection between Schmitt and neoliberal thinkers, showing the different theoretical roots and goals of their theories. Yet, while distinguishing the Schmittian and the Hayekian conception of law (substantive and particular in the former, universal and abstract in the latter), Dardot still attributed to neoliberalism a “constitutionally authoritarian dimension” stemming from the constitutionalization of private law and the consequent restriction of the democratic decision-making process.

Without directly engaging with Heller’s essay, other studies have analyzed the relationship between neoliberalism, conceived both as a doctrine and as an economic policy, with authoritarian measures (Biebricher, 2020; Bruff, 2014), showing how the latter have been used, in some political and geographical contexts, to insulate the market from social and political dissent. However, except for the works on the Chicago Boys’ experience in Pinochet’s Chile (Dardot et al., 2021; Edwards, 2023; Whyte, 2019), this scholarly debate has long remained anchored to Europe and the United States, neglecting a crucial part of the global history of neoliberalism. Only a few scholars have shown that in the same period in Argentina, Brazil, Uruguay, Peru, and Guatemala, military regimes were also fundamental tools for the introduction of the market economy (Heredia, 2004; Klein, 2007; Ramirez, 2014; Silva, 2006). Indeed, although the link between neoliberalism and dictatorship took different shapes in each of these countries and had a different adherence to doctrinaire orthodoxy, it still posed a common question concerning the relationship between the market and the legal and political institutions built to allow its functioning.

Drawing on this literature, this article aims to contribute to this debate by analyzing the specific case of Guatemala. An important theater of the Cold War and the site of the first CIA-backed coup in Latin America to fight against the communist threat, Guatemala was governed primarily by military regimes throughout the 20th century, engaged, from 1960 to 1996, in a civil war against guerrilla organizations, resulting in the killing of hundreds of thousands of militants and sympathizers. It was in this context that neoliberal ideas began to circulate in the late 1950s as an intellectual weapon against the advance of communism in the region, first threatened by the Cuban (1959) and then by the Nicaraguan revolutions (1978).

In particular, Manuel Ayau, an accomplished entrepreneur, took on the reception, adaptation, and dissemination of neoliberal thought in the country, especially in the case of Friedrich von Hayek and Ludwig von Mises. Although not as well-known as other neoliberal figures, Manuel Ayau was president and then vice-president of the Mont Pelerin Society—the first and most important neoliberal international network—between 1978 and 1981, hosting one of its meetings in Guatemala City in 1972. He was also well integrated into other important neoliberal international think tanks, serving on the board of directors of the Liberty Fund and as a trustee of the Foundation for Economic Education. Ayau embraced neoliberalism as a weapon to fight for a “free society” in Guatemala, both within the intellectual world and in the political arena.

Analyzing the political and economic thought of Ayau, this article aims to expand on the seminal work of Quentin Delpech (2010) and Karin Fischer (2022) on the origins of neoliberalism in Guatemala and its relationship with dictatorships through the examination of unpublished archival material—the journal *Tópicos de Actualidad*, the pamphlets from the Universidad Francisco Marroquín, the Foundation for Economic Education journal *The Freeman*, and the Friedrich Hayek and Henry Hazlitt’s Papers—which allows studying this theme not only from the perspective of institutional history, as has already been done, but from that of the history of political thought. Indeed, on the one hand, the article seeks to show how neoliberal ideas circulated in Guatemala, being adapted by Ayau to a country at the time defined as “underdeveloped,” with a solid state and bureaucratic apparatus mostly managed by the military, with an economy regulated by developmentalist plans, and undergoing a bloody civil war. Neoliberalism will be understood here as an intellectual and political project outlined in the post-war period and aimed at embedding market mechanisms into institutional and constitutional infrastructures in order to shield them from the challenges posed, at a global level, by statist dirigisme, economic planning, and mass democracy (Slobodian, 2018). For this reason, the period analyzed spans from the 1950s to the 1980s, that is, the phase in

which neoliberalism was still a project circulating at the transnational level, used to fight ideological battles, without yet being the dominant economic policy, something that in Guatemala will not occur before the late 1990s (Robinson, 2000).

On the other hand, and most crucially, the article aims to investigate how, in this process of translation and adaptation of neoliberal thought, Ayau conceived the relationship between the market economy, authoritarianism, and institutional violence. Therefore, analyzing both the relationship that Ayau had with the regimes of Carlos Arana Osorio (1970–1974) and Efraín Ríos Montt (1982–1983), as well as Ayau’s conception of dictatorship and violence in relation to the market order, the article seeks to examine the controversial role that authoritarian violence played in the battle waged to affirm neoliberalism in Guatemala.

### **The Early Dissemination of Neoliberal Ideas in Guatemala and the Anti-socialist Foundation of the CEES**

Manuel Ayau came from a Guatemalan family active in the oil industry and with economic interests in the electricity, banking, financial, and agricultural sectors. The despotic character he exhibited since he was a child and the Mussolini costume gifted to him by a family friend earned him the nickname “Musó,” by which he was known to his friends and colleagues throughout his entire career. At the behest of his father, he pursued his studies in California, Canada, and Louisiana, returning to Guatemala in the early 1950s, in the midst of what has been termed the “revolutionary decade.” Indeed, after the overthrow of the U.S.-supported dictator Ubico in 1944, Juan José Arévalo was elected president and promoted a new political constitution aimed at democratizing the country. His successor, Jacobo Arbenz, focused instead his reforms on social programs and redistribution of land through the expropriation of unused portions of landholdings from 1951. The agrarian reform posed a threat to the interests of the U.S. United Fruit Company, which at the time had large investments in banana plantations, owned the only railroad, the only public telegraph system, Puerto Barrios (the only Atlantic Ocean port), and 460,000 acres of arable land in the country. Moreover, Arbenz increased cooperation with the labor unions and, most crucially, legalized the Communist Party allowing it to operate freely throughout the country. The concern about the spread of communism over Latin America led the CIA to orchestrate a coup d’état on June 27, 1954.

Under the leadership of General Castillo Armas, all the reforms of Arévalo and Arbenz were eliminated, and many of the communist leaders, including Ernesto Guevara, had to flee. Then, a new political and economic model was installed, which included “an economy dependent on imports from the United States, a government tightly controlled

by the military, a security apparatus inspired by U.S. counterinsurgency specialists, and over this, the rhetoric, but emphatically not the practice, of democracy” (Fried et al., 1983, p. 83).

Although the coup put an end to the economic and social reforms of the “revolutionary decade,” the theoretical tools to rethink the economy and society remained forged, according to Ayau (1992), “exclusively from a socialist perspective” (p. 9). In the “world of ideas,” as stated by Ayau (1992), “the socialist avalanche was overwhelming” and “threatened to crush all opportunity for peaceful progress, and to destroy individual freedom and individual rights” (p. 10). The responsibility was due, in his opinion, to the politicization of the country’s most important university, the Universidad de San Carlos de Guatemala, which constituted the main critical voice against government abuses and U.S. interventionism. To counter the Marxist orientation of the existing higher-educational institutions, Ayau decided to found, together with six other businessmen—Ernesto Rodríguez Briones, Antonio Aycinena, Imrich Fischmann, Enrique Matheu, Enrique García Salas, and Alejandro Arenales Catalán—the Centro de Estudios Económico-Sociales (CEES) in 1958. The aim of the CEES was “to study and disseminate the ethical, economic and legal principles of the free society” in order to encourage “enough individuals of influence” (Ayau, 1992, p. 10) to defend them against Keynesianism, developmentalism, and import substitution through protective tariffs, prevailing in Latin America at that time.

However, the CEES was not Central America’s first neoliberal think tank. Indeed, as early as 1942, the Mexican businessman Luis Montes de Oca invited Ludwig von Mises to give a series of lectures in Mexico City and Friedrich von Hayek in 1946. In the following years, liberal institutions such as Asociación Mexicana de Cultura (1946), Instituto Tecnológico de México (1946), and Instituto de Investigaciones Sociales y Económicas (1956) were founded to disseminate the principles of the free market (Romero Sotelo, 2016). It was precisely a member of Instituto de Investigaciones Sociales y Económicas, Agustín Navarro, who introduced the CEES into international neoliberal networks. Indeed, in 1959, he gave to Ernesto Rodríguez Briones, a fellow of Ayau who was visiting Mexico, a pamphlet published by the U.S. Foundation for Economic Education (FEE) and written by von Mises, associating labor inflexibility and lack of progress. After reading von Mises’ pamphlet, Ayau and Rodríguez contacted the FEE, attended a seminar, and built connections with other free-market institutions. These experiences provided Ayau and Rodríguez with new analytical tools to address the issues of “poverty, development, and progress” that they questioned during those years without finding convincing answers in the dominant developmentalist model.

Thus, Ayau and his colleagues began to read the works of von Mises and Hayek and to study the classics of liberal thought. In order to circulate these ideas, the CEES published a bi-monthly pamphlet, called *Tópicos de Actualidad*, which included articles by local intellectuals as well as translations of articles published in the FEE journal, *The Freeman*, in accordance with the model adopted by Centro de Difusión de la Economía Libre and its journal *Ideas sobre la Libertad*, founded in Argentina by Alberto Benegas Lynch in 1958 (Ciolli, 2023). Additionally, the CEES produced a daily radio program, television programs and a weekly column in the newspaper *El Imparcial*. After Ayau and other CEES members (Ulysses R. Dent, Hilary Arathoon, Félix Montes, Fernando Linares Roberto Ríos) joined the Mont Pelerin Society in 1964, the CEES, like its counterparts in Mexico and Argentina, also began inviting several members of the Mont Pelerin Society to defend the “philosophy of freedom” in Guatemala, including Ludwig von Mises (1964), Henry Hazlitt (1964), Dean Russell (1964), Hans Sennholz (1964), Friedrich Hayek (1965), Leonard Read (1965), Benjamin Rogge (1965), Álvaro Alsogaray (1967), Ludwig Erhard (1968), Milton Friedman, (1978) Gottfried Haberler, Arthur Shenfield, and Augustín Navarro. These invitations were often used as an opportunity to spread neoliberal ideas in the neighboring countries as well, and therefore, when possible, were coupled with trips to Costa Rica, where the Asociación Nacional de Fomento Económico often organized the lectures, and El Salvador, where the Instituto Salvadoreño de Estudios Sociales y Económicos took charge of them.

Overall, then, in a region haunted by the Cuban Revolution in the early 1960s, neoliberal ideas began to circulate through institutions aimed at showcasing an economic and political alternative to communism. In Guatemala, in particular, where the 1954 coup laid the groundwork for anti-communist alliances, Ayau and his colleagues aimed to present the neoliberal project as a viable path that could thwart both wealth redistribution and the closure of the global market by developmentalist and protectionist policies.

## The Legitimization of the Market Economy

Throughout the 1960s and 1970s, Ayau’s primary tool for taking part in the public economic and political debate was *Tópicos de Actualidad*. During this period, his articles focused on the causes of Guatemala’s underdevelopment, addressed both by criticizing the government’s interventionist measures and defending the benefits of the capitalist order.

In 1959, when the pamphlet began to be published, the government was led by Miguel Ydígoras Fuentes, a military officer and politician who, on the one hand, endeavored to hinder the spread of communism in the region by suspending relations with Cuba and allowing the CIA to train the Cuban exiled that would be used in the failed

1961 Bay of Pigs invasion. On the other hand, he promoted strong state intervention in the economy. Indeed, Ayau's first article criticized the law enacted by Ydígoras, which guaranteed compensation to unjustly dismissed workers, considering it a cause of the country's productivity decline (Ayau, 1959). Another obstacle to productivity, according to Ayau, was Ydígoras' law on income tax. Progressive taxation, in his view, penalized skill, success, and competition, thus discriminating against the most productive workers. Therefore, rather than in state intervention, the solution to existing inequalities had to be sought through the modernization of the production system and investment in new machinery, which would allow for an increase in productivity, profit, and prosperity, attracting foreign capital (Ayau, 1960a; Ayau & Montenegro, 1982).

In 1960, Guatemala joined the Central American Common Market, established by the General Treaty of Integration to create a space for free trade and intra-regional investments, promote and coordinating industrial development, cooperating in monetary and financial matters, and developing integrated infrastructure. The theoretical framework of the project was provided by the hypotheses of Raúl Prebisch, director of the UN Economic Commission for Latin America, according to whom the classical pattern of trade allowed for an unequal exchange between developing and developed countries. The appropriate policy response by peripheral countries seeking to end dependency on trade with and investments from the industrial North was, in his view, domestic industrial promotion and import substitution with limited trade protection (Bollard, 2023, pp. 227–262). In December 1961, Ayau wrote an article to illustrate the criticisms of what he termed the “command economy” and “dirigisme” promoted by the Central American Common Market. According to Ayau, tax exemptions reserved for certain companies undermined competition, destroyed free enterprise, and produced monopolies that succeeded not because of their efficiency but due to the artificial intervention of tariff barriers (Ayau, 1961). For Central America to develop a true common market, Ayau believed it was necessary to remove tariff policies and to re-establish a trading space where competition allowed each country to exploit different resources and develop more efficient goods (Ayau, 1965).

Ayau's criticisms of workers' compensation, progressive taxation, and supranational legislation of the Central American Common Market partially echoed the reflections of European and U.S. neoliberals that appeared on *The Freeman* during the same years. In July 1960, Leonard Read attributed progressive taxation to a “collectivist mentality” and indicated individual freedom and moral rights as the limit that state intervention should not exceed. Hans Sennholz, in January 1960, criticized the formation of the European Economic Community with arguments similar to those later used by Ayau for the Central American Common Market. However, while these insights shared a common political and



economic project, Ayau's articles were far from merely reiterating arguments formulated elsewhere and targeted instead specific local phenomena.

The theoretical framework underlying Ayau's attacks on the economic policies of the Guatemalan government was specified in a second type of contribution to *Tópicos de Actualidad*, aimed at defending the benefits brought by the capitalist system in opposition to claims of wealth redistribution and social justice that had found expression in Arbenz's government. Despite the 1954 coup and the political repression that followed, Ayau acknowledged that according to the "prevailing belief," which he considered "deplorable and unfounded," capital could "profit only by sacrificing workers and, conversely, workers could prosper only at the expense of the employers" (Ayau, 1960b). On the contrary, explained Ayau, capital corresponded to the savings of those who produced goods or services and received remuneration that exceeded their consumption needs. Social conflict, in his view, arose from the disparity in the savings that each individual possessed, seeking a solution in wealth redistribution by the state. However, Ayau continued, without private property and the freedom to enjoy the fruits of one's labor—pillars on which the capitalist system rested—it was impossible to produce wealth for redistribution. The free market, moreover, allowed the entrepreneurs to profit only to the extent that they satisfied consumers, who ultimately decided "what to produce, which sources prevail, and who will be rewarded daily." The market thus triggered, in Ayau's view, a democratic process that did not necessarily produce conflict between capital and labor. If anything, capital was "a necessary tool for progress": attacking capital thus meant attacking progress and the wealth of all (Ayau, 1960b).

Ayau's article echoed some of the arguments used a few years earlier by Hayek (1954) in *Capitalism and the Historians* and by von Mises (1956) in *The Anti-Capitalistic Mentality*. Hayek (1954), in fact, justified the connection of capitalism with "the rise of the propertyless proletariat" (p. 15) by arguing that "the proletariat which capitalism can be said to have created" was "an additional population which was enabled to grow up by the new opportunities for employment which capitalism provided" (p. 16). Accordingly, von Mises (1956) contended that far from impoverishing people, "capitalism" not only "deproletarianizes the common man and elevates him to the rank of a bourgeois," but it also allows for a "daily plebiscite" in which sovereign consumers determine "who should own and run the plants, shops, and farms" (pp. 1–2). If these essays had nourished Ayau's defense of capitalism in the Guatemalan context, where a deep divide separated the few rich from the many poor, the lectures von Mises and Hayek gave in Guatemala City in 1964 and 1965 fueled Ayau's articles published in those years, showing the political and economic advantages of a

system based on private property, individual freedom, and free trade, and indicating the limits of collectivist theories (Ayau, 1964a, 1964b).

In the early years after the foundation of the CEES and its journal, Ayau thus dedicated himself to spreading neoliberal theory by engaging with the works of its main authors and adapting them to a context alien to the one for which neoliberal ideas were initially conceived. As Ayau (1992) himself acknowledged, his “resolute opposition to income tax, minimum wage, protective tariffs, the exchange controls” earned him and the CEES a “reputation for being exceedingly radical even for those on the right, not only in Guatemala but in the world in general” (p. 11). However, his “extremism” became even more clear in the following years when the outbreak of the civil war and the political radicalization of Guatemalan society pushed him to take a stronger stance against socialism and communism both academically and politically.

### **From Academia to Politics: The Market Order and Its Violent Defense**

In the early 1960s, the political conflict in Guatemala intensified. In 1963 the Fuerzas Armadas Rebeldes (FAR) were established, becoming the first guerrilla organization in Guatemala and marking the beginning of a civil war. Many students who had fueled the protests in Guatemala City in 1962, later joining the FAR, came from the Universidad de San Carlos de Guatemala. Concerned about the radicalization of this public university and the dominance of socialism in academia, Ayau wrote two articles in 1964 and then in 1966, attacking the shortcomings of socialist economic theory. He considered it incapable of indicating how to concretely build an alternative to capitalism, instead remaining anchored to the price system of the capitalist market (Ayau, 1964c). However, the most worrying problem was, in his opinion, the teaching of this doctrine as a practicable alternative. It was precisely the urgency to counter socialism taught at the Universidad San Carlos that prompted him to found, in 1972, a private university where students could learn the principles of the free market: the Universidad Francisco Marroquín (UFM). The university program aimed to demystify “the ideology of underdevelopment” (Ayau, 1978), namely the belief that capitalism relied on the exploitation of workers, that foreign capital plundered the country, and that wealth redistribution could solve the problem of poverty. In his perspective, the science of political economy was meant to teach which conduct could lead to success by showing the detrimental effects of tariffs, fixed prices, and progressive taxes on the development of a country (Ayau, 1968a).

As Ayau recounts in his memoirs: “If the Mont Pelerin Society hadn’t existed, it is probable that we would have discarded the idea of founding a university” (Ayau, 1992, p. 13). Indeed, not only was the architecture of UFM an homage to the members of

the Mont Pelerin Society—within the campus, there was a Mont Pelerin Avenue, the Ludwig von Mises Library, the Friedrich Hayek and Milton Friedman Lecture Hall, the Rose Friedman Terrace, and the Leonard Read Auditorium (Fischer, 2022, p. 254)—but all students, regardless of their faculty, had to complete core courses (Dyble, 2008, p. 82) in market economics and on Hayek’s *The Constitution of Liberty* (1960/2011) and von Mises’ *Human Action* (1963/2014) and *Liberalism* (1927/2018). In the following years, many members of the Mont Pelerin Society were also awarded honorary doctoral degrees from UFM: Read (1976), Hazlitt (1976), Hayek (1977), Friedman (1978), Sennholz (1988), Buchanan (2001), but also Latin American members such as Alberto Benegas Lynch father (1979) and son (1996), Agustín Navarro (1981), Pedro Ibáñez (1982), and Roberto de Oliveira Campos (1996).

Even though Ayau lamented the reputation of “extremists and radicals” attributed to members of the CEES and UFM, in the early 1970s, he actually began to “radicalize” his own ideological battle. While in his inaugural address at the opening of the UFM, Ayau limited himself to enunciating liberal principles as guidelines for this new institution, the UFM Philosophy Statement framed the university’s mission more clearly within a battle of ideas in the context of civil war. The statement asserted that the ongoing “crisis of human reason” revealed itself through “political violence” and in the rejection “of some of the fundamental values of Western civilization, such as peace, the infinite value of the person, freedom, and the respect for property.” It was, therefore, the task of the UFM to prevent the “combativeness and enthusiasm” of the young students from combining with “ignorance” (Ayau, 1992, p. 61) by countering the idea of the university as a catalyst for political organization, forbidding participation in political parties and strikes and verifying the adherence of the courses to the University’s philosophy and its policies. As Ayau stated in an interview, he did not believe in the “democratization of education,” and therefore, the UFM was aimed at training only the “intellectual elite,” which was expected to ensure outstanding performances (Ayau, 2001).

The members of the Mont Pelerin Society were very enthusiastic about the UFM, regarding it as “a unique case in the world.” Indeed, while Friedman considered Ayau’s results “little short of spectacular” and UFM as “one of the leading universities in Central America” (Friedman & Friedman, 1998), Margit von Mises, Ludwig’s wife, underlined the “zeal and patience” with which Ayau pursued “his life’s task to teach his country the economics of a free society” (von Mises, 1976). The project of the UFM was accompanied, in 1977, by the creation of a Central American society, the Mont Izarù Society, modeled on the Mont Pelerin Society, composed of intellectuals, businessmen, and entrepreneurs who shared the goal of spreading the

principles of the market economy through lectures, journals, and annual meetings. Accordingly, in order to strengthen networks and institutions that were pro-free market and anti-communist in a region marked by social conflicts, Ayau assisted Alberto Benegas Lynch Jr. in the creation of the Escuela Superior de Economía y Administración in 1978 in Argentina, and a few years later, in Peru, he supported Hernando de Soto in the founding of the Instituto Libertad y Democracia in 1981 (Mirowski & Plehwe, 2009, p. 397).

In those years, the ideological battle that Ayau fought in academic and intellectual circles went hand in hand with a direct engagement on the political front. Indeed, he joined the Movimiento de Liberación Nacional (MLN), an anti-communist party founded in the 1960s, known as the “party of organized violence” and led by Mario Sandoval Alarcón, a member of the group that collaborated with Castillo Armas in the 1954 *coup d'état*. During the Civil War, the MLN was also associated with death squads. In 1970, Ayau served as a Deputy in the Guatemalan Congress and as an advisor in political affairs under the government of Carlos Arana Osorio (1970–1974), a military and member of the MLN, selected as a candidate due to his successful repression of guerrillas in the eastern region of Guatemala in the 1960s, which involved torture, disappearances, and killings of student leaders, suspected guerrilla sympathizers, and trade unionists. Arana was also closely tied to leading economic groups and appointed representatives of industrial interests to the Ministry of Economy and the Ministry of Finance. As he said: “in these times, private initiative is very much threatened and the only thing that can save it is the army” (Fried et al., 1983, pp. 113–114). Indeed, while in Arana’s cabinet there were two of the UFM trustees, the presidential decree approving the establishment of the UFM was signed by Arana himself, who, in Ayau’s *Memoirs* is depicted celebrating the UFM inauguration in a cocktail party organized at Ayau’s home.

Despite Ayau’s close association, the economic interests of the military government under Arana pursued strategies divergent from those of the free market economy. Indeed, just a month and a half after his government was installed, the Council of Ministers approved the National Development Plan (1971–1975), which included the creation of various programs aimed at boosting and expanding the national economy with state support, as well as the nationalization of a series of public institutions. As a parliamentarian, Ayau advocated for the privatization of state-owned enterprises (Ayau, 1973), and, specifically, he opposed, without succeeding, the nationalization of the electric energy sector (Ayau, 1974).

Having joined a party and a government that was trying to eradicate insurgency through kidnappings, disappearances, and massacres, Ayau, from the late 1960s to the

1980s, repeatedly intervened on *Tópicos de Actualidad* to redefine the concepts of “dictatorship,” “violence,” and “human rights.” Already in 1968, in an article titled “How to Recognize a Dictator,” Ayau had identified it with the “planner,” that is, someone who implemented a “command economy” (Ayau, 1968a). This interpretation echoed arguments formulated in 1944 by Hayek and Mises. In *The Road to Serfdom*, Hayek stated that, while dictatorship does not “inevitably extirpate freedom,” planning instead “leads to dictatorship because dictatorship is the most effective instrument of coercion and the enforcement of ideals, and as such essential if central planning on a large scale is to be possible” (Hayek, 1944/2006, p. 74). Accordingly, in *Omnipotent Government*, von Mises (1944/1969) asserted that “every step which leads from capitalism toward planning is necessarily a step nearer to absolutism and dictatorship” (p. 53). From this perspective, according to Ayau (1968b), price, exchange, credit, and interest rate controls were indicators of an alleged “omniscience” regarding human interactions and a consequent attempt to coercively direct them. Therefore, while acknowledging that “in a free society, the only instrument of the leader is peaceful persuasion,” Ayau’s target was not political coercion but rather economic coercion.

Through a similar shift, in an article from 1977, Ayau redefined “violence” as the coercion exerted by state intervention in the economy. Considering wealth redistribution as a form of “legalization of violence,” Ayau disqualified the justification of political violence by the guerrillas as a result and response to existing inequalities in the country because the redistributive solution proposed, by violating private property, kept reproducing violence. Therefore, while the “private violence” of socialist origin was illegitimate, the one exercised by the Guatemalan military regime simply adhered to the modern principle whereby states have the legitimate monopoly of violence. Thus, in a Weberian sense, Ayau acknowledged that “the decisive means for politics is violence,” but its ultimate source of legitimization was the defense of property and of the market order. For this reason, while the violence practiced by political opponents was “offensive,” the one practiced by the regime was, in his view, merely “defensive” and, therefore, “fully justified” (Ayau, 1977a). Accordingly, in an article from 1979, Ayau once again attributed a coercive and homogenizing nature to the socialist project, and in a period when the human rights strategy adopted by Jimmy Carter’s foreign policy resulted in condemning Guatemala and freezing U.S. arms sales, he defined the socialist opposition to private education as a “violation of human rights.” Continuing to reverse the accusations regarding the dictatorial violence, Ayau concluded: “the legalization of the individual right’s destruction is the way socialists invariably choose to achieve their goals: the homogenization of society according to their whim, through violence” (Ayau, 1979).

Overall, then, on the one hand, Ayau sought, unsuccessfully, to economically steer the government he was part of and directed specific criticisms toward the economic policies of the military regimes that succeeded in the 1970s (Ayau, 1973, 1977b, 1978). This was done not only under Arana's government but also through a plan for privatizing public institutions, which he considered corrupt and ineffective, proposed in 1979 to President Lucas García. On the other hand, however, the statism of these regimes was never equated with collectivist or socialist planning. On the contrary, the military regimes were politically legitimized precisely because they restrained the socialist threat. The violence they exerted was, according to Ayau, merely a defensive response to the true dictatorial, violent, and rights-violating project represented by socialism and communism. Therefore, while criticizing the economic interventionism of the Guatemalan military regimes, Ayau legitimized the state-mandated repression—even through extra-legal and non-institutionalized violence—of political opponents who, by advocating not only democracy but, most crucially, wealth redistribution, threatened the only “peaceful form” of coordinating society, namely through the market.

### **The Defense of the Liberal Order through Its Suspension**

Political tensions in Central America escalated between the late 1970s and the early 1980s. In 1978–1979, the Sandinista revolution defeated the Somoza regime and seized power. In 1979, a U.S.-supported coup in El Salvador sparked a civil war between the government and the Farabundo Martí National Liberation Front, supported by Cuba and Nicaragua. The objective of the Francisco Marroquín Foundation (FMF), a charitable corporation founded in 1981 and based in California, was precisely to counter the disorder brought about by the Nicaraguan Revolution in the region by encouraging scholarship and education in market economics. As stated in the first “Annual Report and Prospectus” of the FMF, in response to the “armed conquest of Nicaragua” and the efforts of “guerrillas and terrorists to gain dominion over neighboring countries on behalf of those who profess Marxist-Leninist ideology and practice Stalinist brutality,” the FMF aimed at “helping critical few potentially influential individuals in some of the Central and South American countries become acquainted with fundamental economic principles and the logic of economic analysis” (FMF Annual Report and Prospectus, 1982, p. 1). The CEES, the UFM and the Escuela Superior de Economía y Administración de Empresas in Buenos Aires were the main recipients of the FMF grants.

With the same objective, in 1981, the budget of UFM included an eighteen-week course on the “Principles and Ethics of the Free Society” for the Guatemalan Army War College officials. The same year, Ayau published an article in *Tópicos de Actualidad*

where he once again debated the claims related to human rights, as they were used instrumentally to justify the “right of society to redistribute wealth.” To prevent this misleading use of social justice, Ayau (1981) argued that it was more appropriate to speak of “individual” rather than “human” rights, establishing the priority of the individual property owner over society. In this way, despite the reduced pressure from the Reagan administration compared to Carter’s, Ayau could frame the repressive violence exerted by the state not as a violation of human rights but rather as a defense of individual rights against the expropriative threat represented by the guerrillas.

In 1982, in a speech to The Wisconsin Forum, Ayau addressed the issue posed by the guerrilla warfare in Nicaragua, which had supposedly turned the country into a “communist state,” in El Salvador, where “guerrilla forces have control over parts of the country,” and in Guatemala, where they “commit atrocities” (Ayau, 1982). In all these contexts, Ayau underlined that civil war not only threatened the future of the various countries but also contributed to the economic deterioration of Central America by hindering investments, trade, and tourism.

Depoliticization of society was indeed one of the goals that led entrepreneurs from the CEES and the UFM to support the dictatorship of Efraín Ríos Montt (1982–1983), one of the most murderous commanders who turned much of Central America into a killing field in the 1980s, later convicted of genocide and crimes against humanity. As reported by Martín Rodríguez Pellecer and Karin Fischer, Enrique Matheu, one of the founders of the CEES, became Minister of Economy under Ríos Montt; Juan Carlos Simmons, a member of the UFM’s board and a militant of the MLN, joined the Council of State; Ernesto Rodríguez Briones, founder of the CEES, and Carlos Springhüml, one of the founders of the UFM, collaborated with the Ministry of Finance and donated funds for counterinsurgency efforts (Fischer, 2022, p. 259; Rodríguez Pellecer, 2013, pp. 15–16).

In 1984, in an article published in the right-wing journal *Imprimis*, Ayau explained the success of the coups d’état among the people as a response to “terrorist sabotage, supported by the international Marxist-Leninist movement,” capable of calming popular discontent by restoring law and order to the country. In this framework, the dictator could be the figure responsible for “imposing freedom,” namely the freedom guaranteed by a market economy. In this sense, Ayau (1984) wrote:

I am one who believes that, since the principal function of government is to protect people’s freedom, it follows that it is proper to use the coercive power of government to maintain freedom. This seems to me to be the same thing as saying freedom paradoxically must be imposed.

In this way, for Ayau, the dictator had the mere role of “defending freedom,” that is, coercively establishing a “free” social order based on private property, free trade, and the price system. Just a year earlier, Ayau (1983) had published a book, *En torno al espíritu de la próxima constitución*, in which, drawing on the foundations of Hayek’s *The Constitution of Liberty and Law, Legislation, and Liberty*, he pointed to the division of powers, abstract and general norms of just conduct, the limitation of power, and even the people’s right to rebellion when public power suppresses the rights of the citizen, as the legal infrastructure of a free society. Yet, precisely in *Law, Legislation, and Liberty*, Hayek (1973/1998, p. 124) justified, as Ayau did, the temporary suspension of the basic principles of a free society in case the long-term maintenance of that order was threatened. Hayek’s travels in Latin America corroborated the argument of the “dictatorial exception.” Indeed, during his last lecture given in Buenos Aires in 1977, dedicated to democracy, Hayek (1977) affirmed that in case of “exceptional situations,” the legislative assembly had to be authorized “to confer emergency powers on the government assembly” (p. 61) that is, to give a dictator the powers of compulsory organization, to be revoked once the emergency was over (Ciolli, 2024). Accordingly, the following year, after his trip to Chile, in a letter to *The Times*, Hayek (1978) wrote that, while not believing that “generally authoritarian governments are more likely to secure individual liberty than democratic ones,” in some historical circumstances, “there have, of course, been many instances of authoritarian governments under which personal liberty was safer than under democracies.” “After all,” he concluded, “some democracies have been made possible only by the military power of some generals.” Accordingly, embracing the paradoxical conclusion that to protect the liberal order when it was threatened, it had to be suspended, Ayau redefined the ultimate purpose of political and legal institutions to defend a particular type of freedom: economic freedom within the market order.

## Conclusions

Overall, this article has shown how neoliberal ideas circulated in Guatemala long before the Washington Consensus, how they were adapted and used in the economic and political challenges posed by the Central American political context, and what relationship the neoliberal project maintained with the multiple dictatorial regimes that succeeded in the second half of the 20<sup>th</sup> century. In particular, it has been shown how neoliberal ideas were never fully embraced by the Guatemalan military regimes and, indeed, were used by Ayau to criticize the bureaucratic, corporatist, and developmentalist statism preserved by the armed forces. However, in a context marked by a bloody civil war fought



in defense of two opposing social plans, one backed by guerrilla groups, democratic and egalitarian, the other backed by the National Army, hierarchical and authoritarian, the neoliberal project had to tackle the issue of the political function of violence. By reversing the accusations coming from local activists and intellectuals, as well as from foreign governments, regarding the violation of human rights by the Guatemalan dictatorial regimes, Ayau redefined dictatorship and violence as practices of socialists and anyone who intended to impose, by violating individual rights, an arbitrary dispossession of private property. In this framework, the violence exercised by the military regimes against guerrillas and sympathizers could appear as nothing but the legitimate defense of the proprietary order, the foundation of a free market society. Referring exclusively to neoliberal scholarship—has he said Hayek, Mises, Hazlitt, and Friedman were his intellectual models (Ayau, 2001)—but never to Schmitt, Ayau therefore legitimized, in the case of a threat to the market order, the suspension of the rule of law and the exercise of arbitrary coercion in order to create the social and political conditions for the functioning of the market. In these circumstances, authoritarianism thus became the tool to silence redistributive claims, brutally remove dissent, depoliticize society, and impose an unequal social order, but one that, through private property, competition, and the price system, could guarantee the only neoliberal form of freedom: economic freedom.

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# THE CIVIL SOCIETY OF AUTHORITARIAN LIBERALISM. FROM DEPROLETARIZATION TO ASSEMBLY\*

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## LA SOCIEDAD CIVIL DEL LIBERALISMO AUTORITARIO. DE LA DESPROLETARIZACIÓN A LA ASAMBLEA

### Abstract

This article reconstructs the idea of civil society in neoliberal thought and policies, showing that it constitutes the central governing object of the latter, which aims to subjectify an individualized social body whose direction, therefore, takes on an authoritarian twist. The other side of the Strong State and the ordered economy is deproletarianization, to put it in ordoliberal jargon. Following the conceptual traces left by Michel Foucault and Hermann Heller, the article reconstructs and analyzes the nexus between neoliberal governance of civil society by the market on the one hand and political authoritarianism on the other. Finally, it asks whether it is possible today to think of civil society as a space for questioning not only authoritarian liberalism but also capitalist society by reflecting on the politics of nouns and adjectives.

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## Keywords

de-democratization; deproletarization; civil society; capitalistic society; authoritarian liberalism; neoliberalism

## Resumen

El presente artículo reconstruye la idea de sociedad civil en el pensamiento y las políticas neoliberales al mostrar que constituye el objeto central de gobierno de estas últimas, las cuales pretenden subjetivar un cuerpo social individualizado, cuya dirección adquiere un giro autoritario en consecuencia. La contracara del Estado Fuerte y la economía ordenada es la desproletarización, para decirlo en jerga ordoliberal. Siguiendo las huellas conceptuales que dejaron Michel Foucault y Hermann Heller, el artículo reconstruye y analiza, por una parte, el nexo entre la gobernanza neoliberal de la sociedad civil por parte del mercado y, por otra, el autoritarismo político. Por último, se plantea la pregunta de si es posible pensar la sociedad civil hoy como un espacio para cuestionar no solo el liberalismo autoritario sino también la sociedad capitalista mediante la reflexión sobre la política de los sustantivos y los adjetivos.

## Palabras clave

desdemocratización; desproletarización; sociedad civil; sociedad capitalista; liberalismo autoritario; neoliberalismo



## **Births of Neoliberalism: The Double Life of Texts and Their Heuristic Value**

Forty years and the crossing of the Seine separate the historical locations where the two main birth events of the concept of neoliberalism, now understood as a political “project” and now as an “object” of critical study, take place. The political movement founded in 1938 near the Palais Royal, where the host institute of the Lippmann Colloquium was located, returned in 1979 to occupy the debates of those in Paris, especially if they attended Michel Foucault’s course at the Collège de France, in which neoliberalism was the main object of an urgently topical analysis (Audier & Reinhoudt, 2018; Foucault, 2004).

Retrospectively, the survey earned Foucault the reputation of a prophet when published in 2004, during the full global expansion of liberal economic policies. Translated into English in 2008, it was quickly assumed, in many English-speaking departments, as the main key to interpreting the crisis of financial capitalism that erupted that year. The proliferation of research was so conspicuous that it generated a new course of study, the “governmental studies” (Audier, 2015, p. 31; Venugopal, 2015). Thus, the perception was established that Foucault had the extraordinary ability to examine the “new rationality of the world” (Dardot & Laval, 2009) when it was still in its germinal stages, moreover at a chronological height when Thatcher’s and Reagan’s governments had not yet been formed. Pinochet’s liberalist authoritarianism had been critically analyzed at that chronological height but—with few exceptions—had not yet been taken as the anticipatory figure of a logic of power destined to invest the entire globe (Vergara, 1985). The 1970s was a period of crisis, but there was no widespread agreement on its status, let alone on what basis it could be resolved.

It is necessary, however, to scale down this “historiographical myth,” given that since the mid-1970s, in France, limited interest in the obsolete concept of ‘neoliberalism’ had been partly reactivated by the policies adopted by then-President Valéry Giscard d’Estaing, who episodically even triumphantly described them with that lemma (Giscard d’Estaing & Armand, 1968; Laval, 2018, pp. 194–220).

At that time, the inquiry into Giscardian transformation was analyzed from various perspectives, including the one aimed at investigating its neoliberal theoretical framework, although the latter was a minority and was often superficially explored. Among these, we must remember the Conference held at the Free University of Vincennes titled “The New Internal Order” in March 1979, organized by Pierre Dommergues, where, among others, Michel Foucault was present, discussing this theme with intellectuals such as Nicos Poulantzas and Noam Chomsky (Behrent, 2017; Dommergues, 1980). If the latter emphasizes the authoritarian transformation of State apparatuses for the imposition of economic liberalization, Foucault focuses on installing environmental

government technologies that refer to the exercise of a “soft power” that has little or nothing to do with a new authoritarianism of the State. As known, Foucault developed this analysis in his course at the Collège de France, where he even identified a structural “State-phobic” component of neoliberal government art, which makes the market the main device for ordering society.

Recently, the rise of so-called “sovereignisms” and “populisms” has led to a downsizing of the praise attributed to Foucault’s analysis and, conversely, to a reevaluation of readings à la Poulantzas, for which the authoritarian twist of States is the direct consequence of the transition to the neoliberal form of capitalism (Bruff, 2014). From this perspective, the set of readings developed in recent years on this theme has attributed heuristic value not to Foucault’s text, from which many have distanced themselves, but to the one written more than forty years ago by the German jurist Herman Heller, entitled *Authoritarian Liberalism?* In it, the use of the fiscal state of exception for the imposition of a deflationary policy between 1930 and 1932 in the Weimar Republic is analyzed, at the time desired by the German Chancellor Heinrich Brüning on the advice of the constitutionalist Carl Schmitt and applauded by the exponents of German Ordoliberalism of the Freiburg School (Heller, 2015). Today’s recovery of Heller’s text has been mainly functional to illustrate the fundamentally anti-parliamentarian and antidemocratic core of neoliberalism (Atzeni, 2023; Bonefeld, 2017; Brindisi, 2024; Chamayou, 2020; Streeck, 2015), which, dormant for a long time, would now have returned manifest, albeit polymorphically, with the explicit reappearance of the so-called “strong State,” capable of “encasing” the global market at national and international scales from democratic and social pressures (Slobodian, 2018).

However, this debate risks overlooking a theme structurally related to authoritarian liberalism, namely that of the specific disciplining neoliberal society. The thesis of this essay is to analyze this phenomenon related to so-called authoritarian liberalism; it is entirely fruitful to recover the Foucauldian matrix reading alongside the Hellerian one. This is not a forced operation; after all, when Foucault spoke of the “State-phobia” of neoliberalism, he had in mind the disciplinary State of Keynesianism; he did not support the erosion of the State in favor of the market in the neoliberal order (Foucault, 2004, pp. 77–79). On the contrary, he identified a transformation of the State, which alone could allow the extension and intensification of decentralized economic government technologies for the control of society. In his course’s final lecture, Foucault focused on the importance of ‘civil society’ for all the rationalities of governance in modernity, from Liberal to Marxist. Modernly understood, civil society is generally ambivalent because it generates spontaneous association among individuals while simultaneously introducing

a constant principle of dissociation. The task of the art of governance, which follows civil society and serves its function, is then to order it according to a criterion of “truth” (Foucault, 2004, p. 316). For Marxism, this truth is the “rationality of history,” while for classic liberalism, it is rooted in the “interests of individuals,” which must be allowed to express themselves freely so they can spontaneously meet and produce collective interest.

But what about neoliberalism? Although neoliberals rarely employ the adjective “civil,” actually following a twentieth-century trend, the reflection stands in continuity with traditional liberal thinking on the subject, at the same time innovating it profoundly. It is to signal this continuity that the adjective ‘civil’ is employed in this essay, consciously emphasizing a contested syntagma that has profoundly altered its semantics-politics over time (Ricciardi, 2014). So, how do neoliberals innovate such semantics?

In the penultimate lecture of the course, Foucault seems to answer this question by defining the decisive distance between classical liberalism and neoliberalism, specifically on the issue of civil society. For the latter, the interests of individuals are to be directed by the market institutionalized by the government: The neoliberal economic subject is, in fact, “eminently governable” (Foucault, 2004, p. 274) rather than the one who is to be let off the hook. In other words, governing civil society according to “truth” in neoliberalism equates to directing individuals through the institutionalized competitive market protected by the State at any cost. This means, following Foucault’s and integrating it with Heller’s perspective, that by virtue of its own rationality, neoliberalism is incompatible with democracy but rather implies the subjectification of individuals interested only in their private sphere of interests to be managed solely by the market and never by the State and, concomitantly, a reduction of parliamentary deliberation on the economy itself. It implies, in essence, an authoritarian twist of the State, which is based on a new art of governing civil society through the market in a comprehensive manner.

Consequently, for neoliberals, it is not true that—as the famous Thatcherian dictum goes—“society does not exist.” Rather, what, for them, *must not exist* is the attribution of “political” or “power” interest to social relations, which instead must be re-privatized and, that is, de-statalized and de-regulated, leaving them to be defined by the unpredictable dynamics triggered by the free market to which all individuals, thought of as human capital, must have access (Serughetti, 2023). De-statalizing civil society means, for neoliberals, making it the object of an even more pervasive government that relentlessly induces individuals to read reality as a market in which to compete as human capital and not in terms of a democratic society to be built as citizens who participate together in the life of the State. On the contrary, “the State can become a repressive

function for any deviation from the profitable use of human capital” (Ricciardi, 2014). If the government of conduct is administered by the decentralized technologies of the market, the State is responsible for ensuring its order, by law and by the sword, in a centralized way. This is why it is appropriate to read the insights that Foucault gives us, along with those that Heller provides, but not one without the other. Recently, even the most “Foucauldian” of critics of the neoliberal order, such as Pierre Dardot and Christian Laval, have recognized that the eminently Foucauldian reading of neoliberalism is not enough. In their latest book, *Dominer*, they devote the entire Appendix to reckoning with Foucault in this perspective (Dardot & Laval, 2020, pp. 699–724).

The government of civil society becomes the fundamental stake of “authoritarian liberalism.” The remainder of this essay will focus on neoliberal theories and policies to show some relevant articulations of this theme.

## 2. Conceptual Foundations of Neoliberal Civil Society: Undoing the Revolutionary Subject

One of the constant concerns of early neoliberal theorists between the 1920s and 1930s is to de-democratize society and the economy. To do this, they need to envision a new capitalist rationality that establishes new social processes and new political forms. According to the father of German Ordoliberalism, Walter Eucken (2017), social democratization has only entangled capitalism. It has an exorbitant economic cost because it depresses entrepreneurial spirit, but more importantly, it has a potentially catastrophic political cost; it must, therefore, be eliminated for both economic and political reasons.

The “economic” State, as Eucken calls the Weimar Republic, risks degenerating into a “total State,” a category borrowed from Carl Schmitt and Ernst Jünger—a State that is “plundered” and torn apart by the voracity of interest groups represented in Parliament, a State completely fused with society, which thus reproduces its conflicts rather than resolving and mediating them (Eucken, 2017, pp. 51–72). With the total State, the State and society are indistinguishable; they blur into each other. The democratic State is, therefore, impotent, incapable of neutralizing social conflict from above, and in fact, it suffers it, risking its own extinction. The situation of ungovernability can effectively lead to chaos and civil war, and it has catastrophic political costs. If civil society is democratized, it will, in other words, degenerate into a state of war: The insouciant sociability that characterizes it is in danger of turning into outright hostility based on the dichotomy of friend-enemy. It is, therefore, necessary to transform the State, which must become both a minimal and strong State.

This was partly realized in Germany in 1930 when the main heads of state decided to bypass parliamentary deliberation to assert deflationary policies; they did so by declaring an economic-financial state of emergency, using Article 48 of the Constitution. This is what Herman Heller defined in those years as “authoritarian liberalism.” Authoritarian liberalism has the full support of Schmitt, who is not yet a Nazi. In this context, Schmitt believes that the economic-financial state of emergency is a functional political solution, in that circumstance, to maintain social order; his support for authoritarian liberalism is therefore based on opportunity, not ideological support. The economic-financial state of emergency instead has the full ideological support of German Ordoliberals: A highly competitive economy is essential for an ordered and rational society, and only a strong State can make it possible (Mesini, 2019).

Clearly, the economic-financial state of emergency did not last long: In 1933, Hitler came to power. But the German ordoliberals did not stop theorizing about a “strong State and an ordered economy” in these years (Malatesta, 2021). Eucken even tries to persuade the Nazi leadership to adopt anti-monopolistic and competitive economic policies. He even proposes an “economic constitution,” that is, a “general political decision on how the nation’s economic life should be structured” (Böhm, 2017; Böhm et al., 2017). Obviously, he is unsuccessful in that context.

Antitrust economic policy is not the only measure that must build the minimal and strong State dreamed of by the Ordoliberals. It must also promote, as written in their works, especially by Wilhelm Röpke and Alexander Rüstow, new policies aimed at privatizing social spending so that individuals do not depend on public services, do not burden the State budget, nor pretend to do so; but rather embrace the principle of individual responsibility typical of bourgeois conservative morality. The main objective of these new social policies, according to Röpke (2020, p. 216), is essentially to “de-proletarianize” workers, that is, to turn them into bourgeois. There is nothing more dangerous, in fact, than a “mass society” composed of proletarians because they live in conditions of overcrowding and brutishness, of “pseudo-integration” made up of “anonymous relations with human collectivity” instead of the “neighborly relations” full of genuine “human warmth” found only in a “hierarchical society” made up of “pure communities” such as “family, municipality, church, profession” (Röpke, 2020, pp. 17–19) that assign each individual their place in society. The phenomenon of massification, “*Vermassung*,” generates the mass-man, the isolated individual, the *homo insipiens gregarius*, Röpke (2020) argues, echoing Ortega y Gasset, that is, the individual conformed to the social context, but at the same time dangerous, as unpredictable and easily manipulable. Massification, “the reduction to mass” is synonymous with “proletarianization,” which Röpke (2020)

does not only give a material definition: Proletarianization is generally a “social and anthropological situation characterized by economic-social dependence, uprooting, overcrowding, alienation from nature, and desiccation of labor” (p. 23) in which there are “anonymous relations with human collectivity, exterior and mechanical relations” among “class members” and members of “a single anonymous centralized organization” (p. 25). In other words, the inherent risk in mass society is the explosion of an “international class struggle” that must be avoided (Röpke, 1944, p. 104).

But how to deproletarize workers? By integrating them into bourgeois society. This is the spirit of Röpke’s new “social policy.” The need to transform it through its integration into the bourgeois-owning society and its community societal devices, for example, allowing every individual facilitated access to credit to purchase a minimal productive unit so that everyone owns “gardens” to provide for their own self-sufficiency (Röpke, 2020, pp. 263–275; Solchany, 2015, pp. 409–435).

This is important not only from the point of view of self-sustainability but also from the point of view of the surrounding environment. Far from proletarian tenements and reintegrated into small communities, individuals can find in neighborly relations, in the community, in the family, in the church places to form their own identity and receive assistance, according to the “principle of subsidiarity”: solidarity and assistance must become, in short, a private rather than political and public matter. The natural welfare produces an “intact community of men ready to cooperate, naturally more grounded to the earth, and from the social point of view, well settled in their respective functions” (Röpke, 2020, p. 271).

Milton Friedman, from the Chicago School, mockingly dubbed Röpke, an “agrarian thinker” (Greg, 2010); the idea of gardens for everyone seemed entirely unrealistic and outdated. Yet, in his own way, he too is convinced that wage labor must be eliminated, and everyone should become capitalists, entrepreneurs of themselves, detached from politics, restructuring social policies in that direction. Instead of facilitating access to ruralized private property, according to Friedman, the welfare state can be replaced with the distribution of vouchers to access private services, which guarantee a minimum consumption threshold and integration into the market (Friedman, 1962, Chapter 11). From this perspective, the citizen’s welfare is replaced by that of the consumer, who is simultaneously an entrepreneur of themselves. The fundamental adversary of neoliberals in this context is evidently social democratic universalism: the ideal, that is, of the substantial equality of citizens in a functioning democracy. This, in fact, is not what these thinkers aspire to, for whom authoritarian forms of government are more in line with functioning market societies (Slobodian, 2024, p. 39).

From the small bourgeois ruralized civil society to that of self-entrepreneurs influenced by Friedman, aided by the State to continue being integrated into the market, another eloquent figure of neoliberal civil society is that defined by Friedrich August von Hayek (2013), for whom it is opportune to reprogram the individuals who compose society to depoliticize it, eliminating solidarity:

a peaceful open society is possible only if it refrains from creating solidarity (which is extremely effective in the small group) and, in particular, if it gives up the principle that ‘if people are to be in harmony, then let them fight for the same common purposes.’ (p. 271)

This does not mean that individuals should be left to themselves, but rather that they should lend each other assistance by organizing themselves in private associations à la Röpke, without attempting to politicize themselves in order to eliminate the conditions they are in; mutualism, volunteering, civil associationism, show their conservative side in this context:

True individualism affirms the value of family and all the common efforts of the small community and group, believing in local autonomy and voluntary associations. Its arguments are certainly based on the idea that much of what is usually invoked for coercive action can be better accomplished through voluntary collaboration. False individualism, on the other hand, seeks to dissolve these small groups into atoms with no cohesion other than the coercive rules imposed by the State. (Hayek, 1946, p. 23)

The Hayekian civil society must be founded on respect for compatible moral traditions, therefore, with the social division defined by the social rule of market competition (Ciolli, 2023). Consequently, any criticism exercised within it must be, as Hayek (2013) writes, an “immanent criticism,” meaning a “criticism functional to the maintenance or preservation of order” (p. 190); attempting to change them would be futile and obtuse, a sign of an anachronistic and tribal Promethean rationalism. This is how Hayek, for example, defines the New Left: tribal movements with economic and political costs that are entirely destructive and irrational (Hayek, 2013, p. 304).

Contemporaries of Karl Polanyi and even theorists of neoliberalism are well aware that for there to be social order, it is fundamental to develop devices for integrating the competitive market economy into society through technologies that compensate for the disruptive effects and inequalities produced by the latter (Cooper, 2018). If social democrats

attribute these to the state, neoliberals, by de-democratizing society, ensure they are the prerogative of private companies. With neoliberalism, in other words, the planning of the economy does not end, but rather, its centralization in the public sphere. Designing individuals devoted eminently to their curved individualized self-interest, governing civil society from this perspective, constitutes the condition of possibility for the edification of liberal authoritarianism.

### 3. Neoliberal Revolution and Its Criticism: Re-framing Civil Society

The conceptual framework outlined above reappears in some politically successful discourses, even among neoconservatives close to neoliberalism, in the 1970s. An example is the Report of the Trilateral Commission, a think tank composed of representatives from three countries (France, Japan, and the United States), which, in 1975, described the social struggles of those years as a dangerous “excess of democracy,” with economically and politically unmanageable and potentially catastrophic costs. Samuel Huntington, focusing on the U.S. case, argues that the excess social demand on democratic institutions, ideologically rooted in a “renewed commitment to the idea of equality,” drastically reduced and undermined their authority, generating an imbalance termed “ungovernability.” The excessive vitality of democracy, according to Huntington, has the “suicide” of democracy as a collateral effect, weakening it economically and especially politically. To prevent the self-oppression of democracy, it is necessary to re-educate the population to “a certain degree of apathy and disengagement,” encouraging a depoliticization of socioeconomic life or a “self-limitation of all groups” concerning democratic participation (Crozier et al. 1977, pp. 123–124).

Grégoire Chamayou (2018) focuses on the gradual realization of this ideal in the Euro-Atlantic world through “micro-incremental social engineering,” elaborated by the Scottish neoliberal Madsen Pirie in 1988 in the text titled *Micropolitics* (Chamayou, 2018, Chapter 26). This method allows governments to initiate privatization programs without facing the political price. It consists of creating circumstances in which individuals are motivated to prefer the alternative of private provision and to individually and voluntarily make decisions that lead to the desired situation. It is a process that Stuart Hall calls the “regressive modernization” in Thatcher’s Britain: glittering liberalizations and privatizations that negate achievements obtained after years of social struggles. It carried out a real “Revolution,” which, however, went against the modern meaning of revolution, understood as the acquisition of “power by and of the powerless,” disabling the concept (Hall, 1988). In fact, it is a revolution that has led to the subjectification of entrepreneurs of themselves and the disabling of social criticism.



In other words, neoliberalism is not only a governmental project of ordering society by means of the market but a project animated by an “authoritarian” polemical logic because it aims to assert only its own authority and eliminate criticism of its own. It does not contemplate any change in its own principles. By the way, Pierre Dardot and Christian Laval, together with the GENA study collective, have highlighted the “civil war logic” of neoliberal policies, aimed at isolating and neutralizing the “enemy within,” even before it truly builds up (Dardot et al., 2021): The Röpikian deproletarianization echoes in this logic. Of authoritarian liberalism, one must, therefore, understand the fundamental anthropo-socio-technique.

But what happens when this revolution fails to keep its promises of happiness? On one hand, self-entrepreneurs, as Stephane Haber (2013) says, become neurotic enemies of themselves, turning against themselves for their failures. On the other hand, according to Wendy Brown (2019), from the “ruins of neoliberalism,” a generalized resentment has developed, tending to degenerate into social forces that contemporary right-wing movements have intercepted and articulated. By spreading the culture of possessive individualism, neoliberalism has produced an “authoritarian freedom” (Brown, 2019) that cannot become participatory and democratic but instead falls back into the identitarianisms of today’s extreme right. Thus, from neoliberal civil society, there is a shift towards a clash of civilizations within the market.

However, this is not the only trend present in the crisis of neoliberalism. The construction of spaces for reflection and analysis of neoliberalism within it is evidence of its resistance and possible rehabilitation (Lepori, 2020). As a surrogate for capitalism, the concept of neoliberalism has become the main target of contemporary criticisms, redefining their semantic-political field since at least the late 1970s. A lemma that fell into the oblivion of history after the 1960s and was rarely and a-systematically used by its proponents (Brennetot, 2013) has been recovered by critical theory and praxis only in the last forty years to bring into focus the historical novelty that social de-democratization has associated with an authoritarian twist of politics in favor of the market. From this perspective, the texts of Foucault and Heller acquire a new value compared to the one highlighted in the first paragraph, namely, a *political* value. They are inscribed in the reactivation of a discourse of radical questioning of the existing order, which had long appeared dormant, testifying that the project of neoliberal deproletarianization of civil society, that is, of dissolution of the antagonistic subject within it, has not yet really fully succeeded.

If deproletarianization, in fact, was intended to split the revolutionary subject par excellence at the time when the theorists of neoliberalism spoke of it, today, that subject has been reconstituting itself in different forms by virtue of the very change in power

relations imposed by the neoliberal transformation of capitalist systems and forms of the state. Among others, Judith Butler analyzed the social force of what they called “assemblies” in contemporary civil society. According to Butler (2015), “assemblies” are

an assembled or orchestrated collective that claims to be the popular will, to represent the people along with a prospect of a more real and substantive democracy, then an open battle ensues on the meaning of democracy, one that does not always take the form of a deliberation. (p. 2)

By triggering a struggle in the field of democracy to produce or radicalize it. Their fundamental political action does not consist in claiming representation in public institutions, aimed at obtaining the inclusion of those excluded from them, but rather in asserting the legitimacy of the coincidence between social power and democratic power, where the former is founded on the ethical principles of equality and responsibility. The criticism that democratic assemblies exercise can produce a provisional crisis of the productive and reproductive order, political and civil, in which they manifest themselves, contesting their criteria for distinguishing between the public and private spheres, between State and civil society, so that these may be transformed, rearticulating and revising the definition of their partitions. In this way, the criticism exercised by the assemblies affirms the democratic principle of self-determination. On the other hand, it reveals the constitutive performativity of self-determination, clarifying its status as an artificial, fictitious, contingent, and revisable practice, thereby making manifest that the criterion of belonging to a democratic community is fundamentally anti-identitarian, neither substantive nor essentialist, but performative and, therefore, an object manipulable by social power politics. In other words, it declares that democratic representation is constitutively fallible since the subject of democracy is constructed as it is exercised in society. By reactivating the mobility of society, the assembly questions the neoliberal criterion of its governance, thereby producing an immediate political action, which constitutes an unforeseen public space—of appearance and enunciation—that, at the same time, challenges the legitimacy of the established public sphere, whose inability to fully represent the parts of the social body, which it nominally would like to direct and guide, it establishes.

As Sandro Mezzadra and Brett Neilson (2019) point out, however, this kind of assembly “remains silent about how this collective subject can confront its multiple outsides and others, which include both existing political institutions and what we might call with an intentionally provocative Schmittian twist, its ‘enemy’” (p. 248). From a

similar perspective, it is decisive, according to Antonio Negri and Micheal Hardt (2017), that the assemblies organize themselves from a clear anti-neoliberal as well as anti-capitalist perspective, recovering the Marxian notion of civil society, that is, the sphere of social relations of production which the assemblies, to emancipate themselves, must reappropriate. This is a radical perspective, the stakes of which are not only to redefine human capital into democratic citizens but to reconceive them as a multitude from which value is continually expropriated and profited by the same system, differentially and yet connected by that same capital relation. From this point of view, for an understanding of the internal tensions within the civil society of authoritarian liberalism, it is necessary to follow not only the tracks of Heller and Foucault but also those of Marx. For the latter,

the semantics of society is not unitary, but constantly brings to the surface the divisions that run through it and the constant attempts to name them in order to dominate or delve into them. [...] On the other hand, for Marx, the only adequate adjective should be 'capitalist,' the only capable of identifying the historical time of society. (Ricciardi, 2014, p. 219)

From this perspective, then, rethinking the *civil society* of authoritarian liberalism to challenge it means knowing how to identify what exceeds that civil order of deproletarianized human capital and to think the possible space for the critique of *capitalist society* at the time of its neoliberal and authoritarian regulation, re-framing a political subject in it. Otherwise, the only alternative is to give in to "postcriticism" without an alternative, for which society does not exist, pursuing a Dadaist and post-modern variation of the existing (Felski, 2015). The explicit authoritarian twist of neoliberalism today reminds us, however, that postmodernism is over and that, therefore, we need to rethink the narratives and counter-narratives of society and its subjects, as well as their ineradicable tension, in order to understand it and act upon it.

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# ARTÍCULOS

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# EL NUDO VELADO DEL PODER. SUBJETIVACIÓN, SABER, VERDAD\*

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## THE VEILED KNOT OF POWER. SUBJECTIVATION, KNOWLEDGE, TRUTH

### Resumen

El artículo analiza, desde una perspectiva foucaultiana, la relación entre la constitución del sujeto, los procesos de veridicción y las formas de poder que se activan y son activadas en este encuentro. El análisis se basa en una genealogía clásica que parte de Platón y Aristóteles, utilizando también las obras de Foucault. El texto se esfuerza por demostrar cómo las interconexiones de los elementos señalados con anterioridad configuran un espacio público atravesado por el conflicto entre el conocimiento y el poder, lo que representa uno de los elementos claves para legitimar una autoridad política.

### Palabras clave

subjetivación; saber; poder; lenguaje; verdad

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## **Abstract**

From a Foucauldian perspective, this article analyzes the relationship between the constitution of the subject, the truth-telling processes, and the forms of power that are activated and activate each other in this intersection. The analysis is based on a classical genealogy starting with Plato and Aristotle, as well as Foucault's works. The text endeavors to demonstrate how the interconnections among the aforementioned elements shape a public space permeated by the conflict between knowledge and power, which constitutes a key element in legitimizing a political authority.

## **Keywords**

subjectivation; knowledge; power; language; truth

“La soberanía de lo semejante”: ¿Qué se parece a qué?

La verdad no es semejanza, es idéntica a sí misma. La semejanza se mueve hacia lo inmóvil, “nunca permanece estable en sí misma”, si lo hiciera, no se parecería a lo verdadero, sería lo verdadero, lo inmóvil.

La representación es el semejante de lo idéntico. Cuando la palabra se muestra semejante a la cosa, se encuentra próxima a ella, pero esta es una proximidad que nunca es plena, la plenitud bloquearía su movimiento, privándola, precisamente, de su deseo mismo de plenitud. Así

al poner como enlace entre el signo y lo que indica la semejanza, [...] el saber del siglo XVI se condenó a no conocer nunca sino la misma cosa y a no conocerla sino al término, jamás alcanzado, de un recorrido indefinido. (Foucault, 1968, p. 39)

Por lo tanto, la semejanza es el “vínculo” entre la representación y la verdad. Desde este momento la representación, el así llamado verdadero, es el “llamado verdadero” de la representación; lo Verdadero se descubre como aquello que se asemeja a lo Verdadero en la expresión de su forma.

La variación de la coacción que precisamente sostiene a lo largo de los siglos tal expresión define la esencia de lo verdadero, delinea el marco de su manifestación hasta oscurecerlo, a tal punto que se hace transparente la inconsistencia de su esencia; la verdad no es, y la articulación de los signos nos ayuda a saberlo. El saber nos desvela que no es (lo) verdadero, se escapa a la necesidad de saberse verdadero para llegar a la posibilidad de saberse como plural.

¿La negociación entre el conocimiento y la verdad se reconoce en los individuos, cómo? El único hecho cierto es que el individuo es capaz de articular de forma sensata sonidos que pueden ser signos y palabras capaces de significar. Por lo tanto, el hombre (sujeto) que habla es la negociación en sí misma.

*Zoon logon echon*, sujeto-conciencia: dos planos, solo aparentemente diferentes, de la inscripción del nudo que vincula la verdad y el saber con el lenguaje; dos planos diacrónicamente distantes, pero profundamente próximos. La verdad antes y después del conocimiento, la verdad muda y la verdad que habla. Entonces, el saber visto y el saber dicho.

La astucia de Aristóteles corrobora profundamente el sentido del conocimiento del Ser en la sutileza de partir de la sensación y el deseo. Dos elementos asociados (por necesidad) a lo corpóreo que se desmaterializan en la progresiva plenitud del conocimiento de la Verdad:

Todos los hombres por naturaleza desean saber. Señal de ello es el amor a las sensaciones. Éstas, en efecto, son amadas por sí mismas, incluso al margen de su utilidad y más que todas las demás, las sensaciones visuales. [...]. La razón estriba en que ésta es, de las sensaciones, la que más nos hace conocer y muestra múltiples diferencias. (Aristóteles, *Metafísica*, A, 1, 980a)

El análisis foucaultiano permite detectar exactamente los pasos del proceso de desmaterialización de lo corporal y enunciar su acto fundacional en el establecimiento de una Verdad que, siendo Una, existe, en un sentido sustancial, antes y después de dicho proceso. Así, Foucault, refiriéndose a Aristóteles, escribe:

la sensación podía considerarse como un ejemplo legítimo de conocimiento, era porque tenía acceso a lo verdadero, a las cosas mismas en sus cualidades propias. si podía extraerse cierta forma de placer de la sensación, se debía a que ésta era capaz de presentarnos algo parecido a la figura avanzada de la contemplación, es decir, del conocimiento de lo verdadero en sí mismo. [...] Si hay en general deseo de conocer y el conocimiento puede hacer nacer dentro de su propio movimiento algo como el deseo, es porque todo se desenvuelve ya en el orden de la verdad. [...] La verdad desempeña por tanto tres papeles: asegura el paso del deseo al conocimiento; funda en cambio, y a cambio, la anterioridad del conocimiento sobre el deseo, y da lugar a la identidad del sujeto en el deseo y en el conocimiento». (Foucault, 2012, pp. 39-41)

La subordinación de la sensación y del deseo al conocimiento de lo verdadero son asumidos como una condición necesaria para el establecimiento legítimo y garantizado de la identidad del sujeto. La verdad es lo idéntico, la verdad fundamenta al sujeto. Por ello, cada uno de sus elementos corporales debe ser definido hasta volverse inconsistente dentro de un saber que certifique su ser.

¿Cómo conoce el sujeto? ¿Cuál es su acceso a la verdad? En primer lugar, el sujeto conoce gracias a la vista, y después, en consecuencia, la palabra. Estos son el viático hacia la verdad, incluso antes de Aristóteles. En el momento en que se asume el asombro ante la realidad como motor de acción del pensamiento se confía a la visión la posibilidad de la reflexión que, simultáneamente, se convierte en necesidad de saber. Este es el mismo instante en que contemplar el cambio sensible de las cosas impulsa hacia la búsqueda de lo inmutable, permitiendo así a la mente la capacidad de ver, de abrir los ojos hacia la contemplación de la idea: alcanzando finalmente la teoría, el conocimiento.

El que conoce es aquel que «ama el espectáculo de la verdad [...], aquel que es capaz de avanzar hasta lo Bello en sí y contemplarlo por sí mismo» (Platón, *Republica*, 475e-476). El que conoce es aquel que ya ha descubierto en su propio asombro el abismo de su propia ignorancia y trata de no perderse en la oscuridad, ascendiendo hacia esa «ciencia que no ha nacido de la necesidad sino del asombro, vale decir de lo que permite reconocer la propia ignorancia y querer escapar a ella por el mero efecto y en bien exclusivo del conocimiento» (Foucault, 2012, p. 50). La connotación de tal conocimiento debe entonces tensar sus lazos alrededor de un rigor que asegure la exclusión de lo impuro en protección de lo en-sí, lo puro. Un riesgo que parece más acuciante cuando la visión contemplativa se traduce en una palabra que significa —que debe significar— lo esencial, lo visto.

Ver y decir convergen en el decir de lo conocido, el verdadero saber en la palabra verdadera. Es de esta forma que se hace más profundo el infranqueable surco entre el discurso verdadero y el falso, y que todavía será más profundo cuando sea estigmatizado por los intérpretes de los propios discursos: el filósofo elevado a líder político, el sofista vilipendiado al nivel de las meretrices. La perspectiva dentro de la cual Platón y Aristóteles enfocan la figura del sofista y destacan la operatividad de la sofística enmarca dos sistemas teóricos diferentes que avanzan en la diacronía temporal para desvanecer al sofista y volver inútil al sofisma.

Cuando el extranjero dice a Teeteto: «es necesario que el discurso cuando lo hay sea discurso de alguna cosa, es imposible que no sea discurso de alguna cosa», y continúa con

las cosas que se dicen de ti, ciertamente cosas diferentes dichas como si fueran cosas idénticas de ti, cosas que no son como si fueran cosas que son, tal conexión hecha de sustantivos y verbos, sin duda alguna constituye real y verdaderamente un discurso falso. (Platón, *Sofista*, 262e, 263d)

introduce (de facto) en el orden del discurso el discurso falso, es decir, hábilmente se apodera de la torre desde la que Platón arrojará a Parménides, alcanzando el punto de ruptura que le liberará del maestro.

El sofista es la antítesis del filósofo, está literal y conceptualmente colocado (*titemi*) contra él. Para superarlo se requiere el doble movimiento de admitir el no-ser y reconocer la falsedad lógica y ontológica del mismo. Platón conduce al sofista a través de una secuencia argumentativa que alcanza su clímax al etiquetarlo como impostor. En este sentido, simultáneamente, también supera un desafío mucho más ambicioso: la admisión del no-ser. Los sofistas son presentados como aquellos que

arrastran todo desde el cielo y lo invisible hacia la tierra, abrazando toscamente con las manos piedras y árboles. Aferrándose a estas cosas, sostienen que solo existe la que ofrece resistencia y cierto contacto; definen como idénticos la realidad y el cuerpo, y si alguien afirma que algo no tiene cuerpo, existe, ellos lo desprecian por completo y no quieren escuchar ninguna otra cosa. (Platón, *Sofista*, 246a-b)

Sin embargo, aunque sean despreciados y marginados, pueden discutir porque discuten no sobre la nada, sino sobre algo, no sobre lo que no es ser, sino sobre algo diferente de ello. Esto les está permitido y queda legitimado por el hecho de que

cuando hablamos de “lo que no es”, es evidente que no hablamos de un opuesto de “lo que es”, sino sólo de algo distinto», ya que, y aquí el giro teórico radical es evidente, “lo que no es” es firmemente y tiene una naturaleza propia. (Platón, *Sofista*, 257b, 258b)

Sin embargo, el no-ser es inmediatamente neutralizado, y el camino más directo es sin duda connotar su naturaleza teórica como falsa. Dada la necesidad de lo verdadero, urge yuxtaponerle lo falso, que debe ser establecido como necesariamente falso, so pena de debilitar la misma verdad. El sofista, por lo tanto, debe hablar. Este cumple con eficacia su tarea cuando discute, pero desafortunadamente su discusión se centra en lo falso, por lo tanto, engaña, mostrando que lo “falso en el pensamiento y en los discursos no es otra cosa que juzgar o afirmar el no-ser” (Platón, *Sofista*, 260c).

El sofista y Platón avanzan en dos planos paralelos y, como tales, irreconciliables: la palabra del retórico y la palabra del filósofo dicen cosas distintas. Por ello, lo que debe decirse, si se quiere decir la verdad, escapa al control. De este modo el propósito del decir se resuelve apropiadamente en hacer creer verdadero el decir. Asumir la palabra como un elemento separado de la cosa deforma por completo la simbiosis platónica decir-dicho. «En la práctica del discurso lo que se *manipula* no son las cosas mismas sino sus símbolos verbales» (Foucault, 2012 p. 59), precisamente porque para Platón la palabra no manipula, sino que remite, transita y traduce lo real.

La deformación se produce entonces en el momento en que se expulsa la objetividad de lo dicho, ampliando inconmensurablemente el hiato entre la palabra y la cosa. De este modo se manifiesta la diferencia sustancial entre uno y otro elemento, emerge que:

el número de los nombres es finito, e infinito el de las cosas; en que hay una escasez relativa de las palabras, y en que no se puede establecer una relación biunívoca entre palabras y cosas. Para resumir, en el hecho de que la relación entre las palabras y lo que designan no es isomorfa con la relación que permite enumerar.

El Sofista es quien se vale de la misma palabra, el mismo nombre, la misma expresión, para decir dos cosas diferentes, de modo que dice dos cosas en la identidad misma de la cosa dicha. (Foucault, 2012, p. 60)

La ruptura de la relación biunívoca palabra-cosa inaugura en la palabra una pluralidad de significados que el vínculo con la cosa excluía, abriendo una perspectiva comunicativa puramente retórica. Por eso Gorgias:

parece haber sido el primero en fundamentar teóricamente la autonomía de la dimensión retórica persuasiva y performativa del lenguaje respecto a su tradicional referencia a la verdad del ser. [...] El lenguaje de la comunicación humana [...] no posee verdad, si por tal se entiende una descripción fiel del ser en sí mismo. Ni los discursos pueden evaluarse en términos de verdadero/falso. (Vegetti, 2018, p. 253)

El enfoque platónico rechaza y condena esta perspectiva en el plano gnoseo-ontológico: el anhelo de cada uno es aspirar al conocimiento *verdadero*. Y ¿qué puede llamarse conocimiento de lo verdadero sino el conocimiento del Ser? La única forma de discurso que tiene validez teórica es, en sentido absoluto, el discurso sobre el Ser, ya que

los discursos están emparentados con aquellas cosas que explican: los concernientes al orden estable, firme y evidente con la ayuda de la inteligencia son estables e infalibles —no deben carecer de nada de cuanto conviene que posean los discursos irrefutables e invulnerables. [...] Lo que el ser es a la generación, es la verdad a la creencia. (Platón, *Timeo*, 5b-c-)

Es entonces sobre el *con-génere*<sup>1</sup> que se fundamenta la veracidad del conocer, donde se ahonda el abismo entre lo verdadero y lo falso, entre conocer lo verdadero y creer lo verdadero. El conocimiento de lo que cambia es un conocimiento falso:

Ninguna clase de conocimiento, en verdad, conoce cuando su objeto no es de ninguna manera. Pero es razonable sostener que ni siquiera existe el conocimiento. si

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<sup>1</sup> En el texto original, la cita inmediatamente anterior dice así: «i discorsi sono congeneri a ciò di cui parlano: i discorsi su ciò che è stabile, saldo ed evidente al pensiero, bisogna che siano anch'essi stabili e solidi, e, nella misura in cui, peri discorsi, è possibile e conveniente essere inconfutabili e invincibili. [...] Lessere è rispetto al divenire nello stesso rapporto in cui è la verità rispetto alla credenza» (Platone, *Timeo*, 5 b-c). Como se observa, en la cita en italiano se recoge el término *congeneri*, cuya traducción más correcta al castellano es emparentado. Con el fin de conservar el sentido de la oración y el juego de palabras que la autora hace en el texto original, en este caso, se toma la decisión de traducir *con-génere* como con-génere y no como emparentamiento, a pesar de la pequeña disonancia que pueda producirse [Nota del trad].

todas las cosas cambian y nada permanece. Pues si esto mismo, el conocimiento, no dejara de ser conocimiento, permanecería siempre y sería conocimiento: pero si, incluso, la forma misma de conocimiento cambia, simultáneamente cambiaría a otra forma de conocimiento y ya no se ría conocimiento. (Platón, *Cratilo*, 440a-b)

El falso conocimiento, como conocimiento del devenir, se afirma como no-conocimiento, es decir, como una mera creencia.

La sistematicidad con la que Aristóteles comprime la relación verdad-conocimiento arrastra al discurso sofístico a un nuevo orden, haciendo vacua cualquier pretensión residual de verosimilitud al desvincular el sofisma de la fijeza del razonamiento, es decir, negándole incluso el acceso al razonamiento falso. El sofisma es un golpe de teatro, una ilusión escénica que silencia al interlocutor no porque lo ciegue con la verdad, sino porque lo embriaga con un juego de sombras. «[El sofista] Se sitúa en una dimensión que no es la del razonamiento verdadero o falso; está del lado de la apariencia de razonamiento. Está en la sombra y el reflejo; en un espejismo razonador, pero no razona verdaderamente» (Foucault, 2012, p. 58). En este sentido, no es el error lo que anula el discurso, sino el carácter camaleónico de los colores lo que lo escenifican.

Los contornos de las sombras que escenifican el discurso se desvanecen en palabras policromadas que modifican sus significados, alienando la verdad de ellas. La proposición ya no enmarca el decir de manera tan perfecta como para corroborar lo absoluto de lo verdadero, sino que es el enunciado el que compone, descompone y recompone las palabras, apostando a que la apariencia de lo decible asuma la posibilidad de lo verdadero.

La proposición forma el silogismo y el enunciado deforma el sofisma, desfigurando el significado a través una combinación de palabras cuya maleabilidad ofrece la ilusión de una verdad objetiva que Aristóteles se apresura a invalidar aduciendo que:

como no es posible discutir trayendo a presencia los objetos mismos, sino que empleamos los nombres en lugar de los objetos, como unos símbolos, creemos que lo que ocurre con los nombres ocurre también con los objetos, tal como les ocurre con los guijarros a los que cuentan. Pero no hay tal semejanza: en efecto, los nombres y la cantidad de enunciados son limitados, mientras que los objetos son numéricamente infinitos. Es, pues, necesario que un mismo enunciado y un único nombre signifiquen varias cosas. (Aristóteles, *Sobre las refutaciones sofísticas*, 165a, 4-13)

El pensamiento del objeto escapa al cuerpo de las palabras, es imposible para la materia condensar lo inmaterial, por lo tanto, estas palabras disimulan. ¿Por qué Aris-



tóteles también expulsa el sofisma del falso razonamiento? Quizás porque razonar no deja de ser argumentar, pensar conceptos que se conocen en su veracidad y falsificar su significado en lo dicho, conocer para mentir, mentir para refutar lo verdadero, la palabra seductora que disfraza el ser pensado.

Aristóteles va más allá: configura una escena en la que el sofista es obsceno, no razona falsamente, manipula las palabras en una transfiguración de un significado que no es, pero puede parecer, dándole forma en el cuerpo de la palabra, una materia impensada. El desprecio por el sofista y la censura del sofisma marcan el modo sistemático en que Aristóteles despoja al sujeto del conocimiento de su propio cuerpo y al cuerpo de la palabra de su propio significado. Es así como el atento y preciso desprecio por lo corpóreo resulta ser el núcleo irradiador del *theorein* aristotélico. Una mente iluminada en un cuerpo oscurecido, alejado del deseo de desear y persuadido del deseo de conocer.

El conocimiento humano antes y después del deseo, el deseo es el «conocimiento diferido, pero visible ya en la impaciencia del suspenso en que se mantiene» (Foucault, 2012, p. 32). El deseo no se suspende para avanzar hacia el conocimiento, el conocimiento es ya, en su aurora, el deseo suspendido que será finalmente cegado por la plena luz de lo verdadero.

El sofista ofrece a Aristóteles la posibilidad de configurar la palabra como un “acontecimiento corporal”, pensada como un “efecto de victoria” y no como un “efecto de verdad”. La palabra es indudablemente cuerpo, presentada como “acontecimiento” puede situarse en el centro de la disputa.

Es Platón quien nos brindó un prólogo significativo al modular la figura del personaje de Sócrates no como sofista, sino como parresiasta; el discurso socrático sitúa una parresía concebida, construida y defendida como una racionalidad ética, que proscribía la palabra dicha porque “no se ocupa fundamentalmente de la verdad de la proposición, sino de la voluntad del sujeto hablante de aferrarse a lo que ha dicho”, el sofista no “constata”, más bien “jura”, el sofisma “ata al interlocutor a lo que dice”, ya que “lo único que el sofista manipula, el único ser al que se dirige es el de la cosa dicha; es el del enunciado en su realidad material” y, “si las palabras tienen su realidad material específica en medio de todas las demás cosas, resulta claro que no pueden comunicarse con ellas. [...] No significan las cosas, no se puede, por tanto, tener acceso a estas a partir del discurso” (Foucault, 2012, p. 80).

La palabra de Sócrates es inmaterial, y su discurso, sustancial; puede parecer paradójico u oximorónico, pero en realidad es solo axiomático. Nada en el discurso socrático alude a la materialidad de las palabras: un discurso que dice cosas con palabras sin cuerpo.

Agotar la plenitud de la subjetividad en su constante necesidad de tensión hacia lo verdadero estandariza y comprime al sujeto, sustrayéndole la posibilidad de aperturas a espacios que no son verdaderos, pero no por ello son falsos.

El deseo es la fuerza que mueve su voluntad de conocer fuera, más allá, sin que esta se vuelva hacia el conocimiento de lo verdadero. La brecha entre conocimiento y verdad es el excedente que permite al sujeto ser sin tener que ser, desear, pensar, actuar “an-árquicamente”, desviándose y avanzando en un registro distinto al del *archè*, abandonando su uniformidad para perderse en el vórtice de lo posible.

La posibilidad del conocimiento no es una ley formal; el conocimiento encuentra su posibilidad en un espacio de juego donde se trata de muy otra cosa que él mismo, es decir: de instintos y no de razón, saber o experiencia; de duda, negación, disolución, dilación, y no de afirmación, certeza, conquista, serenidad. (Foucault, 2012, p. 226)

La cuestión debe replantearse replanteada al distanciar y polarizar los tres polos de forma autónoma, con el fin de reconfigurar radicalmente una posible relación entre ellos. Desde el pensamiento clásico, el vínculo deseo-conocimiento-verdad ha sido orientado en una dirección unívoca por la verdad: el deseo es deseo de conocimiento y el conocimiento es conocimiento de lo verdadero. Una superposición que efectivamente decreta la anulación y la absorción de dos partes en una —en el Uno— dando lugar al comienzo del juego metafísico.

Superar e ir más allá del dogma de que el conocimiento es necesariamente conocimiento de la verdad no sólo interrumpe la fijeza de la relación sujeto-objeto del conocimiento, sino que además restituye el deseo a la corporalidad, prefigurando uno como “puro querer conocer” y el otro como “puro querer desear”. Trazando —como en el esbozo aristotélico— el deseo como:

conocimiento diferido, pero visible ya en la impaciencia del suspenso en que se mantiene, [...] tiene la consecuencia de que el saber y el deseo no estén en dos lugares diferentes, poseídos por dos sujetos o dos poderes, sino que quien desea el saber sea ya el que lo posee o es capaz de poseerlo; y es sin violencia, sin apropiación y sin lucha, [también] sin comercio, sólo por la simple actualización de su naturaleza, que aquel que lo desea terminará sin duda por saber: un solo sujeto va del deseo de saber al conocimiento, por la sencilla razón de que, si éste no estuviera allí como precedencia del deseo, el deseo mismo no existiría. Y a la inversa, el deseo de conocer ya es en su naturaleza algo así como el conocimiento, ya es

algo de conocimiento. Sólo puede querer el conocimiento por sí mismo, porque lo quiere como punto de partida de su conocer. El conocimiento es a la vez su objeto, su fin y su materia. (Foucault, 2012, p. 32)

La crítica radical de los sofistas se agudiza aún más en el momento en que estos alejan el saber del conocimiento (como conocimiento) de lo verdadero, concentrándolo en la persuasión hacia lo verosímil. La partida no se juega entre lo verdadero y lo falso, el jaque a lo verdadero lo da lo verosímil. He aquí el hiato inconmensurable que separa los dos planos de sentido, marcado por la densidad conceptual que define lo verosímil: si tanto para Aristóteles como para Platón verosímil es igual a falso, para los sofistas, siguiendo la dirección de un discurso que persuade, conocer lo verosímil es conocer.

El deseo y el deseo de conocer configuran así dos subjetividades separadas. El sofista plantea la cuestión en los términos de que “quien aún no conoce y desea no puede ser aquel que conoce y ya no desea más”. Por el contrario, en Aristóteles, toda cuestión está eludida a priori ya que el deseo es —en su propia sustancia— no solo deseo de saber, sino absolutamente deseo de conocer lo verdadero. De hecho «[si los hombres] filosofaron por huir de la ignorancia, es obvio que perseguían el saber por afán de conocimiento y no por utilidad y alguna» (Aristóteles, *Metafísica*, 982b, 19-22).

La abstracción del deseo de la corporeidad, modulada a través del ostracismo sofístico del discurso sensato, traza el perímetro dentro del cual se teje la relación saber-poder. La figura que este nudo despliega dentro del marco democrático sumerge y sitúa la búsqueda de lo verdadero en el momento en que legitima a la mayoría para gobernar. Es decir, otorga al demos la equidistancia del *kratos*, anulando, en la concentricidad del poder, el espesor ético necesario para gobernar bien.

La democracia es enemiga de la Verdad porque estructuralmente no sabe reconocerla. La disidencia democrática seduce y así triunfa y manda:

por eso el decir veraz no puede tener su lugar en el juego democrático, habida cuenta de que la democracia es incapaz de reconocer y hacer lugar a la división ética sobre cuya base, y sólo sobre cuya base, el decir veraz es posible. (Foucault, 2010, p. 62)

En el espacio democrático, se traiciona el ser del hombre, ya que:

sólo él, entre los animales, tiene habla; [...] Pero la palabra es para manifestar lo conveniente y lo perjudicial, así como lo justo y lo injusto. Y esto es lo propio del hombre frente a los demás animales: poseer, él sólo, el sentido del bien y del mal,

de lo justo y de lo injusto, y de los demás valores, y la participación comunitaria de estas cosas constituye la casa y la ciudad. (Aristóteles, *Política*, I, 1253a, 10-18)

La democracia es voz sin palabra, un significante cualquiera que se ocupa con el significado más apropiado. *Isonomía e isegoría*, en un solo gesto, otorgan al *demos* el privilegio de la libertad y la igualdad. Además, al mismo tiempo que desactivan su exclusividad, desdibujan el rasgo elitista de los dos conceptos en la homogeneización de lo común. Así «el *demos* es, [...] el nombre de la masa indistinta de hombres sin cualidades [que coincide] con el nombre mismo de la comunidad» (Rancière, 1996, p. 22). El espacio político se comparte «se configura conforme a un esquema geometrizado de relaciones reversibles, cuyo orden se funda en el equilibrio y la reciprocidad entre iguales» (Vernant, 1973, p. 198).

En un espacio público estructurado de este modo, la palabra se instala como la posibilidad más fuerte y concreta de ejercicio del poder, ocultando, pero presuponiendo, el hecho de que:

el conocimiento es siempre una cierta relación estratégica en la que el hombre está situado. Es precisamente esa relación estratégica la que definirá el efecto del conocimiento y, por esta razón, sería totalmente contradictorio imaginar un conocimiento que no fuese en su naturaleza obligatoriamente parcial, oblicuo, perspectivo. El carácter perspectivo del conocimiento no deriva de la naturaleza humana sino siempre del carácter polémico y estratégico del conocimiento. Se puede hablar del carácter perspectivo del conocimiento porque hay batalla y porque el conocimiento es el efecto de esa batalla. (Foucault, 1996, pp. 30-31)

Es la palabra la que inclina el conocimiento, proporcionándole el enfoque perspectivo que requiere la contingencia. Es precisamente en este punto donde radica la perturbación y, por tanto, la hostilidad de Platón y Aristóteles, pues “las palabras son solo símbolos de las relaciones recíprocas entre las cosas, y también de las cosas con respecto a nosotros, y jamás llegan a palpar la verdad absoluta” (Nietzsche, 2003, p. 89). El ataque al poder de la verdad es violento y debe ser neutralizado. Es necesario instaurar un sistema siempre finalizado, recto y legitimado por una Verdad en la que el instinto, el deseo y la lucha sean desórdenes que el *kratos*, fiel a su pureza etimológica, debe asimilar y neutralizar.

La decidida aversión de Platón hacia la tragedia ilustra con claridad meridiana la urgencia de censurar cualquier distracción del camino trazado. Platón está seguro de que:

el mundo del drama griego es un mundo en el que la razón es incapaz de digerir lo que brota de las profundidades del ser, o de fuerzas que se elevan por encima del hombre tanto como los cielos se elevan por encima de la tierra. Comprende que el poder de esta forma de poesía consiste en hacer entender que el hombre no es uno solo, sino doble e incluso múltiple. Todo junto, el bien y el mal, queriendo una cosa y también su contrario. El hombre trágico se sitúa en el polo opuesto del sabio porque se deja llevar por sus pasiones, no se detiene a conocerlas. (Guidorizzi, 2023, pp. 26-27, trad. GRP)

El conocimiento es la astucia más brillante para la captura y el ejercicio del poder.

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# LA PROTECCIÓN DE LOS NEURODERECHOS: REFLEXIONES COMPARADAS SOBRE LAS PRIMERAS SOLUCIONES LEGISLATIVAS\*

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## PROTECTION OF NEURO-RIGHTS: COMPARATIVE REFLECTIONS ON EARLY LEGISLATIVE SOLUTIONS

### Resumen

Los avances neurocientíficos y los nuevos modelos de neurotecnología han sido, por un lado, una formidable herramienta de apoyo clínico, pero más recientemente han puesto en tela de juicio los dogmas jurídicos tradicionales y las salvaguardias que protegen la identidad del cerebro.

La intrusión en la esfera más privada del hombre a través, por ejemplo, de la técnica de la neuromejora, plantea al jurista retos sin precedentes en relación con la necesidad de salvaguardar los datos cerebrales de una difusión incontrolada. La reflexión comparada pretende así analizar las primeras soluciones legislativas desarrolladas en el contexto español, y más aún en el chileno, encaminadas a reconocer los neuroderechos como una nueva especie de derechos humanos.

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Por último, tras constatar la insuficiencia de una intervención circunscrita, se sugiere la adopción de una convención internacional de principios de protección del *habeas mentem*.

### **Palabras clave**

neuroderechos; privacidad mental; GDPR; *neuroenhancement*

### **Abstract**

Neuroscientific advances and new neurotechnology models have, on the one hand, been a remarkable tool for clinical support, but more recently, they have challenged traditional legal dogmas and safeguards protecting the brain's identity.

Intrusions into the most private sphere of humans, such as through neuroenhancement techniques, present unprecedented challenges for legal experts regarding the need to safeguard brain data from uncontrolled dissemination. The comparative reflection thus seeks to analyze the first legislative solutions developed in the Spanish context, and even more so in the Chilean context, aimed at recognizing neuro-rights as a new category of human rights.

Finally, after identifying the insufficiency of a localized intervention, the article suggests adopting an international convention on the principles for protecting *habeas mentem*.

### **Keywords**

neuro-rights; mental privacy; GDPR; *neuroenhancement*

## Más allá de lo poshumano: perfiles introductorios e implicaciones de la neurociencia

¿Hasta qué punto podemos seguir siendo humanos en un mundo cada vez más digitalizado? ¿Cuál es el nivel de protección de las garantías fundamentales frente a los riesgos de la neurotecnología?

Estas son solo algunas de las preguntas que invaden la mente del filósofo, del eticista y, no menos importante, del jurista del tercer milenio al contemplar las formas proliferantes de lo poshumano que tienden a renegar de toda forma de antropocentrismo y de autotranscendencia humana (Stanzione, 2010, p. 86).

Las nuevas tecnologías cuestionan irremediablemente —quizás están en crisis— aquellas fronteras que, antes para la naturaleza y luego para la tecnología, parecían infranqueables en la relación entre lo natural y lo artificial, entre lo animado y lo inanimado, entre lo consciente y lo inconsciente, entre el hombre y la máquina, entre el sujeto y el objeto (Faini, 2023, p. 2).

Los resultados concretos que la tecnología nos muestra como realizables nos obligan a reflexionar, según perspectivas de análisis históricamente inéditas, sobre los límites de lo humano.

Una respuesta parcial, que representa al mismo tiempo una perspectiva viable de método, puede hallarse en la conciencia de que el desarrollo de las técnicas neurocientíficas, junto con los estudios sobre la inteligencia artificial, implica la necesidad de remodelar los dogmas jurídicos tradicionales de acuerdo con nuevos paradigmas gnosológicos. Se trata de un ajuste que dista mucho de darse por descontado, dado que el jurista es, por naturaleza, proclive a intentar incorporar la innovación al tranquilizador universo del marco habitual y existente de principios y normas.

Sin embargo —tal y como se verá—, la primera reacción a las exigencias del llamado “humanismo digital” (Nida-Rümelin & Weidenfeld, 2019, p. 10) parece haberse consolidado, al menos a primera vista, en el silencio normativo o en la remisión a documentos sin carácter vinculante. En la incertidumbre, es casi una especie de “derecho en espera”.

En semejante marco de progresiva colonización del pensamiento, de todas formas el concepto de hombre cartesiano (Grion, 2021, p. 34), sujeto racional por excelencia, parece despedirse del centro de la reflexión, incluida la jurídica, con la prepotente emergencia de un nuevo concepto basado en el binomio hombre-máquina. Se está produciendo, en muchos aspectos, una fragmentación de la dimensión identitaria en favor de una idea de yo múltiple, donde la relevancia del pensamiento humano cede paso a la preeminencia de los mecanismos bioquímicos y de los datos neuronales. En este sentido, un modelo ejemplar es el proyecto desarrollado por Elon Musk, el llamado *Neuralink*, que consiste en la posibilidad

concreta de desarrollar e implantar chips detectores de impulsos neuronales en el hombre, mediante los cuales será posible no solo tratar disfunciones neurodegenerativas, sino también codificar recuerdos para transferirlos a un robot o a otro cuerpo.

Por lo tanto, es evidente que a medida que la demarcación entre lo natural y lo artificial se hace cada vez más frágil las soluciones que pueden perseguirse en abstracto parecen ser dos: gobernar el proceso evolutivo de las neurotecnologías, anticipando su regulación y teniendo presentes los principios y valores éticos que las sustentan o, viceversa, dejarse gobernar por ellas, aceptando la idea *tout court* de la recesividad del hombre.

En este frente las neurociencias son ahora capaces de identificar los correlatos neuronales de la mayoría de las actividades mentales y comportamentales, partiendo del supuesto de que toda función y contenido mentales corresponden a la activación de un área cerebral específica. Al mismo tiempo, han puesto en duda las narrativas del libre albedrío y de la responsabilidad humana, sumándose a los ya peligrosos e incontrolables algoritmos del mundo digital, que parecen haber derribado definitivamente el célebre paradigma de las tres leyes de Asimov, según las cuales el robot se encontraría en una posición sumisa al servicio del hombre (Lledó Benito, 2021, p. 10).

Dicho esto, en los párrafos siguientes veremos cómo, por un lado, no ha faltado la crítica metodológica, que ha hecho hincapié en la manipulabilidad de los datos procesados por las neurotecnologías; por el otro, la ciencia jurídica se ha interesado profundamente por las potencialidades ocultas de este nuevo paradigma.

## **El paradigma del *neurolaw* en la intersección del derecho y la neurociencia**

Imaginar que la reflexión jurídica podría permanecer de algún modo indiferente a la vehemente evolución de la neurotecnología es pura ilusión por parte de quienes siguen ignorando sin razón la profunda omnipresencia de la tecnología en la vida de cada individuo.

En efecto, los puntos de contacto entre el derecho y la neurociencia son múltiples. Si, por un lado, el derecho se entiende convencionalmente como un instrumento regulador de la conducta humana, mientras que la neurociencia configura el estudio de los procesos cerebrales, por el otro, la perspectiva de la búsqueda del fundamento de un posible neuroderecho solo puede partir del innovador catálogo de instrumentos normativos configurados de acuerdo con el progreso científico (Narváez Mora, 2023, p. 113).

Una imagen eficaz de cómo pueden integrarse neurociencia y derecho la proporcionan los estudios de Owen Jones, jurista estadounidense que identifica nada menos que siete puntos de convergencia o interferencia: ‘apuntalar’, ‘desafiar’, ‘detectar’, ‘ordenar’, ‘intervenir’, ‘explicar’ y ‘predecir’ (Jones, 2013, p. 4). Por ejemplo, con detectar, el jurista estadounidense alude a la facilitación de la actividad investigadora en el contexto de un juicio. Las

pruebas neurocientíficas también pueden ejercer una función de refuerzo (*buttressing*), cristalizando el contexto en el que se toma una determinada decisión. En otros casos, sin embargo, puede darse el caso de que cuestionen el marco jurídico (por ejemplo, el marco probatorio), dando lugar a una reevaluación de la tesis hasta entonces expuesta.

Igualmente interesantes son los usos en el ámbito del procedimiento penal, que demuestran una vez más cómo el neuroderecho es capaz de impregnar, al menos en abstracto, todo el sistema jurídico (Santosuosso, 2012, p. 83). De hecho, las adquisiciones neurocientíficas utilizadas en los tribunales son consideradas cada vez más por el órgano juzgador como argumentos decisivos y centrales para la valoración de la imputabilidad, puesto que la actividad neuronal representa un sustrato crítico de la identidad personal y, en consecuencia, de la responsabilidad (moral y) jurídica. Baste decir que, ya en la década de 1990, en Estados Unidos los juicios de responsabilidad se calibraron sobre la base de tales pruebas para imponer una reducción de la pena o declarar la demencia del reo (Caprioli, 2022, p. 291).

Más recientemente, también en Italia los hallazgos neurocientíficos se han utilizado para diagnosticar trastornos psíquicos capaces de afectar al juicio de imputabilidad. Varias decisiones judiciales también han empleado los datos obtenidos para determinar la responsabilidad o para evaluar la fiabilidad de los testimonios: en este sentido, resulta emblemático el uso de nuevas formas de detención de la memoria, como el *Test de Asociación Implícita* (*Implicit Association Test*, IAT) y el *Test de Asociación Implícita Autobiográfica* (*Autobiographical Implicit Association Test*, a-IAT), que revelan las huellas mnésicas de la conducta del individuo.

Así, las aplicaciones de la neurociencia demuestran la necesidad de remodelar, *de iure condendo*, dogmáticas clásicas del derecho penal, como la imputabilidad según el ex art. 85 y ss. del Código Penal italiano, la peligrosidad social según el ex art. 203 del Código Penal italiano o la deficiencia mental, según el ex art. 89 del Código Penal italiano (Di Giovine, 2019, *passim*).

En la misma perspectiva, el derecho civil, con sus abstractas categorías tradicionales, también parece estar experimentando una profunda revisión (Tafaro, 2017, p. 251). En primer lugar, se está debatiendo el modelo del *homo oeconomicus*, el actor que actúa de manera racional, que está siendo sustituido por la idea del hombre considerado en su unidad psíquico-física, apoyado por elementos impulsivos y emocionales (Zoppini, 2014, p. 12). La exploración y puesta en valor del dato mental también puede resultar decisiva para garantizar una mayor protección jurídica civil de la persona, facilitando la constatación del grado de incidencia de la enfermedad o deficiencia física en las capacidades funcionales del sujeto.

## Nuevos modelos de neurotecnología y primeras implicaciones jurídicas

La revolución neurotecnológica es una realidad cada vez más consolidada: en una renovada sociedad de la información, la tecnología dialoga constantemente con la ciencia, de modo que el “animal informacional” se convierte en protagonista, sustituyéndose al hombre prometeico (Benanti, 2018, *passim*).

La neurotecnología hace referencia a cualquier instrumento o técnica capaz de manipular, registrar, medir y obtener información del cerebro humano mediante electrodos, ordenadores o prótesis inteligentes. Adopta la forma de un concepto interdisciplinar que combina las nuevas tecnologías de exploración metabólica funcional del cerebro con formas de inteligencia artificial: mediante esta interconexión, se pueden recuperar datos neuronales e información cerebral relacionada. Además, dependiendo de la finalidad para la que se utilicen las técnicas, se puede influir positiva o negativamente en cada función biológica.

Para comprender adecuadamente el alcance de este paradigma científico, es necesario antes que todo examinar los factores que han contribuido a su difusión.

El primero y más decisivo es la proliferación de nuevas formas de inteligencia artificial, como el *machine learning* y el *deep learning*, dotadas de aprendizaje computacional y de un profundo carácter transformador, así como capaces de operar de forma cada vez más autónoma y de desvelar escenarios aún inexplorados, incluido el cerebro (Semmler y Rose, 2017, p. 85).

Las nuevas herramientas tecnológicas demuestran un alcance evolutivo que supera los límites tradicionales de la ciencia al invadir un cambio en el llamado “paradigma cultural del cuerpo” y del concepto tradicional de humanidad.

El creciente uso, por un lado, de aplicaciones tecnológicas basadas en dispositivos portátiles y/o smartphones y, por el otro, del denominado *Internet of things* (Giannone Codiglione, 2016, p. 31), ha creado el fenómeno de la tecnología digital con fines de autoseguimiento, también conocido como *Quantified Self* (Lupton, 2016, *passim*). Esto incluye diversas aplicaciones funcionalmente relacionadas con la protección y con la prevención de la salud y la forma física, que operan mediante sensores capaces de detectar procesos fisiológicos del cuerpo o de derivar análisis biomédicos de las acciones.

Sin embargo, a una primera fase correspondiente a los albores de la llamada “Década del Cerebro”, en la que el seguimiento sólo afectaba a una mínima parte de la actividad física y de la fisiología humanas, siguió otra, caracterizada, en cambio, por la posibilidad de catalogar casi todos los procesos motores y mentales del individuo, en una perspectiva cada vez más clara de la integración total del cerebro humano como conjunto de neuronas interconectadas con el mundo electrónico.

Otra coordenada que ha marcado la revolución neurotecnológica es el uso de las llamadas “neurotecnologías del consumidor” (Imbrenda, 2021, p. 814), herramientas que aplican las teorías de la neurociencia para comprender los procesos de comportamiento y toma de decisiones de los consumidores. Baste decir que las principales empresas de investigación de mercado, así como las agencias de publicidad, cuentan ahora con verdaderas divisiones de *neuromarketing* (Braidot, 2006, p. 51).

También están en el centro del advenimiento neurotecnológico las interfaces cerebro-ordenador (BCIS), dispositivos creados para conectar el cerebro humano a un ordenador con el fin de llevar a cabo una comunicación bilateral hacia y desde la zona cerebral. Aquí es donde entra en juego el papel decisivo de la IA, que activa un proceso de interferencia inversa que permite convertir los datos neuronales adquiridos en el *output* procesado por la máquina informática.

Hasta la fecha, no es casual que se registren diferentes técnicas de estudio y extracción de datos neuronales, cuya *summa divisio* se refiere a su carácter invasivo o no. Las primeras funcionan mediante la instalación de electrodos en el cerebro que redirigen la información obtenida a la máquina informática para su procesamiento y posterior decodificación. En la medicina tradicional, la experimentación ha demostrado un uso cada vez mayor de la “BCI invasiva” para tratar disfunciones motoras causadas por la enfermedad de Parkinson o para intervenir en los procesos neuoredegenerativos de la esclerosis lateral amiotrófica; se ha llegado incluso a crear prótesis visuales para ciegos, como demuestran los estudios más recientes. En la primera categoría se incluye también la “Estimulación Cerebral Profunda” (ECP), una técnica que se utiliza sobre todo para el tratamiento de patologías neurológicas que consiste en estimular la zona cerebral mediante impulsos eléctricos generados por electrodos implantados.

Por el contrario, las técnicas no invasivas utilizan dispositivos situados en la superficie, capaces de descifrar los pensamientos o los movimientos de una persona.

### **Optimizar el rendimiento cerebral: el *neuroenhancement***

La interacción entre neurociencia e inteligencia artificial ha demostrado un aumento significativo de los recursos que aprovechan los neurodispositivos y, en las últimas décadas, ha surgido la necesidad de ampliar también su potencial de aplicación a campos heterogéneos. En la actualidad, parece oportuno separar el uso estrictamente clínico de las neurotecnologías de su utilización con fines de mejora cognitiva. Las innovaciones en el primer tipo de uso, que facilitan el tratamiento de patologías neurodegenerativas, están sin duda reconocidas tanto a nivel jurídico interno como en el marco normativo transnacional: baste pensar en las garantías sobre el derecho a la salud dictadas por el art. 32

de la Constitución italiana o el art. 15 del Pacto Internacional de Derechos Económicos y Sociales. En cambio, hay más problemas cuando —como veremos ahora en la hipótesis del *neuroenhancement* (Perlingieri, 2021, p. 1)— las disfunciones cerebrales están ausentes y la neurotecnología se convierte en una herramienta de optimización y potenciación de la actividad neuronal, pues ello crea no pocos interrogantes sobre su compatibilidad con el sistema de derechos y libertades fundamentales (Cucchetti, 2019, p. 477).

De hecho, no cabe duda de que ha despertado la idea de que la salud humana representa la normalidad; al mismo tiempo, el interés por la posibilidad de lograr mejoras en ausencia de disfunciones biológicas o incluso de crear nuevas capacidades cognitivas. Por ejemplo, los avances en nanotecnología y biónica contemplan la posibilidad de crear cuerpos mejores: piénsese en el neurodopaje, que da lugar a la mejora de los estados mentales (potenciadores cognitivos) o en potenciadores del estado de ánimo capaces de afectar a los estados de ánimo.

Además, algunos estudios sociológicos recientes también registran un recurso importante sobre el uso de sustancias farmacéuticas capaces, por ejemplo, de elevar el nivel de atención o de tratar los trastornos de hiperactividad.

En este contexto, por neuromejora se entiende la aplicación de la neurotecnología con fines ajenos al tratamiento clínico-patológico, destinada a optimizar las capacidades físicas y mentales con respecto a la “línea de base” entre sujetos sanos.

En Estados Unidos o China, por ejemplo, las agencias gubernamentales están aplicando neurotecnologías con fines militares, con el fin de mejorar las capacidades cognitivas de los soldados o incluso reduciendo los trastornos mentales causados por acontecimientos bélicos (Kosal y Putney, 2023, p. 81).

Las modificaciones *in melius* del proceso neuronal, sin embargo, remiten a la dudosa compatibilidad de las técnicas neurocientíficas con la libertad cognitiva, entendida esta última como premisa fundacional del derecho a la autodeterminación, al que apelan quienes juzgan favorablemente la mejora cognitiva, siempre que los beneficios alcanzables superen los daños potenciales.

La mejora cognitiva está, de hecho, destinada a comprometer la identidad humana e incluso a distorsionar la estructura genética, para producir el llamado fenómeno de “despersonalización de la persona”. Será crucial, como veremos, el refuerzo de la protección de la intimidad y de la vida privada.

### **Nuevas fronteras de los derechos humanos: la categoría de los *Neuro-Rights***

Si partimos del contexto que acabamos de esbozar, parece evidente que la neurotecnología representa, en la dialéctica ciencia-derecho, un revolucionario banco de pruebas



para una reflexión orgánica y la consiguiente revalorización jurídica de la esfera personal del individuo, en una perspectiva efectivamente resumida en términos de “expansión tecnológica del compás humano”. De hecho, la actividad neurotecnológica, además de la función de lectura cerebral —entendida esta como mero desciframiento de impulsos— llega hasta la manipulación de los impulsos, dialogando, o mejor dicho, interfiriendo con la identidad mental de los usuarios, último dominio privado que aún resiste inflexiblemente a la erosión de la información privada (Boncinelli, 2000, p. 147).

Por tanto, si bien la neurotecnología constituye un método innovador para la realización de descubrimientos científicos relevantes, al mismo tiempo despierta interrogantes no desdeñables sobre los mecanismos de protección de los derechos humanos, dado que, tanto si se utilizan técnicas invasivas como no invasivas, es necesario hacer frente a lagunas normativas que afectan a la protección de situaciones jurídicas subjetivas. Es emblemática, en este sentido, la incertidumbre en la aplicación del art. 3 de la Carta de los Derechos Fundamentales de la UE, que establece que toda persona tiene derecho al respeto de su integridad física y psíquica, al consentimiento libre e informado, a la prohibición de prácticas eugenésicas, a la prohibición de comercialización de partes del cuerpo humano y a la prohibición de clonación, sin prever nada sobre el mal uso de la neurotecnología.

Del mismo modo, se puede encontrar una laguna de protección en el Convenio de Oviedo para la Protección de los Derechos Humanos y la Dignidad del Ser Humano con respecto a la aplicación de la biología y la medicina, en relación con el cual muchos autores ya habían señalado la necesidad de recurrir al principio de precaución tecnológica, consagrado en el mismo, para justificar el rechazo de las neurotecnologías profundamente invasivas (Nawrot, 2018, p. 11).

Como consecuencia, se desencadenó un intenso debate sobre la posibilidad de limitarse a la reconceptualización de los derechos humanos (tendencia seguida, como se verá en la carta española de derechos digitales) o viceversa, a la introducción de neuroderechos específicos (como se contempla en los proyectos de reforma chilenos).

En cuanto a la primera solución, una pista interesante puede encontrarse en la comparación con las soluciones ideadas por la comunidad internacional con respecto a los retos planteados a lo largo de los años por los descubrimientos científicos. Cabe señalar, de hecho, que la ampliación del catálogo de derechos humanos como reacción adecuada a los retos de la neurotecnología y de la inteligencia artificial no es una circunstancia aislada en el panorama jurídico.

Varias veces se ha ampliado este marco en respuesta a los nuevos avances en los campos biomédico y biotecnológico. Tomemos como ejemplo el campo de la tecnología genética.

En 1997 se adoptó la Declaración Universal sobre el Genoma Humano y los Derechos Humanos (UDhGHR), seguida en el 2003 por la Declaración Internacional sobre los Datos Genéticos (IDHGSD), para regular la recogida de muestras biológicas humanas y garantizar el uso de la información genética de acuerdo con el respeto de los derechos humanos. La interacción entre genética y derecho ha llevado así a enunciar derechos “híbridos”, entre ellos el “derecho a no conocer la propia información genética”, protegido por el art. 5 UDhGHR y por el art. 10 IDHGSD.

La trayectoria que acabamos de describir —que sigue el camino convencional de la aparición de los derechos humanos como respuesta específica a la puesta en peligro de intereses fundamentales— también puede emprenderse eficazmente para hacer frente a los retos que plantea la neurotecnología.

Entrando en el núcleo de la cuestión, la doctrina especializada ha acuñado cuatro especies del género más amplio de neuroderechos (Ienca & Andorno, 2017, p. 5). El neologismo ‘*neurorights*’ identifica los nuevos derechos humanos que protegen la intimidad y la integridad cerebral frente al mal uso de las neurotecnologías. Se caracterizan por mezclar un sustrato exquisitamente jurídico con principios neuroéticos y sociales. Hasta la fecha, los neuroderechos enumerados son el derecho a la libertad cognitiva, el derecho a la integridad mental, el derecho a la continuidad psíquica y el derecho a la privacidad mental (privacidad digital mental). Adelantamos que este último será objeto de discusión aparte, debido a las peculiares connotaciones que lo identifican.

El derecho a la libertad cognitiva es un concepto complejo, donde el término ‘cognitivo’ alude al proceso de organización de la información recibida por un individuo (Sommaggio et al., 2017, p. 32). Supone una ampliación de la tradicional libertad de pensamiento y puede resumirse, a nivel de definición, como la garantía de tomar decisiones libres y conscientes en relación con el uso de neurotecnologías (IMC, neuromodulaciones, etc.), asumiendo, al mismo tiempo, la libertad negativa de salvaguardar el propio dominio mental de restricciones o violaciones y la libertad positiva de actuar sobre la propia actividad mental (Bublitz, 2013, p. 234).

Por otra parte, para salvaguardar la salud mental se individualiza el derecho a la integridad mental frente a la intrusión y alteración de los procesos neuronales, lo que incluye las actividades de *brain-hacking* (el pirateo de una interfaz que produce daños psicofísicos) y la neuroestimulación no deseada.

Por último, el ‘derecho a la continuidad psicológica’ consiste en el derecho a proteger la identidad personal y la continuidad de los estados mentales frente a alteraciones externas no autorizadas.

## La *NeuroRights Initiative* y la perspectiva internacional

Los neuroderechos están surgiendo como nuevas formas de gobernanza también a nivel supranacional.

En mayo del 2017, veinticinco neurocientíficos e investigadores expertos reunidos en el *Morningside Group* –un grupo dirigido por el profesor Rafael Yuste, de la Universidad de Columbia– intentaron cristalizar los neuroderechos en un nuevo marco, ya que las directrices ético-jurídicas existentes parecían deficientes e inadecuadas para regular un ámbito tan problemático (NeuroRights Initiative, 2021). Entre los documentos de referencia figuraban, en efecto, la Declaración de Helsinki para la investigación médica, el Informe Belmont para la protección de los seres humanos en la investigación biomédica y la Declaración de Asilomar sobre la inteligencia artificial. Del mismo modo, la Declaración Universal de los Derechos Humanos de 1948 no aportaba nada sobre los requisitos para acceder a los datos cerebrales y utilizarlos.

La propuesta del Grupo Morningside se denomina *NeuroRights Initiative* y sigue la clasificación ya realizada por Ienca y Adorno. Dentro de ella, se identifican cinco neuroderechos. El *neuroright to free will*<sup>1</sup>, que consiste en la libertad de pensamiento y el libre albedrío; el *neuroright to equal access to mental augmentation* al aumento mental representa el derecho a garantizar que los beneficios de las mejoras en las capacidades sensoriales y mentales a través de las neurotecnologías se garanticen por igual a todos los individuos (Yuste et al., 2017, p. 159). Por otra parte, el *neuroright to personal identity* se entiende como la capacidad de controlar la propia integridad física y mental (Inglese & Lavazza, 2021, p. 15). Por último, el *neuroright to protection from algorithmic bias* y el *neuroright to mental privacy* resumen, respectivamente, la garantía de que el uso de la tecnología no cause daños y el derecho a proteger la información neuronal (Borbón y Borbón, 2021, p. 2).

Ahora bien, aunque el diseño es un *novum* que puede servir de punto de partida para la consolidación efectiva de los nuevos derechos, conviene señalar dos puntos críticos. En primer lugar, en la lista se utilizan términos bastante genéricos, fácilmente manipulables a nivel interpretativo y difícilmente conciliables con la especificidad de las alteraciones y condicionamientos del proceso cognitivo. En segundo lugar, no se prevé nada en términos de sanciones para remediar las violaciones de los derechos neuronales.

Por estas consideraciones, el catálogo esbozado por la “Iniciativa NeuroRights” no resolvió la cuestión ab origen de cómo regular, de manera que a pesar de las tímidas intervenciones las lagunas normativas persisten en el panorama internacional.

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<sup>1</sup> De acuerdo con la iniciativa, “*individuals should have ultimate control over their own decision making, without unknown manipulation from external neurotechnologies*”.

Por ejemplo, la Organización para la Cooperación y el Desarrollo Económicos (OCDE) ha creado un comité directivo sobre neurotecnología, y adoptó en el 2019 una Recomendación sobre Innovación Responsable en Neurotecnología.

En el contexto europeo, en cambio, puede ofrecer una trayectoria de investigación eficaz la posibilidad de aplicar analógicamente la disciplina de la inteligencia artificial en la búsqueda de una puerta de entrada a la protección de las neurotecnologías y los neuroderechos.

Como es ampliamente reconocido, la Resolución núm. 2015/2013 del 16 de febrero del 2017 del Parlamento Europeo, que incluye las “Recomendaciones a la Comisión sobre normas de Derecho civil relativas a la robótica”, ya ilustraba los posibles riesgos asociados al uso de herramientas de inteligencia artificial. En este contexto, al proporcionar la definición de autonomía de los robots, entendida como “la capacidad de tomar decisiones y ejecutarlas en el mundo exterior, sin la intervención o influencia del entorno”, se estableció la existencia de una relación inversamente proporcional en la que, a medida que las máquinas adquieren mayor autonomía, disminuye su consideración como meras herramientas bajo el control de otros actores<sup>2</sup>. Del grado de autonomía de que esté dotada la máquina artificial se sigue, por tanto, un diferente alcance del impacto que la IA puede producir en la vida humana. En sintonía con esta reconstrucción se encuentra la propuesta de Reglamento de la Comisión Europea para una “Ley de Inteligencia Artificial”, que supone la culminación actual del recorrido de la Unión en la materia, iniciado con la resolución del 2017 y continuado en el 2019 con la elaboración de las *Directrices éticas del grupo de expertos de alto nivel en inteligencia artificial*. La Comisión Europea, con el objetivo de establecer un marco normativo eficiente, adaptable y flexible a los avances tecnológicos, adopta un enfoque basado en el riesgo y, siguiendo el planteamiento que caracteriza a la legislación sobre seguridad de los productos, clasifica cuatro tipos de inteligencia artificial a los que corresponden sendos regímenes normativos. Pues bien, la peculiaridad de los datos neuronales podría llevar a que las herramientas neurotecnológicas recibieran el mismo trato que los sistemas artificiales de mayor riesgo.

Otra salvaguarda de la libertad cognitiva podría derivarse entonces de una interpretación tecnológicamente orientada del art. 22 del Reglamento General de Protección de Datos (GDPR), según el cual el interesado tendrá derecho a no ser objeto de una decisión basada únicamente en un tratamiento automatizado, incluida la elaboración de

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<sup>2</sup> La referencia es al Parlamento Europeo, *Resolución del Parlamento Europeo de 16 de febrero de 2017 con recomendaciones destinadas a la Comisión en relación con las normas de Derecho civil sobre robótica* (2015/2103(INL)), considerando T.

perfiles, que produzca efectos jurídicos en él o le afecte de forma significativa de modo similar (Mantelero, 2018, p. 754).

En esencia, se ha intentado incorporar los derechos neuronales a documentos internacionales ya existentes, como la Declaración Universal de Derechos Humanos o el Convenio Europeo de Derechos Humanos. Hasta la fecha, sin embargo, incluso la ONU se ha limitado a adoptar recomendaciones relativas a la protección de los derechos humanos frente a las tecnologías en sentido amplio, del mismo modo que el Consejo de Europa ha establecido un plan de acción estratégico quinquenal para el estudio de los impactos neurotecnológicos.

Así las cosas, la creciente innovación ha demostrado la necesidad de una intervención legislativa a escala mundial que garantice protecciones específicas en materia de transparencia y tratamiento justo de la actividad cerebral. El cerebro almacena cada vez más información sensible, y parece que la neurotecnología hará que esos datos sean peligrosamente accesibles en un futuro próximo.

En esta perspectiva, parece útil detenerse ahora en las propuestas de *soft-law* y *hard-law* elaboradas por los distintos Estados al respecto.

### **Modelos de *soft law*: la *Carta de derechos digitales* en España**

En el marco del *Plan España Digital* y de la *Estrategia Nacional de Inteligencia Artificial de España* se lanzó la propuesta de *Carta de derechos digitales*, aprobada el 14 de julio del 2021 por el Presidente del Gobierno español (Barrio Andrés, 2021).

Se trata de un documento sin carácter normativo, el cual, contado entre los instrumentos de *soft law*, pretende abordar los muy recientes retos interpretativos que plantea la innovación tecnológica y, al mismo tiempo, proponer un marco de referencia desde el cual calibrar la intervención legislativa en la materia. Consciente de que el avance de la investigación científica plantea la necesidad de garantizar la “protección de los derechos individuales y colectivos de las personas, los valores constitucionales que constituyen el único cimiento posible de la convivencia”, el documento se sitúa en la línea de la evolución en el reconocimiento de los derechos digitales, incluyendo el Título X de la *Ley Orgánica 3/2018, de Protección de Datos Personales y garantía de los derechos digitales* (García Fernández, 2022, p. 69). Dentro de este se puede discernir un núcleo de seis capítulos con referencia a 26 tipos de derechos esenciales para garantizar una digitalización humanista.

En concreto, el capítulo inicial identifica los denominados derechos de libertad, entre los que se encuentran el derecho a la protección de datos personales y el derecho a la herencia digital.

El segundo identifica la categoría de derechos de igualdad, ejemplificada en el derecho de acceso al espacio digital y el derecho a la protección de los menores en semejante dimensión.

También es central el catálogo de derechos de participación y de conformidad del espacio público, que pretende proteger el derecho a la neutralidad de Internet y los derechos digitales de los ciudadanos en sus relaciones con la administración pública. Dichas garantías también se declinan en la perspectiva del derecho laboral en el capítulo cuatro, denominado “derechos digitales del entorno específico”.

Solo en el capítulo 5 encontramos una auténtica apertura al tema de la neurotecnología, ya que entre los derechos digitales en entornos específicos se mencionan expresamente los derechos digitales en el empleo de las neurotecnologías. De hecho, las condiciones, los límites y las garantías para la implantación y uso de las neurotecnologías podrán ser reguladas por ley con el objetivo de garantizar no solo el control de cada persona sobre su propia identidad, asegurando la autodeterminación individual, la soberanía y la libertad individual, sino también la confidencialidad y la seguridad de los datos obtenidos a partir de los procesos cerebrales de la persona o relacionados con ellos, así como el pleno control y la eliminación de dichos datos, además de regular el uso de interfaces hombre-máquina que puedan afectar a la integridad física o mental de la persona y, por último, garantizar que las decisiones y los procesos basados en neurotecnologías no estén sesgados.

Sin embargo, la lista que acabamos de esbozar muestra cómo sigue faltando una calificación adecuada de los derechos neuronales: lo que el documento pretende no es tanto la creación de nuevos derechos, sino más bien “perfilar los más relevantes en el entorno y los espacios digitales o describir derechos instrumentales o auxiliares de los primeros” (Brugal, 2021, p. 3). Si, por un lado, las referencias de la Carta de derechos digitales privilegian una declinación innovadora de los derechos ya existentes en el espacio digital, por el otro la doctrina española mayoritaria centra sus reflexiones en la necesidad de legislar sobre los neuroderechos determinando *ex novo* formas de protección capaces de garantizar la “protección de las propiedades públicas de la experiencia mental humana”.

## **Pruebas de *hard law* en Chile entre la reforma constitucional y el proyecto de ley**

Observando el panorama jurídico latinoamericano, la comparación de los modelos de protección aplicables a los neuroderechos resulta aún más estimulante.

A la fecha, la experiencia chilena representa un *unicum* en el panorama mundial, al ser el único país que ha recurrido a instrumentos de *hard law* para regular las formas

de acceso al mundo cerebral, consciente de que la evolución cognitiva no puede desvincularse de la garantía de los derechos y de las libertades fundamentales. En concreto, se ha planteado un procedimiento de reforma constitucional (boletín nº 13.827-19) y, paralelamente, se ha elaborado un proyecto de ley (boletín nº 13828-19), con el objetivo de ampliar el catálogo de derechos fundamentales y un embrionario intento de incluir entre ellos los neuroderechos (Yuste, 2023, p. 15).

En el plano constitucional, la propuesta de modificación pretendía introducir un nuevo apartado, en el número 1, del art. 19 de la Carta Fundamental. Esta disposición regula el derecho a la vida y a la integridad física y psíquica de las personas, garantizando su protección frente al avance de las neurotecnologías. Al final de la tramitación parlamentaria, el 14 de octubre de 2021 se aprobó la Ley de Reforma Constitucional, y se introdujo un nuevo apartado en el artículo en cuestión, en el que se encomiendan a la legislación ordinaria los requisitos y las condiciones de acceso a la monitorización de la actividad cerebral.

El proyecto de ley “sobre protección de los neuroderechos y la integridad mental, y el desarrollo de la investigación y las neurotecnologías” fue, en cambio, promovido por un grupo de senadores representado por Guido Girardi, miembro de la Comisión para los Retos del Futuro, la Ciencia, la Tecnología y la Innovación, asistido por el profesor Rafael Yuste, director del proyecto BRAIN.

El proyecto de ley consta de tres capítulos y diez artículos, y se centra en el binomio desarrollo neurotecnológico-protección de la integridad mental y privacidad: emblemático en este sentido es el art. 2, que define los neuroderechos como “nuevos derechos humanos que protegen la privacidad y la integridad mental y psíquica, tanto consciente como inconsciente, de las personas del uso abusivo de las neurotecnologías”. Del tenor de la disposición se deduce que está prohibida cualquier interferencia o forma de intervención en el cerebro, mediante el uso de neurotecnologías, que no esté sujeta al consentimiento libre e informado del receptor incluso en el caso de procedimientos médicos. A la inversa, el derecho a la intimidad entra en juego cuando se permite la recogida, el almacenamiento y la difusión de datos neuronales.

Sin embargo, la revisión de la Carta no ha estado exenta de críticas. En muchos sectores se argumenta que la gemación de los neuroderechos sería totalmente superflua, ya que estarían relacionados con derechos que ya están ampliamente garantizados en la Constitución, como los derechos a la intimidad, a la integridad mental y a la integridad física. Así pues, las libertades fundamentales consagradas en la Constitución no son reducibles a meros preceptos, sino que identifican un catálogo abierto de principios normativos más amplio, que puede enriquecerse mediante la interpretación de normas ya existentes (Zúñiga-Fajuri et al., 2020).

Por el contrario, parece más aconsejable acudir al instrumento legislativo ordinario con la finalidad de “hacer conscientes a los ciudadanos de la importancia del tema y de los derechos y deberes asociados”, siempre que el núcleo normativo esté adecuadamente calibrado al progreso científico (López-Silva y Madrid, 2021, p. 53).

## De los datos personales a los datos cerebrales: la protección de la privacidad mental

Por lo menos desde el punto de vista teórico, el reconocimiento del género de los neuroderechos no agota el abanico de las *quaestiones* planteadas al jurista.

Si en su día uno se preguntaba hasta qué punto el ordenador podía convertirse en un instrumento de control de la vida y de los asuntos humanos, hoy la misma cuestión puede declinarse en los siguientes términos: ¿hasta qué punto las neurotecnologías pueden invadir y controlar la actividad cerebral? ¿Cómo puede conciliarse la privacidad con las técnicas de lectura del cerebro?

El alcance de estas preguntas es cada vez más central, dado que en un futuro próximo la comprensión científica de cómo se digitaliza el pensamiento permitirá deducir una cantidad creciente de información sensible, procesada en un contexto parcialmente inexplorado en el que crece el peligro de las “*black box*”, es decir, la dificultad de rastrear los dispositivos *deep learning* que utilizan redes neuronales (Desai y Kroll, 2017, p. 1). Asegurar la entrada correcta y prepararla para alcanzar una salida específica no es, de hecho, ninguna garantía de la transparencia del proceso seguido ni de las variaciones realizadas por la IA.

Así las cosas, tal vez las respuestas, nada obvias, exijan un replanteamiento de la propia privacidad, tal como la entendían tradicionalmente Marmor, Warren y Brandeis; esta, en la confrontación con los datos cerebrales parece perder, al menos en parte, sus connotaciones esenciales (Warren y Brandeis, 1890, p. 193). Las técnicas innovadoras de la digital *mind technology* han contribuido, de hecho, a delinear la denominada *digital mind*, es decir, un conglomerado de datos relativos a la información mental de una persona, incluidos los estados cognitivos y afectivos. Por lo tanto, la concepción de los datos personales sujetos a la protección del conocido GDPR (Resta y Zeno-Zencovich, 2016) centrada en la información externa, parece *prima facie* inadecuada para la identificación de una barrera normativa a las intrusiones de las neurotecnologías innovadoras antes mencionadas, dado que, a la luz del denominado “problema de la inyección”, los datos cerebrales no permiten ninguna separación entre los datos tratados y el órgano del que emanan. De ello se deduce que la necesidad de protección se aplica no solo a la información que se vigila o registra, sino también a las fuentes de dicha información.



La discrepancia con los dictados del GDPR lleva, por consiguiente, a un *neuro exceptionalism* (Schick, 2005, p. 36) calcado de las insuficiencias que ya habían surgido en el pasado en relación con la protección de los datos genéticos, lo que había llevado a apelar al denominado *genetic exceptionalism* (McGee, 1988, p. 565).

En este sentido, teniendo en cuenta los requisitos previos de aplicación del GDPR, parece apropiado entender si la naturaleza de los datos cerebrales puede asimilarse a la de los datos personales con arreglo al ex art. 4 del GDPR (Stanzione, 2016, p. 27) y, en segundo lugar, si pueden incluirse en las categorías especiales con arreglo al ex art. 9 (Ienca y Malgieri, 2022, p. 7).

El art. 4 identifica los datos personales relativos al estado de salud física o mental. De un primer análisis cabría pensar que la información neuronal sería clasificable como datos personales en virtud del ex art. 4, ya que la referencia no se refiere únicamente a estados patológicos mentales, sino también a estados de “salud mental”. El carácter estrictamente personal de los datos cerebrales fue confirmado posteriormente por la “Modernización del Convenio 108” del Consejo de Europa en lo que respecta al tratamiento de datos personales y por las directrices sobre privacidad elaboradas por la OCDE, según las cuales los datos cerebrales incluyen información sobre el funcionamiento y la estructura del cerebro humano. Se caracterizan precisamente por un alto potencial de interacción en tiempo real que permite un acceso rápido a las funciones neuronales.

La reflexión debe dirigirse ahora a la disciplina del GDPR, según el cual

está prohibido el tratamiento de datos personales que revelen el origen racial o étnico, las opiniones políticas, las convicciones religiosas o filosóficas, o la afiliación sindical, así como el tratamiento de datos genéticos, datos biométricos destinados a identificar de manera unívoca a una persona física, datos relativos a la salud o a la vida sexual o a la orientación sexual de una persona. (art. 9).

Surge entonces otra pregunta: ¿forman los datos cerebrales índices reveladores de los parámetros que acabamos de mencionar? La respuesta no puede ser unívoca. En primer lugar, debemos comprender qué criterio distingue los datos sensibles de aquellos que no lo son. Según una primera orientación, la clasificación se basaría en la esencia y en la pertinencia ontológica de los datos, desvinculados de otros factores. Según otro enfoque, en cambio, la clasificación debería basarse en la finalidad que se persigue con el registro de los datos neuronales. Por lo tanto, si el tratamiento se lleva a cabo con fines incluidos en las categorías del art. 9, no cabe plantearse el carácter sensible de la información obtenida. Por el contrario, el carácter sensible parece quedar excluido cuando

el tratamiento de los datos va más allá de los fines mencionados. La integración de las técnicas neurocientíficas con las inteligencias artificiales viene muy bien en este caso. De hecho, el uso de algoritmos en la descodificación de los impulsos neuronales puede facilitar sin duda la identificación de los sujetos. Por ejemplo, la activación de una zona encefálica relacionada con el lenguaje permitiría rastrear las opiniones políticas, los datos biométricos o la orientación sexual, de modo que los datos obtenidos entrarían dentro de la salvaguardia del art. 9, cuyo tratamiento solo está permitido en los casos previstos en el mismo.

Por otra parte, los datos neuronales pueden revelar simples emociones o pensamientos que no están íntimamente relacionados con la información sensible.

De ello se desprendería que todos los datos cerebrales no sensibles estarían sujetos a las condiciones generales de licitud del tratamiento reguladas por el art. 6 del GDPR, incluido el consentimiento para el tratamiento, la necesidad del tratamiento para la ejecución de un contrato en el que sea parte el interesado, la necesidad de cumplir una obligación jurídica a la que esté sujeto el responsable del tratamiento y las hipótesis mencionadas en este (Bravo, 2017, p. 101).

Sin embargo, tal conclusión no parece apoyarse si se estrecha el foco de atención a la conformación de los datos neuronales. En efecto, los datos cerebrales no son meramente legibles, sino que también son fácilmente reescribibles. Es precisamente el aspecto de la escritura cerebral el que permite su almacenamiento y posterior reutilización por el controlador, incluso para fines ajenos a aquellos para los que se llevó a cabo el procesamiento, exponiendo al controlador a fenómenos de hackeo cerebral. El peligro de los ciberataques ha llevado en los últimos años al uso de anonimizadores de la BCI que ocultan la identidad o de modelos de arquitecturas que preservan la intimidad, pero estas formas de protección aún no han resultado totalmente eficaces.

En el marco actual del GDPR, por tanto, existe una laguna de protección en lo que respecta a los datos cerebrales, ya que la estricta regulación del art. 9 parece ser aplicable únicamente cuando los datos neuronales están íntimamente relacionados con las categorías especiales protegidas por la disposición. La incertidumbre aplicativa se hace aún más evidente si se tiene en cuenta que las ondas cerebrales pueden registrarse en ausencia de consentimiento pleno para la recogida y el uso de la información procesada. Esto es aún más cierto si se analizan las formas heterogéneas en que los destinatarios de las neurotecnologías pueden perder el control de sus datos: el consentimiento para la recogida de sus datos puede darse en ausencia de información adecuada sobre las condiciones de uso, especialmente en el caso de las tecnologías más sofisticadas; o puede ocurrir que el titular dé su consentimiento informado para un fin determinado, ignorando la reutilización para otros fines.

Las criticidades recién señaladas demuestran la urgencia de una respuesta normativa para la protección del procesamiento de datos cerebrales, sugiriendo el reconocimiento previo de un derecho formal a la privacidad mental, que apunte a proteger el entramado de datos cerebrales en función de la transparencia y trazabilidad en el acceso a la divulgación indiscriminada de datos cerebrales en la infoesfera. Solo emprendiendo tal vía metodológica será posible evitar la deriva por la que el individuo de ser el propietario original de los datos cerebrales pasa a ser su mero copropietario.

### **Observaciones finales: *habeas corpus*, *habeas data*... ¿*habeas mentem*?**

La ausencia de un marco definido que regule los neuroderechos a escala nacional y supranacional actualiza el desafío inherente a la identificación de guardarrailles normativos apropiados y de mejores “infraestructuras” para la protección de los datos neurales. La evolución de lo posthumano, también en sus implicaciones filosóficas y ético-sociales, requiere un enfoque interdisciplinar basado en la protección de las garantías fundamentales y del mundo interior frente al llamado riesgo del reduccionismo neurológico, sin renunciar a los logros neurotecnológicos que ofrecen importantes ventajas en el ámbito terapéutico-sanitario.

Las experiencias chilena y española han revelado parcialmente la insuficiencia de una intervención circunscrita. Por ello, es más que digna de apoyo la idea expresada en la reciente conferencia del Garante de la Privacidad, según la cual es necesaria una convención internacional de principios que incluya al mayor número posible de naciones, también en vista del papel crucial que desempeñarán en los próximos años las formas proliferantes de inteligencia artificial<sup>3</sup>. La enucleación de los nuevos derechos deberá afrontar también el peligro de la llamada “inflación de derechos”, es decir, el reconocimiento incontrolado de estos derechos sin un fundamento de protección eficaz, que está íntimamente relacionado con el riesgo de una reconstrucción fragmentaria y frágil de la personalidad humana. Para evitar esta deriva, la intervención normativa debe guiarse por criterios reguladores precisos, como la llamada “prueba de justificación” o la ausencia de repetitividad en la formulación de valores ya protegidos en el marco jurídico internacional.

En definitiva, la transición del *habeas corpus* del Estado de derecho y del *habeas data* de la sociedad de la información al *habeas mentem* de la sociedad de la posinformación ya ha comenzado (Pollicino, 2021, p. 12). Esperemos que en un futuro próximo las respuestas superen los numerosos interrogantes.

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<sup>3</sup> En este sentido, léase el discurso del presidente italiano de la Autoridad de Privacidad, el profesor Pasquale Stanzone, en enero de 2021, en la conferencia titulada “Privacy e neurodiritti. La persona al tempo delle neuroscienze”.

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# UNSETTLING SOLIDARITY: TOWARDS A MATERIALISTIC APPROACH TO BORDER TRANSGRESSION\*

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# SOLIDARIDAD INQUIETANTE: HACIA UN ENFOQUE MATERIALISTA DE LA TRANSGRESIÓN FRONTERIZA

## Abstract

Is it possible to rethink the idea of solidarity beyond traditional and mainstream frameworks of analysis, between humanitarianism, political action, and charity? Can we deprovincialize a concept which was mainly developed in the Global North and re-imagine it starting from cases and situations in the South, non-Western agencies, and worldviews? Can we reinterpret the production of solidarity as a process which is fundamentally enmeshed in the underground informal economy of border transgression?

Based on three ethnographic case studies from North Africa, this article aims to raise new questions about the heuristic dimension of solidarity, fostering our understanding of the relational and political dynamics at work along contemporary illegalized migration routes. More broadly, it will attempt to shed light on the production of solidarity as a fluid situation which is always in the making from a materialistic perspective. This requires us to think about spurious contexts and practices which exceed conceptual binaries such as "smugglers" and "facilitators", "profit" and "not-for-profit", even "donor" and "recipient," by looking at invisible and informal interactions and relations, tactical alliances, infrastructures, mutual aid, and cooperation among people on the move.

## Keywords

solidarity; borders; materialism

## Resumen

¿Es posible repensar la idea de solidaridad más allá de los marcos de análisis tradicionales y dominantes, entre humanitarismo, acción política y caridad? ¿podemos desprovincializar un concepto desarrollado principalmente en el Norte Global y reimaginarlo a partir de casos y situaciones del Sur, de agencias y cosmovisiones no occidentales? ¿podemos reinterpretar la producción de solidaridad como un proceso fundamentalmente enredado en la economía sumergida informal de la transgresión de fronteras?

Basándose en tres estudios de casos etnográficos del Norte de África, este artículo pretende plantear nuevas preguntas sobre la dimensión heurística de la solidaridad, fomentando nuestra comprensión de las dinámicas relacionales y políticas que actúan a lo largo de las rutas migratorias ilegalizadas contemporáneas. En términos más generales, tratará de arrojar luz sobre la producción de solidaridad como una situación fluida que siempre se está gestando desde una perspectiva materialista. Esto nos obliga a pensar en contextos y prácticas espurios que superan los binarios conceptuales como “contrabandistas” y “facilitadores”, “con ánimo de lucro” y “sin ánimo de lucro”, incluso “donante” y “receptor”, examinando las interacciones y relaciones invisibles e informales, las alianzas tácticas, las infraestructuras, la ayuda mutua y la cooperación entre las personas en movimiento.

### **Palabras clave**

solidaridad; fronteras; materialismo

## The matter of solidarity

In the last decade, a growing body of work by European and Western scholars has used the concept of solidarity to describe various forms and practices, inner intentions and political orientations related to supporting the illegalized movements of migrants toward and through Europe (Agustin et al., 2018; Ambrosini, 2022; Della Porta & Steinhilper, 2021; Rygiel, 2011; Tazzioli, Walters, 2019). Two of the authors of this article suggested conceiving of and reframing the often ephemeral, yet persistent, tactical coalitions among people on the move (either migrants, refugees, or asylum seekers), and groups of activists and civil society actors through the lens of the Underground Railroad in nineteenth-century pre-Civil-War US history (Queirolo Palmas & Rahola 2022). Other colleagues and comrades invited us to re-read the necropolitical Mediterranean "solid sea"—which, despite the many dangers it poses, is challenged every day by hundreds of dinghies and crossed by many disobedient vessels involved in rescue operations—as a space of re-articulation and crossing similar to the "Black Atlantic" explored by Paul Gilroy, thus suggesting the idea of a "Black Mediterranean" (Smithe, 2018). In both cases—as well as in more discrete situations involving direct support to people crossing, inhabiting routes and being hosted while on the move—the fact that solidarity defies the European border regime and its legal order gives it a central and almost implicit role (Schwartz & Schwenken, 2021; Lendaro, 2018; Ataç et al., 2016), because it is used as an explanatory category. Moreover, it has often been rearticulated as an act of moral and political disobedience, which means it has been over-exposed, criminalized, and persecuted, with activists being charged with aiding and abetting illegal migration and smuggling (Fekete, 2018; Schack & Witcher, 2021). In this respect, the meaning of the term also seems to require a necessary and broader redefinition, an expansion of its semantic reach, and perhaps even a radical re-articulation.

Indeed, appealing to solidarity to define and describe all these specific acts of complicity with illegalized movements has often turned out to be based on a somewhat partial and even Manichean perspective, one that clearly distinguishes between subjects and objects, donors and recipients, profit and not-for-profit actions, the West and the rest. Such perspective implicitly conceives of solidarity as a kind of altruistic and disinterested gesture (Jeffries, 2014), rejecting all other possibilities of tactical alliances, forms of help and cooperation with and among people on the move as impure and unfitting. As we know, solidarity is a concept with a deep-rooted and heavy sociological and political meaning (Kymlicka, 2015). From a political perspective, solidarity is mainly understood through the lens of the Marxian or Marxist notion of class solidarity, intended as a form of awareness of a common exploited and subaltern condition. Its sociological

definition dates back to Durkheim's idea of "organic solidarity," intended as a kind of glue or energy which holds together different interests and functions within the rationalized framework of the modern nation state. Both traditions turn out to be somewhat useful in our case. On the one hand, solidarity toward and among people on the move may be inscribed within a specific political horizon, as a process of (class) subjectivation beyond national boundaries and belongings. On the other hand, the Durkheimian perspective highlights a less substantial or essentialized dimension, a rather impersonal and operational functioning which prevents a general given situation from falling apart. In a way, our understanding here includes both meanings, as it seeks to combine the political dimension of an act of subjectivation (of defiance and disobedience) with a more relational approach to solidarity intended as a form of social interaction and exchange, beyond overdetermining moral judgements and partitions.

Indeed, in the case of border transgression and unauthorized mobility, once we understand solidarity as a peculiar relation whose main outcome consists in producing a route or making it possible, we end up facing a more practical dimension, one which stems not only from moral intentions and ethical-political orientations, but which is also based on actual, material, and effective conditions. As is the case with all conceptual categories, solidarity is defined by both genealogy and translation, which requires us to trace the trajectories that may have been drawn by the concept, its inner movements, and different declinations. In doing so, we start from the assumption that, when moving away from the Western tradition (the Latin meaning related to the idea of a common obligation, *in solido*, of indebted people (Roediger, 2016)) and from a Eurocentric perspective, the concept takes on different meanings and has a different weight (Bauder & Juffs, 2020).

Without pretending to do an exhaustive etymological and genealogical exercise as such, this article is limited to exploring some unconventional encounters and instances of cooperation among people on the move. Although it may seem counter-intuitive, we argue that these could be seen as forms and effects of solidarity in their own right. We, the authors, are all involved in a broader ethnographic multi-site research project whose aim is to explore border transgression practices enacted by people on the move as well as by heterogeneous groups that support their stay and movement. Starting from this fieldwork, our main objective is to generate a new standpoint by de-centering the gaze and adopting a Southern perspective as the preferred ground from which the mainstream research narrative founded on political and humanitarian oppositions can be unsettled. Unsettling to us is another way, perhaps a complementary way, of making solidarity "uneasy," to quote David Roediger (Roediger, 2016), both by broadening its geopolitical array—thus provincializing Europe—and by extending

its field of application beyond the conventional distinction between disinterested altruistic gesture and materially oriented practices with a specific purpose. All of this requires a different and more inclusive notion of and approach to solidarity. We could even talk about a relational turn, one that sees it as something that is less embodied in individual moral and political positions and intentions, and more involved in the practical outcomes triggered by it. In this sense, solidarity is conceived of as a fuel, as energy or even, following Gabriel Tarde (Tarde, 1903), as a flow of electricity circulating among multiple nodes and poles.

Accordingly, we could even wonder whether those who are regarded as smugglers, and thus criminalized, might turn out to be active vectors of such energy or electricity, as Khosravi, Keshavarz and other scholars (Keshavarz & Khosravi, 2022; Zhang et al., 2018) argue in their work. By the same token, Tunisian fishermen searching for economic value in the engine of a shipwrecked boat could also be acting as "conductors" for all those travelers trying to reach Lampedusa, regardless of their beliefs on borders and solidarity. Addressing these questions means paying particular attention to the actual and material dimension of a set of interactions which can be referred to as a different, unsettled, and perhaps less comfortable ("uneasy") idea of solidarity. This also suggests a possible critique of the political economy of solidarity. Thus, our intention is to immerse ourselves into the hidden abodes where the modes of production of solidarity can be observed, addressing different material instances and situations characterizing the routes followed by many migrants, wondering whether it is still a matter of solidarity and, if so, of what kind.

### 1) Navigating unsettling situations

For the reasons outlined above, the article focuses on three ethnographic scenes from North-Africa which are linked with our research fieldworks. The first one (the *Polò* story) was directly experienced by one of the authors and it is related to a blurred location that facilitated movements and encounters in the Algerian city of Tamanrasset, located around 400 km from the Nigerian border. The second one (the *Maquis* story) depicts the economic and social functioning of a multilevel facility for sub-Saharan migrants in the Tunisian port of Sfax. The third one (the digital story) describes an online space, a platform offering different exit tickets to pierce through the borders of the so called "Balkan route" (El-Shaarawi & Razsa, 2019). Based on these locally grounded dispatches, we aim to open a new terrain for questions and research, bringing up the challenging and somewhat unsettling idea of "solidarity at large."

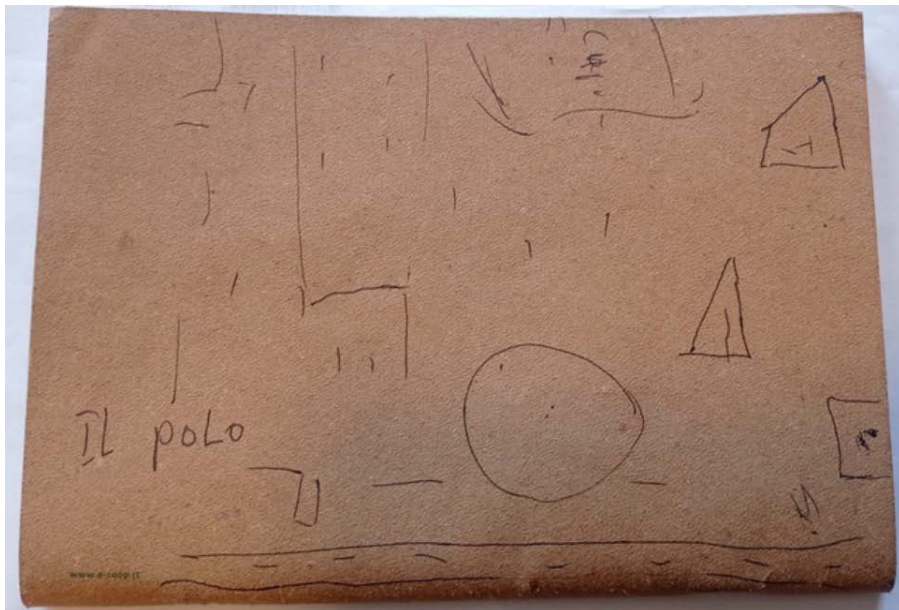


By illustrating three different, unsettled configurations of solidarity outside Europe, the following three sketches also reflect the authors' different positionalities. The *Polò* story comes from a longstanding research project along migrants' routes that some of us had been working on since the dismantlement of the Calais Jungle (anonymized, 2022), dealing with different forms of solidarity and cooperation among people on the move and activists. This project also gave rise to the idea of a "third gaze", shifting the subjectivity and the positioning of researchers and informants. The *Polò* story is a case in point, with one of "our" previous informants re-positioning himself as a refugee author and researcher recounting his own experience of the journey. The *Maquis* story is the outcome of a doctoral research project conducted by one of us which was carried out in the city of Sfax between 2017 and 2019. This place, which is central to the creation of social connections among people on the move in Tunisia, was the subject of several lengthy ethnographies in which observation and interviews were conducted with various categories of actors involved in migrant mobility. More broadly, the work on which this second sketch is based described the power relations at work in associations autonomously run by migrants between Tunisia and Ivory Coast. Finally, the digital infrastructure sketch stems from an ongoing observation of four online chat channels run by Moroccan *Harraga* in different locations along the route to Europe. On these platforms, we rely on the exchanges performed in this online social space. We reconstruct the principles and the directions that shape the logistics, the resources, and the facilitation linked with the journeys of Moroccan *Harraga* from Morocco to Turkey, through the Balkans, and to Europe.

### **Sketch 1: Playing Polò in Tamanrasset**

The rigid polarity between understanding solidarity as either a disinterested gift or as an unauthorized transit service (including smuggling) seems to compress a whole set of dense and contingent relations which structure cooperation among people on the move. This simplification also fails to account for the agency inscribed in the small practices of unauthorized traveling, which are thus obscured by external acts of solidarity or by provisions delivered by economic operators dealing with migration, whose proliferation results from the harshening of the border regime. To counter this polarity, we aim to shed light on the dimension of cooperation during the journey by conceiving of it as something which exceeds the gift/market dichotomy, that is, as an expanded and constantly reproduced space, a specific symbolic and material economy in which seemingly antithetical principles are integrated, composed, and enhanced.

Figure 1. Il Polò drawing



Source: authors' drawing, 2024.

Let us start with a drawing (Figure 1) which is meant to depict the first safe spot after crossing the border between Algeria and Niger and arriving in Tamanrasset, "the gateway to the desert." The author of the drawing is Georges, a former traveler who is now one of us. Suddenly, in an academic conversation about desert passages, we heard him exclaim: "the first thing you do when you get to Algeria is look for the *Polò*. All of us guys look for the *Polò*." In a matter of minutes, we receive two different definitions of this space, a common recurrence in the idiom of Francophone travelers which at first glance seems to refer to a place of hospitality, density, and rerouting: the first definition foregrounds mutual aid, solidarity, and self-organization; the second one is focused on the provision of services which are conventionally associated with smuggling. Despite appearances to the contrary and in spite of the drawing representing the mansion of the *chef* living in the *Polò* and the tents of the travelers camped out in the courtyard as spatially opposed, this is no contradiction, as we will show in the following discussion. Indeed, the place where people have dinner (the circle at the center) symbolizes a community in which various subjects defined by different positions and temporalities are re-united thanks to the communal experience of eating: "we all eat together from the same plate in a circle, taking the food with our hands."

The *Polò* is a place you find while following the flow as you see other "black fellows driving you there." It seems like a passage, a place that changes your experience from a condition of movement into one of rest which makes it possible to take off your perceived migrant *habitus*: "you have to leave your backpack somewhere, so you are not considered a migrant when you walk." The *Polò* becomes a community of suspended travelers which is based on some homogenous features—language and nationality—while still maintaining a certain heterogeneity:

there were not only Cameroonians, but there were also Christians and Muslims among us. The city is full of *Polòs*, the Nigerian one, the Malian one, and so on. These shelters are run by us, they are located in the backyards of the houses of people who have been settled in Tamanrasset for longer or in abandoned construction sites.

Thus, people on the move can access a network of information and relationships which leads to and establishes the circulation of different goods and services: food, medicines, false documents, tickets, money-transfers for small amounts, phone calls to families, and income opportunities through casual employment. At the center of this exchange network, there is a *chef* who is not so much an actor looking to extract value from it, but rather acts as a guardian, a guarantor for the space and for its social and economic functioning, and may receive a material return: "the *chef* has inherited the *Polò* from a previous elder owner who left and in turn he will leave it to someone else once he gets back on the road." The two words which recur the most when describing the people dwelling in the material and symbolic space represented in the drawing are elders and travelers, both of which establish a specific relationship with space and time as well as with power.

We wonder what kind of economy and what kind of solidarity the *Polò* fuels.

Of course, there are fees, a certain amount of money will be earned by the *chef*, for example when he purchases food for everyone. This will allow him to cover the rent. But the *chef* is someone like us. He just came here before and got settled. He works as a bricklayer during the day and then eats with us in the evening. If you don't have any money, no one will turn you away and you can always find something to eat, you are accepted even if you don't have anything. If you really can't get by, it's the *chef* who pays for your ticket so you can go elsewhere, recommending that you call him once you have arrived.

However, the *chef* does not control all circulation and exchanges:

when I arrived, I associated with the guys who had a phone, to call my brother in Algiers. I asked him to send me money through their phones, paying a

small fee. Everything happened informally through long-distance transactions. I spent three weeks in the *Polò*. I was considered an “elder” because I was always handing out some money. When I left using a fake student ID—which gives you a better chance of traveling around Algeria without being pulled off buses by the police and dumped out to die in the desert—I left everything I had to the fellows in the *Polò*.

In this case, having access to a certain amount of money (which stratifies the positions of different travelers) helps to build a reputation and a character—that of the elder—which can only be maintained by circulating resources with no fees other than moral ones. Leaving some goods and belongings to those who remain evokes a ritual related to prisons, which underscores the segregated and self-detaining dimension of the *Polò* as a temporary shelter, preventing guests from being captured by the authorities until they can continue their journey.

Inside the *Polò*, order is maintained through simple rules which are communicated by the *chef* to the traveler during the first communal meal: "1) Housework is shared. Everyone must contribute. 2) All violence is prohibited. If anyone causes injuries to others, there is a cash penalty and eventually they will be expelled. 3) No stealing. Anyone who steals will be beaten with a stick." Once they have been defined, both space and time can be narrated. In this sense, the *Polò* is reminiscent of one of Italo Calvino's *Invisible Cities*, Euphemia, where people just exchange memories and words: "It was nice to stay there. Everyone told their story; you can listen and participate in endless storytelling. You can recover and feel safe, leaving aside the stress, pace, and dangers of traveling." The *Polò* is an inhabited pause, a dwelling along the route, which provides gifts, money, resources, and exchanges in a contingent and variable manner. Thus, it establishes a peculiar and contrapuntal travel economy with its own pedagogical dimension: a learning space which reproduces a fragile, but necessary form of mutual cooperation and complicity since "with fellow travelers you behave like a family, and everyone can often count on the help of others." This specific moral economy and its institutions such as the *Polò* directly counter those put in place by profiteers, professional smugglers, "those who want to profit from our journeys without limits, those who want to turn us into their commodities."

As Georges finishes his drawing, the sheet is filled with abstract dots: fires to provide light, people, and masts with curtains to offer shade, surrounded by a boundary wall

separating the *Polò* from the city. This reminds us of something we have already heard: "My journey was a road to nowhere, with me having nothing and getting somewhere almost by magic." Such magic is not only a matter of luck, but also of efforts, cooperation, encounters, exchanges, complicity, and brotherhood which are built along the routes. All these can be summed up by the word "solidarity" if we are willing to extend its scale and unsettle its scope.

## Sketch 2: Maquis' time, tensions, and cooperation

In Tunisia, the city of Sfax is one of the most important places of passage on the way to the Italian coasts and to Europe. The extensive media coverage on Sfax, which is regularly revived by shipwrecks (always attributed to so-called 'unethical smugglers'), makes it one of the quintessential places in the 'border spectacle'. Yet, there are few places in Sfax where movements can be easily observed. However, all the relational configurations leading to movements are embedded in micro-places where relationships are formed and undone based on the need for cooperation. Among these places, the *Poudrière* is probably one of the most fascinating points of observation of this process.

A former residential building, the *Poudrière* has multiple functions. It is useful to those who wish to just pass through as well as to those who wish to stay, find a job, and accumulate various forms of capital. In 2017, Jimmy, a young Ivorian man who had just arrived in Sfax, explained the importance that this place had acquired within the community of adventurers in Tunisia in these terms:

Before you know this place, we can say that you don't know anything about Tunisia... It's like you're in the dark. I spent five months in the 'bara' on my own before a brother showed me this place, I had even lost the taste of home, of our food. I thought I would be staying in the bush until the end of my adventure ... [...] Here you can get to know the little plans, the stories, how we do what. You come, you drink your beer, you chat a bit ... that's how you learn.

The *Poudrière* is not only a 'recreational' space where some homesick adventurers come to quench their thirst. It is also, and above all, a space where power relations are forged through exchanges which are made all the more crucial by the fact that they take place in the context of constraints produced by the border regime (Figure 2).

Figure 2. The Poudrière



Source: author's photo, 2024.

The entire political economy of mobility that adventurers, facilitators, and entrepreneurs with more or less dubious histories put in motion is organized on four floors. The first two floors are simply designated as housing, with leases of different lengths, which are essentially arranged based on criteria of national proximity. While Ivorians were 'dominant' managing this place for a long time, things have now changed. On the third floor, the western half of the building is designated as short-term accommodation for newly arrived people or those in transit. The eastern half is a multimodal space. On the right, a small 'bunker' serves as a shop specializing in African products, such as Attiéké, beauty products, and condiments. These are made available through a long supply chain linking the 'gouro' market in Abidjan to this small room lost in the suburbs of Sfax. This place has been run by 'Maman Nelly' since the beginning of the *Poudrière* history. The fourth floor, the *maquis* of the *Poudrière* is the core of interactions. The western part of this floor hosts the kitchens, which are always managed by the women living here. On the east side, a large room, divided in two by long tables and opening onto a large roof terrace, forms the *maquis* room. A large television stuck to the wall, connected to a sound system, broadcasts the latest Zouglou or Nigerian Afrobeat clips, depending on the current balance of power. They serve beer, fish and Attiéké that would make even the most knowledgeable person wonder what country they are in.

This unique arrangement, which is a direct consequence of the economy linked to African migrants' mobility in Tunisia, has a singular history. In a way, it is the mirror of the power relations which have developed along this migratory route, of its political balances and tensions. Indeed, the *Poudrière* was born out of a history of cooperation. At the beginning of 2016, several Ivorians who had been kicked out of their homes started looking for a place where they could live collectively, sheltered from the pressure exerted by landlords. It was thanks to the intermediary of a wealthy Sfaxian boss that this group was able to move into this building, in return for a substantial rent and well-paid, albeit relative, police protection. At the end of 2016, the death at work of a young Ivorian man who was close to the group of the *Poudrière* gave rise to the idea that an associative structure, even an informal one, would allow the collective to ensure a form of 'mutualization' of risk. A small spontaneous contribution made it possible to take care of the funeral and start the 'Association des Ivoiriens Actifs de Sfax' (AIVAS). At the beginning of 2017, the association established as the preferred interlocutor of humanitarian actors working on the 'problems' faced by African people who found themselves in an irregular situation in Sfax. The strong demand for support quickly transformed the political balance of the AIVAS office and of the whole place. The constitution of the association and its establishment in the *Poudrière* made it a real testing ground for the tensions arising from the dynamics of cooperation between different actors moving through this space. The two structures were quickly 'decoupled'. Under the influence of various humanitarian actors, the association followed its own principles and chose to exert its influence beyond its place of origin. The *Poudrière* also followed its own history, which is directly linked to the economy of migration it supports. Here, arrangements are financed, information is exchanged for money, and its spatial centrality means that new actors take on roles and fight to control this place.

In September 2022, Jimmy took me to the *Poudrière*. AIVAS was a distant memory. In the meantime, the NGOs and IGOs that had pushed so hard for it to become structured had turned away when they learned that members of the board had 'used' their positions to connect people who wanted to reach Europe with 'smugglers'. The president, who was accused of aiding people smuggling, is now in prison. The face of the *Poudrière* has also changed. While there are still a few Ivorians, now there are a lot of very young Guineans or Cameroonians who have come from Algeria or Libya after long journeys. Jimmy suddenly seemed overwhelmed by this new generation. He, who had been so young and spirited at the time, was regretting a bygone era when the Ivorians used to 'dominate' the place and its economy. Maman Nelly is still there. Her business has not moved, but her products have evolved, too, influenced

by the demand of newly arrived people as well as by new logistics circuits between Tunisia and Ivory Coast.

A strange fate for a strange place. The history of the *Poudrière* tells us something about the creation of solidarity along migration routes. Far from being 'self-produced', the cooperation that has been built here is the result of a unique assemblage of actors dealing with checks, mobility, and specific temporalities which migration and the border regime have helped shape. However, in addition to demonstrating the analytical ineffectiveness of the classic binary differentiation between 'good' actors of solidarity and 'bad' actors of passage, the history and centrality of the *Poudrière* represent, above all, an invitation to think in terms of tactical cooperation. Places of passage and the emerging relational configurations are obviously the result of power relations, but these relations depend to a lesser extent on a struggle between 'good' and 'bad' actors of migration than on the destiny of the routes and temporalities that cross and constitute these places.

### Sketch 3: The digital infrastructures of the *Harraga*

The use of digital technologies of connectivity constitutes a prominent aspect of the logistics network put in place by Moroccan *Harraga*<sup>1</sup> along the Balkan Route. Moroccans who do not have adequate resources to obtain a Schengen visa to travel to Europe regularly manage to acquire sufficient means to buy a flight to Turkey, which does not require a visa and therefore becomes the starting point of their journey to Europe. Moroccans in Turkey, those moving through the Balkans, those who have reached Europe, and those who are aiming to embark on the "game" of the Balkan route, but are still in Morocco, produce assemblages of information and logistical infrastructures around the opportunities and constraints shaping this specific route. In the case of the Balkan route, mistrust towards potential scammers and unreliable 'passeurs', the need to find reliable information and to avoid some "smugglers" and their scams are the main reasons behind the production of several private and public cross-platform messaging channels. In these spaces, there are efficient ways of surviving the Balkan route, with people choosing to believe that the information and resources provided by users are reliable (conductors' contact details, digital maps of the trails along the routes, points of passage, raw footage

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<sup>1</sup> Derived from the Arabic root 'h-r-g,' the term 'Harraga' means unauthorized migration towards Europe. Literally, the word denotes a burn. Maghrebi *Harraga*, the plural form of *Harrag*, thus embodies the notion of one who disregards a red light. Without a visa, they 'burn' through borders, laws, and even their own documents to reach Europe. In the 1980s, a *Harrag* would attempt to stow away in the holds of a cargo ship towards Spain, Italy, or Canary Islands. Now that migratory routes for the Maghreb *Harragas* have multiplied, Türkiye, the Western Balkans routes are crossed with similar terms being used for those people attempting to 'burn' through borders.



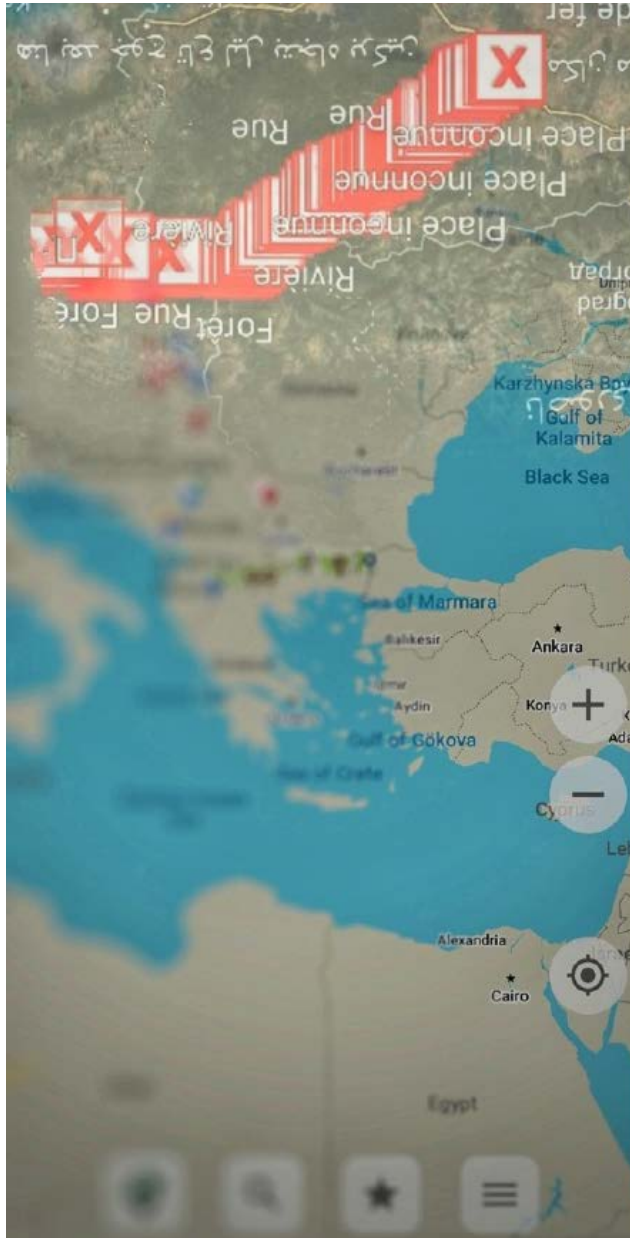
of river-crossings, jumping onto trains and trucks, location of reception centers in Balkan countries, and so on).

The messaging channels we have observed are a space for logistics and for the detailed organization needed to travel from Morocco to Turkey and through the Balkans, providing information about the operational modes and procedures required to travel along the Balkan route from Turkey to Europe including, but not limited to: reliable travel companies to reach Turkey with fewer complications, travel costs, stations where people can take a break, income opportunities, materials and tools needed. One certain fact is that, even before reaching Turkey, the users of these digital platforms know the details of the journey along the Balkan route, its economy, opportunities, and constraints.

On these digital platforms, knowledge and information about *Isstekshafat* (expeditions); *Khe'rajat* (going out to cross the border); *Rihla* (the journey), and *Taslima* (the delivery) are shared. Prior to crossing, groups of people settled in Turkey carry out 'expeditions' twice a week to detect points of passage around the fences marking the border between Turkey and Bulgaria. Thus, information is produced and updated constantly. This knowledge informs the two types of *Khe'rajat*: (1) the semi-independent one and (2) the dependent one. The former is called *Rihla*. The *Harraga* prepare and share maps of the trails and, in each group, there must be a 'knower' of the points of passage along the fences. When they reach the point of passage, the *knower* interrupts the journey and heads back. They are left to traverse forests and cross rivers in the Balkans relying on the digital maps that are available to them. Here, it is up to individuals to find means of transportation (jumping on trains and trucks), relying on their resourcefulness. While the *Rihla* is for those with limited financial resources, those who have sufficient means can embark on a *Taslima*. In this case, the journey is arranged around different points of passage. To be part of a *Taslima*, people need to contact the *Ribirou* (passage provider) and deposit money through a transfer to specific Turkey-based operators. Once the *Harraga* reach country X, they give the *Ribirou* the secret code to collect the fee for the service provided. If that is done properly, the *Harraga* are further along the way in cars to country Y and then to their destination in the Schengen area.

Benefit-oriented services for a fee are not the only form of support provided by "passage providers." The *Ribirou* also share the location of places they found during their activities along the Bulgarian-Turkish border and beyond. By doing so, they help to expand the maps covering the trails along the route (Figure 3).. In addition to that, they form groups of people and supply them with the necessary tools and materials (shoes, coats, sleeping bags, and inflatables to cross rivers) in exchange for a symbolic fee.

Figure 3. Merged maps of trails around the Balkans



Source: author's screenshot from one of the chat channels.

Note: blurred by the author to prevent the identification of locations on the map.

Nevertheless, in this context, the contours and the connotations of the *passeur* and of the "person on the move" are blurred, as most users provide information, tips, contacts, and services. Similarly, a person who is waiting to start their journey from Turkey across the Balkans can be a *passeur* one moment, leading *Harraga* to specific points along the Bulgarian-Turkish border fence, and then be conducted by others at different steps of their border transgression process. To better grasp this context, it is worth considering that being a "conductor" or being "conducted" is not an ontological condition, but rather a situation which arises from complex relational dynamics at different steps along the route. Even the term *Harraga* is used interchangeably in Maghrebi culture to refer to both the "conductor" and the people being "conducted". In the cultural narrative, they both burn borders and former identities to acquire new ones after reaching the other side, beyond or across borders. To understand this context, it is useful to suspend the rigid Western polarity which implies a clear-cut division of tasks and connotations (provider/beneficiary, smuggler/smuggled, and so on).

On these platforms, scams are strongly contested and collective intentionality is built to "bring back the rights" of those who have been victims of scams. The author has witnessed occasions in which people organized to share pictures of contested 'smugglers' and even provided information about the places where they could be found. People contributing to the platforms are located in different places. Those based in Turkey search for, spot, reach, denounce, and often punish 'smugglers' who have been contested by many. Peer-justice is shaped by the users of this digital space in which actions spill out of the digital dimension into the real world, where 'smugglers' known to have scammed people receive the punishment they deserve. With no pretension to romanticizing these chat channels, scammers may be present even on these platforms. However, their users cooperate to denounce and defame the scammers. Above all, this collective exposure aims to counter those who seek to monopolize resources to cross the border through disinformation and scams, which would jeopardize the journey of the *Harraga*.

If the act of facilitating border transgression can be understood as the provision of information and resources meant to help people circumvent the violence of border control, these digital platforms are autonomous infrastructures offering information about the underground trails in the Balkans – like the Underground Railroads in North America. These digital platforms support border crossings and promote mutual aid among the people involved in journeys along this route. In addition to this, they provide information about the daily functioning of the logistical infrastructure supporting border crossings and about its economy.

The 'counter-datafication' of border transgression through the *Isstekshafat* (in contrast to the official datafication performed by Frontex and border police), and the fact that the *Harraga* need to leave digital traces of their passage have opened up new spaces for communication, enabling reliable exchanges between people based along the routes to Europe and people aiming to complete their journey. These mobile commons (Trimikliniotis et al., 2017) allow for autonomous forms of digital expression on how to cross borders beyond narratives based on tragedy or control. Border transgression is facilitated through information and knowledge prioritizing a digital space for its *ad hoc* collective intentionality. The facilitation of border transgression in this context is a position without a specific identity, an action without a clear-cut status and connotation. Instead, it is shaped differently depending on the situation. When looking at this infrastructure, we are faced with the difficulty of identifying its status and connotations, as in the case of trail maps with feedback and modifications circulating on these platforms. However, the ties and the underground knowledge circulating in this digital space spill over, beyond the digital. Encounters, offers of accommodation in border towns, direct contacts with trustworthy conductors, materials, tips and tools for the journey are actually acquired in real life through face-to-face meetings.

The digital infrastructures of border transgression enlighten us about how the act of crossing borders is organized and communicated along migration routes. In this context, different locations, statuses, and actors overlap and become blurred. The resulting assemblage is the result of the frictions and tensions caused by mistrust, by the need for collective resourcefulness in order to face a challenging journey. When we look at this digital infrastructure from the standpoint of Moroccan *Harraga*, we see a complex set of situated frictions and tensions, an *ad hoc* collective intentionality, and tactical cooperation, all of which contribute to shaping a reliable channel of information and knowledge on a prominent migration route used by Maghrebi *Harraga*.

### **An impure process?**

Before moving on to our provisional conclusions, we would like to briefly reflect on methodology because, for us, it was the real key to unsettling the concept of solidarity. As Sandro Mezzadra argued in a recent article, "we should privilege and foster those forms and understandings that acknowledge the constitutive relevance of migrants' agency and take it as an indispensable and fully material basis for action and discourse. It is against this background that the very notion of solidarity has to be rethought" (Mezzadra, 2020). Thus, the development of our materialist position on solidarity did not arise from an abstract philosophical concern, but rather it was and is continuously being inspired

by ethnographic findings on the actual border crossing practices of people on the move. Their stories – if we give them the attention they deserve – reveal to us other possible ways of interpreting and conceptualizing solidarity, which surely are closer to the subalterns who directly experience the violence of the bordered world we live in. These stories provide a migrant perspective that changes an understanding of border transgression which, in today's racialized world, is filtered by white privilege. What we have found is that the more we abandon our Western, subject-centric epistemology (Samaddar, 2022) and classifying state-like gaze (Keshavarz & Khosravi, 2022), the more we develop our ability to see – perhaps a bit more like an illegalized migrant? – how solidarity develops as an impure process, being both collective and impersonal.

Firstly, let us address the theme of solidarity as an impure process. In the cases we are dealing with, impurity is the condition whereby solidarity is mixed with and contaminated by other social occurrences. Indeed, the three stories we have presented in this article can all be interpreted as edge manifestations of solidarity, as real-life situations found along migration routes which, on the one hand, cannot be defined in terms of mere altruistic assistance (pure solidarity) and, on the other hand, cannot be dismissed as the mere result of the social combination of individual economic interests. We find them interesting and think that they fit our aim to unsettle the concept of solidarity insofar as they describe spurious practices in which the boundaries between solidarity and informal economy are blurred to the point that it is hard to fully distinguish them as different domains. The term 'mixture' is key to understanding these practices. Is it actually possible to tell whether the people running the *Polò* or the *Poudrière* – who often happen to be migrants themselves – are primarily motivated by self-interest or moral concern for illegalized people on the move? Would it make any sense to separate the way people share practical knowledge about the Balkan route using the digital infrastructure built by the *Harraga* from the *Taslîma* taxi services provided by some *panseurs* in exchange for money? Drawing on the rather ambivalent character of the three stories, it seems that we find ourselves in a conceptual zone characterized by a lack of distinction, where the very idea of solidarity is not anchored to a clear moral principle built in opposition to self-interest, but rather it operates more fluidly, deeply enmeshed within actual border crossing practices as they are experienced by people on the move. The impure materiality of the Underground Railroad suggests that between mere profit and pure gift there is a whole set of heterogeneous social logics which, by virtue of their 'edge' nature, challenge the dominant concept of solidarity in migration and border studies. Solidarity is to be found not only in the 'clean' actions of disinterested supporters of migration, but also in the 'dirty' practices shaping the economic underworld of illegalized border crossings.

A significant objection that could be raised against our attempt to re-conceptualize solidarity as an impure process might be that, if any form of interaction and exchange taking place in the underworld of unauthorized border crossings is to be interpreted as solidarity, then even the most brutal, exploitative, and hazardous among such forms are somehow redeemed, gaining moral and political legitimacy. Impurity is a dangerous theoretical and political category, there is no doubt about that. But let us be clear. We refuse to get bogged down in the simplistic and cynical logical zone where ‘the enemy of my enemy is my friend’. On the contrary, we want to clearly state that being against the official national border regime is a necessary, but not sufficient condition for claiming solidarity with people struggling to assert their autonomy as migrants. It would be at best naïve – and at worst insincere – to depict the underworld of illegalized migrant mobility as a place where fair cooperation, collective care, and respect for the individual always prevail. In addition to the root problem of national border enforcement, the additional suffering inflicted on people on the move by human traffickers, scammers, speculators, and all sorts of infamous characters ought not to be underestimated. In this respect, it is important to recognize that the social field emerging against the national border regime is a very plural and contradictory space, it is a battlefield in and of itself. The constant process of construction and maintenance of the Underground Railroad – which is a metaphor indicating the material and political possibility for unauthorized migrants to move as free subjects across a bordered world– is what is at stake in such a heterogeneous space, it is not a given or something which has already been established *a priori*.

In light of all this, how and where can we detect the conceptual limits of solidarity? How can we politically appreciate the impurity of actual practices of underground cooperation without falling into the trap of complete amorality? We do not have an exact blueprint for such a complex theoretical operation and, to be honest, we believe that probably there cannot be one. In most cases, the contours of solidarity are inherently blurry and confused, therefore each concrete situation ought to be assessed considering all sorts of relevant contingencies and positionalities and, even if we do this, there is no guarantee that a general conclusion can be reached. For instance, we do not feel that we can say – and surely not in abstract terms – whether 100 EUR is a legitimate price for a ride with a *passeur* given the risky service provided, which would therefore justify including it in the domain of solidarity, or whether it is just speculation on the lives of people on the move. In the border town of Ventimiglia, we have heard migrants praising *passeeurs* as honorable facilitators on some occasions and defining them as nasty opportunists on other occasions, completely reversing their judgment based on changes in specific contingencies and positionalities. However, even in the extreme relativity of dif-

ferent eventualities, there is one major ethical principle which we would like to propose: there cannot be solidarity with people struggling to assert their autonomy as migrants when another border regime, unofficial but similarly effective, and as harsh as the official one, is de facto being imposed.

An unofficial border regime is imposed through the effective control exercised over the socio-material means of production of underground routes. For people on the move, in fact, not only is it vital to be able to move, but it is also crucial to know where to and how. This is 'the game', in their jargon, and it is a very social and material affair. The more available resources for players, the higher their chances to complete each level. If we follow William Walters and assume that "materials, infrastructures, knowledge, economies and authorities that both facilitate and constrain, sort and shape, accelerate and impede movement" (Walters, 2015) are key for grasping the concrete reality of underground border crossings, then those who control the above-mentioned and other elements, which are the necessary material conditions for mobility, have the power to regulate the very likelihood of mobility itself. When certain actors on the ground, no matter who they are and what their aims might be, subtract resources from migrants and privatize them, such actors cannot, in any way, be considered to be acting in solidarity with people struggling to assert their autonomy as migrants. On the contrary, we argue that they embody the logical opposite of this, like a sort of grassroots prohibitionist movement. For instance, on the Italian-French border, where people heading to France try to circumvent French police checks by taking isolated trails across the Alps, some of us have noticed that wall graffiti made by migrants to provide information to people trying to cross autonomously had been deleted by professional smugglers who did not want to lose potential customers. We believe that this is one of the worst possible actions. Even if those passeurs might be considered to be effectively operating against the official border regime, what they are also doing is artificially creating a regime of scarcity upstream, which is profitable for those who, like them, control the means of production of migration routes. These people are not abolitionists, but rather they are just other prohibitionists among the prohibitionists, showing no complicity at all with people on the move, but only an instrumental, exploitative relation. Subtracting and privatizing socially produced knowledge is the radical opposite of solidarity.

The other significant theme emerging from the three stories presented is solidarity as a collective, yet impersonal process. This is particularly evident in the case of the digital infrastructure of the *Harraga*, a peer-based and anonymously fed knowledge sharing system, but also in the other two cases. In both the *Polò* and the *Poudrière*, the real protagonists seem to be the not-fully-discernible micro-interactions and relations

weaving the digital space into an actual place of solidarity rather than specific identifiable actors. As far as we can tell, the typically Western ontological primacy of subjects over processes is definitely unsettled by our understanding of how things actually work in the reality of the Underground Railroad. This leads us to take distance from the concept of solidarity as property or an attribute of a defined and coherent subject, as a moral virtue that individuals or groups either possess or do not possess because, unless we do this, the trans-individual character of solidarity seems to fade away. What remains, as we can deduce from most migration and border studies literature, is the canonically good 'solidary subjects' (NGO volunteers, religious missionaries, political activists), rather crystallized figures that emerge as distinct entities from a background social environment that, conversely, is either unexplored or misunderstood, if not simply negatively judged. On the other hand, we believe that focusing on the tumultuous relationality and materiality of informal practices of underground cooperation allows us to re-conceptualize solidarity in radically different terms.

A promising line of research would be to think about solidarity in terms of circulating energy. Indeed, what we typically see in the Underground Railroad and what we wanted to highlight in this article are the multifarious processes of cooperation among various agents, leading to the very possibility of a route. Is there still solidarity even when there are no clearly distinguishable 'solidarity actors' left, but only informal practices? We definitely believe so. Taking the cue from Foucault and Deleuze's reflections on the concept of power (Deleuze, 1988), we argue that solidarity is not the product of already given subjects, but rather a relation that produces subjects; it can only be exercised, not possessed; it is built action by action; it cannot stand still, it must circulate; it is movement that opens up new possibilities. Even police officers, which by definition are the enforcing agents of the national border regime, can help solidarity circulate if they desert their pre-established role and enter another configuration of assemblage. For instance, when border agents 'turn a blind eye' on a person who is illegally crossing a border, no matter why they do it, no matter what identity they are trapped in, they are acting in solidarity with people struggling to assert their autonomy as migrants. Then, we no longer have people 'showing solidarity', people 'not showing solidarity', or people who are 'not showing solidarity yet', but only assemblages of solidarity. Like electrical current, solidarity is fundamentally mobile, diffused, flowing, unstable, operating at the level of micro-physics. It flows through, it cuts through molar sets, individuals or large organizations, it flows through micro-connections. It takes the form of people supporting and sustaining border crossings, making them more or less easy or probable. It is the



collective production of an environment – or a sub-environment, a milieu, an underground, the Underground Railroad– that increases the autonomy of people on the move.

## Solidarity at large

This article revolves around a basic, fundamental question. It is a question that is central to a research project founded on two words, solidarity and routes, wherein the former is assumed to be the relational fuel producing the latter in terms of spaces that are crossed and inhabited by people on the move within a bordered and hostile landscape. Is solidarity an effective concept, one which can still help us make sense of and shed light on, for instance, the three situations we have presented here? Or rather, do we need to resort to another word to interpret them? Do we have to get rid of that word or rather adapt its meaning to those specific situations, thus re-articulating it? It is likely that the Western theological-political burden of that concept, if still necessary, is not enough to explain these blurred dimensions. Yet, it is exactly because of the political meaning conveyed by the word solidarity that it is worth keeping it and, rather than dismissing it, extending its array of meanings. After all, recognizing that solidarity is at stake in all the three “stories from the South”, that they are still and will always be about solidarity, might prompt us to broaden its scope and semantic reach. Perhaps we could speak of “solidarity at large”.

Through a materialistic approach and a critique of the moral and political economy of solidarity, we propose the unsettling dimension of “solidarity at large” as a way of both exceeding and provincializing Europe, including its historical genealogy and the (post) colonial legacy hanging over its political and theoretical concepts. Suggesting a blurred and impure concept of solidarity is not a matter of cynicism or (cruel) optimism, nor is it about transgressing and betraying a historical and political heritage. Rather, it means offering a broader and more capacious concept, which can encompass both a political action and the particular/practical dimension of an exchange that goes beyond being a gift, once we recognize that there is no inherent contradiction between the two, because a gift is always a form of exchange with strings attached, much like an exchange is more than just an economic relation or transaction.

We believe that this broadened, blurred, and somewhat uneasy concept of solidarity could be thought of as the energy and fuel needed to produce what Stefano Harney and Fred Moten refer to as the Undercommon (Harney, Moten 2013), which we suggest conceiving of as an underground railroad made of multiple hidden routes, as a communal dimension that is always found after, beneath and under the apollonian surface of Western political categories and the selective, murderous geography of a

borderland. Both in the concept of the Undercommon and in the idea of an Underground Europe, in relation to multiple forms and practices of desertion and escape exceeding an established order, solidarity must always be conceived of as an implicit abolitionist stance, a drive against the necropolitical and racialized prohibitionism that characterizes border regimes.

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# NOTAS Y DISCUSIONES



# DO CIVILIANS STILL EXIST?

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“I’m so scared. Please come. Please call someone to come and take me.”<sup>1</sup>

These are some of the last words of Hind Rajab, 6 years old, on the phone to the Red Crescent on January 29th, from the car hit by a tank in which her relatives have already died. Her body was found on February 9th. Two paramedics who were sent to rescue her were killed in the ambulance.

Four months before, there was the ‘Al-Aqsa Flood,’ which resulted in 1,200 deaths, including many civilians and 33 children, hundreds of prisoners and, among other things, “conflict-related sexual violence [...], including rape and gang-rape in at least three locations” (UN, 2024). Since then, it has been months of horror. In Gaza, there have been dozen of thousands deaths, two-thirds of whom are women and children, with dozens certified as having died from starvation. Medical personnel, journalists, intellectuals have been affected. The vast majority of homes, hospitals, schools, universities, mosques, and churches have been destroyed or affected. Particularly shocking events include newborns without incubators, surgeries without anesthesia, the ‘flour massacre’ on February 29, and the hundreds of deaths during food distribution in the following days, and the torture of doctors.

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<sup>1</sup> <https://twitter.com/PalestineRCS/status/1752635889446953464>.

The indistinction between military and civilians was declared from the beginning by Israeli leaders, including President Isaac Herzog (“It’s an entire nation out there that is responsible. It’s not true this rhetoric about civilians not aware not involved”), Defense Minister Yoav Gallant, National Security Minister Itamar Ben-Gvir (“To be clear, when we say that Hamas should be destroyed, it also means those who celebrate, those who support, and those who hand out candy — they’re all terrorists, and they should also be destroyed”), and Minister of Energy and Infrastructure Israel Katz (ICJ, 2023, p. 63-65). The killing of seven World Central Kitchen workers on April 7 appears to be a paradigmatic case of the impotence of law in limiting war. It was an intentional attack on non-combatants, which constituted a violation of the immunity of humanitarian workers. An attack that can be included in a starvation strategy and carried out using drones—technologies that escape the traditional categories of war. Furthermore, the outrage over the six deaths of Australians, Europeans, and Americans seemed to replicate the double standard syndrome when compared to the reaction to the dozens of thousands of Palestinian deaths, which did not provoke the recall of ambassadors.

Yet, according to the tradition of just war theory, the basic principle of warfare is the discrimination between unjust enemies and “innocent” combatants. Francisco de Vitoria argued that the killing of innocents is not legitimate *per se et ex intentione*, but only *per accidens*, when “it would otherwise be impossible to wage war against the guilty” (Vitoria, 1991, p. 315).

Since then, the *ius in bello* has evolved through customary practice and was codified in a series of treaties signed in Geneva and the Hague, concluding in the Additional Protocols of 1977. The use of certain weapons was prohibited, the obligations of occupying powers and the rights of occupied peoples were defined, and the intentional killing of non-combatants was prohibited, starvation, collective punishments, and attacks on healthcare personnel and hospitals were prohibited. The principle of proportionality between the military advantages of actions and the “collateral damage” —including killings and destruction — that may result was affirmed.

However, the difficulty of applying the principles of discrimination and proportionality was evident early on. Bartolomé de Las Casas noted that in war, the risk of killing innocents is constant (Las Casas, 1989-1999, 9, p. 368-70), and identifying them can be very difficult, as the parable of the weeds warns (Las Casas, pp. 398-400, 406; Mt, 13.25-30, 36-40). Distinguishing the wheat from the weeds has become increasingly difficult with technological development. Even during World War I, gases affected the civilian population, and this happened intentionally during Italy’s war of aggression against Ethiopia. During World War II, genocide and extermination characterized the actions



of Nazi Germany and its allies. Sadly, it is well known that terrorist carpet bombings, intentionally carried out on civilian populations, have been integral to the strategies of the United Kingdom and the USA, from Hamburg to Tokyo, from Dresden to Nagasaki.

All of this continued into the Cold War era. With the post-1989 season, the ‘surgical war’ —the declared strategy of minimizing civilian casualties through the use of new weapon systems—resulted in a partial reversal of the principle of discrimination. Conscious of the Vietnam War and the effect of the tens of thousands of deaths among young American conscripts on public opinion, strategies and tactics aimed at reducing casualties among Western soldiers were used. The paradigm is perhaps best represented by NATO’s war against Yugoslavia in 1999, which was conducted exclusively from the sky, beyond 15,000 feet. But this pattern reemerged when troops were on the ground in ‘humanitarian interventions’: the imperative has been to limit “our” casualties and reduce risks, at the expense of protecting non-combatant civilians.

All this is exacerbated by the widespread use of various types of drones. Pioneered by Israel, then widely used by the United States during the Obama administration, and now more democratically available to various parties, drones overturn the logic of the *jus in bello*. The operator, often thousands of kilometers away from the theater of war, is unable to distinguish combatants and non-combatants. Immunity is reserved for the former: “for whoever uses such a weapon, it becomes a priori impossible to die as one kills” (Chamayou, 2015, p. 13), thus canceling the Clausewitzian image of war as a duel.

Cyberwarfare opens the way to even more disturbing scenarios, such as autonomous weapon systems that entrust the selection of targets and the decision to engage them entirely to machines. It has now been demonstrated that in Gaza, the use of artificial intelligence has reduced human decision-making, committed to junior officers, to the twenty seconds needed to determine whether the target is male or female.<sup>2</sup>

The massive use of private companies of mercenaries, or contractors, points out the (partial) privatization of war. Hybrid forms of warfare include cyberattacks and terrorism in a gray zone that makes the very distinction between war and peace difficult. The distinction between combatants and non-combatants is totally erased in nuclear war (Bobbio, 1979, p. 60). Yet, today it is once again invoked by political decision-makers and considered plausible by military analysts.

On the other hand, international humanitarian law seems to be burdened by an original sin. According to IHL, war is in principle legitimate if it adheres to the norms of *ius ad bellum*. The ‘privilege’ of conducting it, that is, of killing other combatants, is

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<sup>2</sup> <https://www.972mag.com/lavender-ai-israeli-army-gaza/>

reserved for the combatants. In short, war as an institution aimed at inhibiting the taboo on intraspecific killing is not questioned. Then there are other specific sins, recurring in the clauses of last resort and in the principle of proportionality itself, which open the way to the justification of attacks on civilians. Indiscriminate attacks are prohibited and are considered “an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated” (I Additional Protocol to the Geneva Convention, 1977, art. 51). Moreover “It is prohibited to employ weapons, projectiles, and material and methods of warfare of a nature to cause *superfluous* injury or *unnecessary* suffering” (art. 35) [the italics are mine]. In the absence of clear distinguishing criteria in what constitutes ‘unnecessary’ suffering and ‘superfluous’ injury, the rule requires a balance between considerations of military necessity and humanity. Among other things, the International Court of Justice did not declare the use of nuclear weapons absolutely illegitimate: “it cannot reach a definitive conclusion as to the legality or illegality of the use of nuclear weapons by a State in an extreme circumstance of self-defence, in which its very survival would be at stake” (ICJ, 1996, par. 97).

International law is an European product. It was born as the law regulating relations among ‘us’ —Christians, *humaniores*, civilized, developed—excluding infidels, barbarians, uncivilized, underdeveloped. For Vitoria, discrimination between combatants and ‘innocents’ falls “in wars against the infidel, from whom peace can never be hoped for on any terms” (Vitoria, 1991, p. 321). For the nineteenth-century founding fathers of international law, it expressed “the legal conscience of the civilized world”: a product of European civilization and cannot be automatically applied beyond its own sphere (Koskenniemi, 2001, p. 41).

According to Carl Schmitt, the limitation of war was only possible within the European Christian States, precisely because they defined their space by excluding the rest of the world. Europe was the “sphere of peace and order ruled by European public law” (Schmitt 2003, p. 97), beyond it, “force could be used freely and ruthlessly” (Schmitt, p. 94). This, he underlines, “was an enormous *exoneration* of the internal European problematic” (Schmitt, p. 94). In short: the limitation of the war within Europe was possible because the unbridled violence beyond European borders had taken on this relief function. Schmitt adds a disturbing example: the war of occupation of Ethiopia by Fascist Italy, which was an aggression by one League of Nations member state against another. But the sanctions imposed by the League were ineffective, and shortly thereafter, the annexation was recognized. “Perhaps [...] Africa was considered to be colonial ter-

ritory” (Schmitt, p. 243), outside international legal order, he comments. One wonders whether this unconscious discrimination continues to apply today. Western States have rightly condemned the atrocities committed by Palestinian militiamen in the October 7 attacks, but reminders of Israeli’s obligation to respect international law have been generally weak, and we have not seen the possible actions to stop the perpetration of war crimes. Palestinian civilians are not doing much better than the Ethiopians in Areri and Amba Aradam, who were gassed by the Regia Aeronautica, or the patients and staff of the hospitals in Malca Dida and Quodam.

Crimes committed in the occupied Palestinian territories have been reported to the International Criminal Court since 2009, yet double standards seem to persist. Prosecutors have stalled while awaiting clarification on Palestine’s status. The current one, Karim Khan, described the Rafah crossing used for the Palestinians with expressions like ‘war crimes,’ “ongoing violations of international humanitarian law,” and ‘unlawfully,’ while for Israeli’s obligations to respect International law the formulations remained doubtful or optative. And then there is the issue of international law: the absence of a third party and the lack of a higher power capable of sanctioning violations. Attempts have been made to prevent or legally limit the use of war since the Treaties of Westphalia. After World War II, the right of veto has almost always paralyzed the UN Security Council.

The Hobbesian problem of the ‘third’ has been taken very seriously by what has been called ‘juridical pacifism’ or ‘institutional pacifism’ since Kant’s project of a *Friedensbund*. Today this approach has been radicalized. Luigi Ferrajoli (2022) has drafted a *Constitution of the Earth* attributing the legal monopoly of force to an Earth Federation. Beyond the doubts about the actual possibility of achieving it, it is not difficult to imagine the risks of such an enormous concentration of power. In fact, even if weapons of mass destruction were banned as ‘illicit goods,’ the know-how for their production could not be forgotten. Faced with the risk that entities such as terrorist or criminal organizations, a State dissenting from the Earth Federation, or even a multinational corporation would end up appropriating them, the global police force would not be able to give up possessing these weapons, including nuclear ones. Nevertheless, there have been General Assembly decisions condemning Russian aggression on Ukraine and calling for a ceasefire in Gaza; appeals to the Security Council, ICC, and ICJ from relevant actors and third countries such as South Africa; the ICJ decisions on 26 January and 28 March; and Security Council Resolution 2728. But perhaps even more emblematic are the hardly credible declarations of the parties involved. On 24 February 2022, the President of the Russian Federation Vladimir Putin declared that “The people’s republics

of Donbass have asked Russia for help. In this context, in accordance with Article 51 (Chapter VII) of the UN Charter, [...] I made a decision to carry out a special military operation” (Putin 2022).

On January 21, 2024, the Hamas press office issued a statement saying, among other things: “the Palestinian fighters only targeted the occupation soldiers and those who carried weapons against our people. In the meantime, the Palestinian fighters were keen to avoid harming civilians”<sup>3</sup> (Hamas, 2024). On February 14, the Israeli embassy to the Holy See replied to a declaration by Secretary of State, Cardinal Pietro Parolin, that Israeli armed forces “are operating in full compliance with international law.” In any case, they are less bloody than those conducted in the past by NATO and Western countries in Syria, Iraq, and Afghanistan, where for every ‘terrorist’ killed ‘nine or ten civilians’ were exterminated, while in Gaza “for every Hamas militant killed, three civilians lost their lives”<sup>4</sup>.

Iran’s ambassador to the United Nations made a statement regarding the attack on Israel on the night of April 13-14, 2024. “This action was in exercise of Iran’s inherent right to self-defense as outlined in Article 51 of the Charter of the United Nations,” while Israel attacking Iran’s Embassy in Syria violated Article 2.<sup>5</sup>

International law is invoked by parties to a conflict to justify their actions, even when they *prima facie* violate it. This is the ideological use of legal reasoning and recognized norms to justify aggressions and massacres, well known throughout the history of European imperialism and an integral element of the discriminatory feature of international law. But is it merely this?

Marti Koskenniemi, far from being indulgent in describing the aporias of international law, emphasized that it still refers to a “formal ideal” which allows the “lack” implicit in particular identities to be expressed. “The ability to articulate this lack, and to do this in universal terms, is what the culture of formalism provides,” which gives the particular the “horizon of possibility” to express itself in general terms (Koskenniemi, 2001, p. 506), and “to give voice to those who are otherwise routinely excluded” (Koskenniemi, p. 517; cp. D’Attorre 2023, p. 155).

International law allows disputes to be given shape and creates a space for negotiations and compromises. It opens and structures a field of struggle. A sort of delirium of omnipotence is a recurrent pathology of legal pacifism; conversely, it is necessary to ad-

<sup>3</sup> <https://www.palestinechronicle.com/wp-content/uploads/2024/01/PDF.pdf>

<sup>4</sup> <https://twitter.com/IsraelinHolySee/status/1757772849383694727?s=20>

<sup>5</sup> <https://www.tehrantimes.com/news/497174/Iran-has-legitimate-right-to-self-defense-against-Israeli-regime>

dress the economic, social, cultural, and anthropological roots of war. But, given plurality of interpretations of principles—even universal ones—only a communicative process that takes place within a legal framework can be successful (Habermas, 1998, p. 212).

How can the potential of international law be activated? A few years ago, Richard Falk argued that Israel's policy toward the Palestinians is the demonstration of the failure of the responsibility to protect principle, which was solemnly assumed in the 2005 UN World Summit, and should be applied in the presence of apartheid, ethnic cleansing, and collective punishments. So “The only path to ending current patterns of criminal victimization is by a combination of Palestinian national resistance and global solidarity initiatives, which as suggested above could benefit from an invocation of the R2P ethos” (Falk, 2019). The suggestion is that even in the international context, processes of ‘jurisgenesis’ can be activated, which involve movements and processes within society, judicial courts, legislative institutions in a virtuous circle (Michelman, 1988).

In the classical tradition, war was seen as an inevitable destiny of the *polis*, a gym for heroism and virtue, and social conflict as a pathology of the body politic, a slippery slope that leads to *stasis*. The relationships between domestic conflicts and war have interacted in different ways in modernity. There can also be a virtuous intertwining: the *tumulti*, which for Niccolò Machiavelli could lead to “laws that are made in favor of liberty” (Machiavelli 1958, p. 202-03), might have similar effects on the international dimension. In the awareness that international law is something even more elusive than ‘domestic’ law, it cannot be denied that the history of peace and rights movements is not just a history of defeats. International mobilization played a role against the Vietnam war, the deployment of medium-range nuclear missiles in Europe, and the abolition of Apartheid. After all, the flawed and impotent international institutions have a merit: they give us the image of a vaster world than the one we Westerners imagine. A world that no longer tolerates double standards and seeks to apply the principles we have developed to ourselves as well.

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# THE HYBRID ERA OF THE “RETURN OF HISTORY”: SYSTEMIC CHAOS, GRAY ZONES, AND CONNECTIVITY

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## What History Returns?

In a speech delivered to the Senate following the invasion of Ukraine by Russian armed forces, Italian Prime Minister Mario Draghi acknowledged that a long political era had definitively ended. The Kremlin's decision not only brought war back to Europe but also dispelled the illusion that economic integration could ensure a peaceful future. "The jungle of history is back," Draghi said. "Its vines seek to envelop the garden of peace in which we believed we lived." The image used by the Italian Prime Minister polemically evoked the thesis enunciated by Francis Fukuyama in 1989 that the "end of history" consisted of the victory achieved by liberal democracies over every alternative political ideology. More precisely, Draghi's words echoed a thesis that Robert Kagan had articulated almost fifteen years earlier. According to Kagan, the beginning of the new millennium dashed hopes for a freer and more peaceful world, bringing nationalist claims and the motives of old power politics back to the fore. Although the United States remained the world's sole superpower, the ambitions of old and new players were becoming increasingly relevant. "The order of today," Kagan wrote, "reflects the rising influence of the great powers, including the great power autocracies": "a multipolar world in which the poles are Russia, China, the United States, India, and Europe would produce its own kind of order, with different rules and norms reflecting the interests of the powerful states that shaped it" (Kagan, 2008, p. 96).

While the events of the past fifteen years confirm that it is necessary, rather than simply legitimate, to recognize that "history is back," it is also essential to define how we understand the "return of history." That is, should we conceive history as a return to the nineteenth-century logic of power politics? Alternatively, should we view it as a return to the bipolar logic of the Cold War? Or, finally, should we view the return of history as leading us toward a premodern-like world? Although each of these hypotheses captures some element of global transformation, it is likely that each overlooks important aspects of the hybrid era we are experiencing. In this article, I suggest that to reconstruct the physiognomy of the new "regime of war" (Hardt & Mezzadra, 2024), it is necessary to recognize that old and new elements combine, drawing a hybrid picture that increasingly challenges the classical distinction between war and peace.

## Hegemony and Chaos

Interpretations that see the return of history to today's changing international system can be traced, with many simplifications, to two main patterns. The first key interpretation focuses on the idea that a *hegemonic transition* is taking place today, similar to the transitions that have marked the history of the modern international system in the past. In this case, the returning history resembles the historical clashes between Athens and Sparta for hegemony over the Greek world, or the transition of power from Britain to the United States. A second line of interpretation believes that after a brief interlude of a 'unipolar moment,' the international system tends to become multipolar again. In other words, according to these interpretations, new 'great powers' are emerging today, each of which has substantial material resources and ambitions for prestige, making the system once again, as it was before 1914, a *multipolar system*. The way the new arrangement is viewed, however, varies considerably, with significant consequences for what we should expect from the behaviour of states.

Regarding the first group of explanations (*hegemonic transition*), an important difference lies in the way hegemony is understood. For Robert Gilpin, for example, hegemony is primarily about material factors and, thus, a position of dominance in political, economic, and military power (Gilpin, 1987). For Joseph Nye, it includes not only hard power but also soft power, that is, cultural power that relates to values and world views (Nye, 2004). According to world-system theory, hegemony has economic roots and political-ideological expressions, making a hegemonic state the pivot of the system at a given historical moment (Palano, 2021). According to Giovanni Arrighi, for example, a state may become world hegemonic "because it can credibly claim to be the motor force of a general expansion of the collective power of rulers vis-à-vis subjects." Alternatively,

"a state may become world hegemonic if it can credibly claim that the expansion of its power, relative to some or even all other states, serves the general interest of the subjects of all states" (Arrighi, 2010, p. 30–31). In other words, the would-be hegemon must demonstrate an ability to collectively lead and offer solutions to the system's problems.

Despite differences in how hegemony is understood, interpretations adopting this focus agree that contemporary instability is a consequence of the decline of the U.S.'s hegemony. Specifically, according to the theory of hegemonic cycles, each major hegemonic season is marked primarily by a long phase of rise, victory, maturity, and finally, an equally long phase of decline. In the maturity phase, the hegemon has no challengers. In the rise phase, it must face the previous hegemon. In the decline phase, the hegemonic state must take a defensive stance against potential challengers. According to Arrighi, for example, modern history has been marked by three great hegemonic seasons, dominated by the Netherlands, Great Britain, and the United States, respectively. These historical examples show that hegemonic crises are characterized by the intertwining of three processes: the intensification of competition between states and businesses, the rise of social conflicts, and the emergence of new power configurations. Financial expansion is an integral aspect of the hegemonic crisis and is connected to the explosion of *systemic chaos*: a situation in which conflicts develop beyond the system's ability to regulate them (Arrighi & Silvers 1999).

Over the past two decades, many signs suggest that the hypothesis of the decline of American hegemony should be taken seriously and remains an important factor in interpreting change. In the new century, the United States, itself, began to undermine the foundations of the liberal international order it had built after World War II. First, the "global war on terror" declared by Washington, D.C., after September 11, 2001, distanced the United States from Europe, weakening multilateralism. Second, after the 2008 crisis, during the Obama administration, the U.S. began to adopt protectionist measures designed to preserve certain sectors of the manufacturing industry from foreign competition. These measures ran counter to the free trade principles upon which the architecture of the liberal international order was built. The tariff war declared by Trump further signalled a break with the past, which was only partially remedied by Biden (Lucarelli, 2020; Palano, 2019). Finally, Uncle Sam's 'muscles' seem to have atrophied. The hard power on which Washington could rely—and still relies on today—has not lived up to the ambitions of the global superpower, especially regarding military interventions in Afghanistan and Iraq. Starting with the Obama presidency, Washington began to scale back its commitments abroad, reducing its presence in the Middle East and preferring to focus on 'covert operations' and high-tech wars rather than ground wars. During the

Trump presidency, this trend continued, coupled with a more explicit abandonment of multilateralism (Parsi, 2021).

According to some scholars, the decline of the American hegemony tends to replay the classic ‘Thucydides trap’ (Allison, 2018). In other words, these hypotheses suggest that we are heading toward a hegemonic transition, in which the declining power of the United States will have to confront the rising power of Beijing. In schematic terms, according to these interpretations, in the descending phase of hegemony, power is less concentrated in the hands of the strongest power. Consequently, the hegemon is less able to play the role of the guarantor of order, as it is no longer willing to bear the costs involved. Although such a transition may still be far off, the perception of this scenario as realistic changes the behaviour of the system’s actors, increasing instability and multiplying the risks of war. The two major powers begin to distrust each other’s intentions, creating a climate of uncertainty about their medium- and long-term goals and fuelling competitive drives. Challengers can demonstrate their disobedience to the hegemon without facing significant sanctions. This scenario finds numerous confirmations in the political events of recent years. On the Middle East front, successive crises since 2011 have witnessed increased activism by both U.S. allies, such as Turkey and Saudi Arabia, and competitors, such as Iran and Moscow. Israel’s reaction after the October 7, 2023, attacks also illustrated the Israeli government’s autonomy from Washington’s directives.

Scholars understand hegemony in various ways, and their predictions do not point in the same direction. Nonetheless, the signs of the attrition of America’s hegemony are quite evident. The dynamics of global politics following the 2008 crisis exhibit all the elements that Arrighi perceives as characteristic of a phase of systemic chaos: the intensification of competition between states and corporations, the rise of social conflicts, and the emergence of new power configurations. Therefore, from the ‘return of history,’ we should expect what accompanies every hegemonic transition: a growth of conflict and, ultimately, a general war, similar to those from which the Dutch, British, and American hegemonies emerged in the past.

## **A Crowded World**

A second major interpretative line argues that the ‘return of history’ is leading us toward a multipolar order similar to that experienced by Europe before World War I. In other words, it is believed that the unipolar moment is definitively closed and that new powers are emerging with growing power bases and claims for international recognition. The way this new order is envisioned, however, is quite varied. According to Amita Acharya, a ‘multiplex world order’ is taking shape, caused by the decline of America’s hegemony.

Nevertheless, due to high economic integration, there will not be a return to power politics and violence (Acharya, 2018). Conversely, Charles Kupchan predicts that the international system of the 21st century will be 'multipolar' (or even 'a-polar'), with each of the major regional powers of the future—likely including China, the United States, Russia, Japan, India, South Africa, Brazil, and Turkey—bringing its own concept of what constitutes a 'legitimate' international order (Kupchan, 2012). From a realist perspective, other scholars believe that the system is becoming multipolar, leading to increased instability in alliances and greater insecurity. As early as 1990, John J. Mearsheimer predicted that the end of the bipolar confrontation between the USA and the USSR would return the Old Continent to its pre-1914 condition, characterized by balance-of-power logic and rivalry among European powers (Mearsheimer, 1990). Similar to all multipolar systems, the new European order would be extremely unstable and far from immune to the risk of wars, with nuclear proliferation representing an especially insidious risk.

As Mearsheimer later highlighted, in addition to becoming multipolar, the international system is also breaking down into regional systems, with the United States acting as an external balancer. According to Mearsheimer, the most dangerous front would be in the Asia-Pacific region. He believes that China will seek to become a hegemon in Asia and impose a Monroe Doctrine-like control over the region. This will inevitably lead to friction with the United States, particularly over the control of the South China Sea and Taiwan's sovereignty. Faced with this scenario, Mearsheimer argues that the United States should abandon the unattainable dream of global hegemony and focus on containing China's rise (Mearsheimer, 2014, 2018). According to a similar perspective, Andrew J. Bacevich has argued that the US should follow the advice George Kennan formulated in 1948: "avoid needless war, fulfil the promises in the country's founding documents and provide ordinary citizens with the prospect of a decent life" (Bacevich, 2023, p. 21).

Beyond the outcomes of the US-China confrontation, the shift toward a multipolar order triggers a series of behaviours that are not difficult to recognize in recent trends. First, the perception that power balances are changing drives actors (especially emerging ones) to distrust others' intentions and seek recognition as regional powers. Second, alliances become less stable, contributing to increased imbalance and insecurity. Finally, the very rules of international law and principles of legitimacy become subjects of contestation, particularly the rules on the legitimacy of using force to resolve international disputes. The most glaring manifestation of this uncertainty regarding rules and fundamental principles is evident in the constant controversy over 'double standards,' highlighting

the contradiction between condemning Russia's aggression against Ukraine and the lack of Western condemnation for the Western military intervention in Kosovo, the US attack on Iraq during the Second Gulf War, or the massacre of the Gaza population (Bacelli, 2023; Colombo, 2022).

According to the hypotheses of a transition toward multipolarity, the 'return of history' appears as a return to the logics that preceded World War I. In short, in a world crowded with great powers, it becomes more difficult to "calculate" and predict rivals' behaviour. This contributes to increased overall insecurity and triggers the classic 'security dilemma,' pushing states to distrust others and strengthen their defences (Herz, 1959). Alliances also become more unstable, and there is an increasing tendency for states to 'offload' the costs of interventions to sanction rights violations onto others. Finally, uncertainty also affects the rules and principles of legitimacy that underpin the system, as they are subject to constant interpretative conflicts, primarily concerning the very legitimacy of resorting to armed violence.

Although very different, the war in Ukraine and Israel's massive retaliation after the Hamas terrorist attack can be interpreted as striking manifestations of the instability of the contemporary international system and its 'breakdown' into regional systems. Indeed, Russia's aggression can be explained as the consequence of a misinterpretation regarding the reaction of the United States and NATO. In other words, the Kremlin might have expected the Western states to 'pass the buck' and not rush to Ukraine's rescue, as had happened in Georgia in 2008 and with the annexation of Crimea and Donbass in 2014. However, in this case, the West's reaction changed the picture and thwarted Russian plans (Baev, 2022).

The Israeli retaliation against Gaza has deep roots, as it is the latest episode in the long conflict between Israelis and Palestinians. However, the Hamas attack and Israel's retaliation fit into a scenario where the effects of the transition to multipolarity and the 'decomposition' of the global system into regional systems have been evident for years (Colombo, 2010). Indeed, since 2008, the relative disengagement of the United States from the Middle East has favoured the rise of new powers and the loosening of existing alliances. Powers such as Egypt, Iran, Turkey, and Saudi Arabia, as well as Russia and medium-sized powers like Qatar, have since 2011 engaged in conflicts to assert their roles in the region, mainly by supporting non-regular armed forces. Israel is at the centre of a shifting web of alliances and balances between states in the Middle East, as evidenced by the Abraham Accords which, prior to the October 7 Hamas attack, were expected to eventually lead to normalization between Israel and Saudi Arabia (Hokayem, 2023; Sternfeld, 2024). In this case, the 'strategic calculation' about its

security proved incorrect. Moreover, the reaction of the Israeli government once again highlights the backwardness of the United States, which seemed unable to moderate its Israeli ally. "The sprawling competition between the United States and the Soviet Union during the Cold War generated serial proxy wars, each one devastating in its own way," as Michael Kimmage and Hanna Notte have written. However, "great-power distraction is starting to look more like a collective curse," because the power vacuum is proliferating in Asia, the Balkans, the Middle East, and the Caucasus, where "middle powers and local actors are exerting themselves more and more boldly" (Kimmage & Notte, 2023). The shift toward a multipolar international system and the fragmentation of the global order into competing regional systems tend thus to increase insecurity, instability, 'buck-passing,' and volatile alliances.

## A Hybrid Era

The interpretations we have briefly examined in the previous pages undoubtedly capture some relevant aspects of the ongoing transition and are very useful for explaining some aspects of the crisis. The signs of the decline of America's hegemony are too evident to be denied, not only because the rise of Chinese power has taken on a military profile in the past decade, but also because the United States truly appears to be a 'dysfunctional' superpower (Gates, 2023), grappling with a strong internal sociopolitical crisis. This makes the idea of reviving its ambitions as a global policeman less credible and makes the scenario of a gradual retreat toward domestic issues likelier. At the same time, the interpretations that observe signs of a transition toward a multipolar system grasp the novelty of a world that is already "post-Western." However, both readings tend to underestimate two aspects, which should lead us to recognize in the 'return of history' a hybrid phase, combining innovative elements and older trends.

The first problematic element particularly concerns interpretations that attribute contemporary instability to the decline of US hegemony and view it as the announcement of a hegemonic transition. Various theories of hegemony, as partially discussed, interpret the history of the modern international system as marked by major hegemonic phases whose conclusion coincides with a general war involving all actors of the system and defining the foundations of the international order. Although apocalyptic drifts cannot be ruled out, we know well that, after 1945, the prospect of a general war became highly unlikely due to the potential destructiveness of a large-scale nuclear conflict. The fact that actors consider resorting to nuclear arsenals as an extreme eventuality makes it largely improbable that the hegemonic transition could be decided by the outcome of a general war, similar to those from which the Dutch, British, and American hegemonies emerged. The highly

improbable nature of a general war could prolong and deepen systemic chaos, increasing instability, overall insecurity, and fuelling internal conflicts within states.

Naturally, the fact that a general war is considered by actors as an extreme eventuality does not mean that states will renounce the use of armed violence. Even during the bipolar era, the impossibility of a general war did not make the world more peaceful, but rather pushed the two superpowers to engage in a series of peripheral conflicts, to fuel proxy wars, and to use political warfare tools aimed at weakening the rival. Indeed, the Cold War's equilibrium pushed the USA and the USSR to develop instruments that did not imply direct confrontation with the rival, but rather the use of intimidation and deterrence, pervasive propaganda, psychological operations, and covert operations. Even today, the use of nuclear arsenals represents the last resort, although after the outbreak of the war in Ukraine, the threat of resorting to nuclear weapons has been explicitly stated on various occasions by Putin and Russian leaders. Moreover, the conflicts fought in the twenty-first century reveal that the use of weapons, even in the presence of a significant resource imbalance, cannot guarantee an easy victory. Despite the apparent discontinuity represented by 1989, the transformations of the last thirty years seem to go in a direction similar to that of the Cold War. In the unipolar context, the asymmetry of military resources pushed the challengers of the United States to use offensive tools other than traditional warfare, consisting of cyberwar actions, disinformation, destabilization, and terrorism. Simultaneously, after the Desert Storm operation in Iraq, the United States radically rethought its modalities of military interventions, orienting toward the use of highly technological tools that avoided the deployment of substantial ground troops. Both on the American side and on the part of Washington's challengers, attention then turned to 'hybrid warfare' or, more precisely, to that 'grey zone' between peace and war, which comprises the use of offensive tools aimed at striking an adversary, without these interventions being interpretable as actual offensive actions or clearly attributable to a sovereign state (Friedman, 2018; Galeotti, 2022). Political warfare is not a novel phenomenon in the hybrid age, as it is an inheritance from the Cold War and the ideological conflict between the Eastern and Western blocs. However, what sets apart today's political warfare is that systemic disorder cannot be rectified through a full-scale war, and the world is no longer bifurcated into opposing camps but is interconnected by robust economic and technological networks.

The second component of the hybrid era in which we are living concerns indeed the connectivity of the system. While the hypotheses of a transition toward multipolarism capture the reality of the power redistribution process, it currently seems unlikely that decoupling and the formation of large blocs could substantially undermine the connect-



ed world that the unipolar moment and globalization have left us. The realization of the world market that in the 1990s had suggested the image of an ancient empire did not produce a long imperial peace (Hardt & Negri, 2000). Nonetheless, it has built a structurally interdependent space where new conflicts, the ambitions of emerging powers, and the fears of the declining hegemon find their place. As Henry Farrell and Abraham L. Newman argue, in today's interdependent world, it is possible to recognize a network topology that "generates enduring power imbalances among states" (2019, p. 45). Moreover, these asymmetries "create the potential for 'weaponized interdependence,' in which some states are able to leverage interdependent relations to coerce others" (Farrell & Newman, 2019, p. 45). In other words, since it is not possible to radically renounce interdependence, states try to move in the direction of derisking, limiting their vulnerability (Farrell & Newman, 2023). Meanwhile, they exploit interdependence to their advantage, using it as a weapon to weaken their rivals. In an era where open warfare is a card that cannot be played as easily as in the past, conflicts take place in the realm of 'connectivity.' As Mark Leonard argues, new conflicts do not occur on the battlefield or in the skies but on the internet, at border controls, in technology, in supply chains, and in the financial system (Leonard, 2021). In an interdependent world where aspiring hegemons cannot confront each other in the field, conflicts multiply and extend the 'grey zone' between peace and war, an area where there is no real war but no real peace: a zone where, as Lucas Kello has defined it referring to internet disorder, 'unpeace' reigns (Kello, 2017; Leonard, 2019).

The war in Ukraine shows us a traditional conflict, seemingly distant from 'hybrid wars.' However, even in this conflict—in its development and in its outbreak—hybrid elements have been present. Beyond this, Ukrainian resistance has depicted how adequate technological equipment can allow even a relatively marginal country to long withstand what was considered one of the most efficient and best-prepared armies. Similar conclusions are suggested by the outcome of the occupation of Afghanistan, which ended after two decades and enormous financial and human costs with substantial failure.

Quite different from the war in Ukraine, the Israeli retaliation against Gaza is a classic example of asymmetric warfare, in which the armed forces of a sovereign state fight against irregular forces, also striking civilian targets. In this case, military violence is exercised in a striking manner, seemingly distinct from those of connectivity conflicts. However, this contemporary crisis is the latest episode in a long phase of instability, where the major powers in the area have used and continue to use grey areas and the weaponization of connectivity to weaken adversaries. Attacks by Iranian state-sponsored hackers, piracy by the Houthi rebels in the Red Sea, the destabilizing

role of Hezbollah in the region, and the weaponization of refugee flows as a means of pressure are just a few examples of how connectivity conflicts and information warfare can intertwine with and exacerbate actual armed violence in the Middle East (Krieg 2024). The expression 'hybrid warfare' is very general, but contemporary wars are in many ways hybrid wars, because they combine military and non-military tools. While actors tend to avoid direct armed confrontation and aim to manipulate the behaviour of rivals primarily through the weaponization of connectivity, in a context of general uncertainty, 'miscalculations' are always possible. It is by no means excluded that the grey zone may turn out to be a zone of real war.

### **By other means**

In these pages, I have attempted to identify key elements of the hybrid era we are living in. As discussed, this era is termed 'hybrid' because it blends old and new elements. The 'return of history' can be partially understood as the resurgence of systemic chaos that accompanies power transitions between hegemonic states. However, the destructive potential of nuclear weapons makes the prospect of large-scale warfare unlikely and extremely risky, causing systemic chaos to become a more structural phenomenon. Simultaneously, signs of a transition to a new multipolar system are evident today, leading to increased insecurity, instability, and the risk of armed conflict. The experiences of 21st-century wars, beginning with Afghanistan, will likely encourage China and the U.S. to avoid direct military confrontation, instead opting for other means to assert their influence. In response to this climate of uncertainty, great powers are striving (and will continue to strive) to reduce their vulnerabilities. However, the decoupling hypothesis remains highly unlikely at present, as does the formation of 'closed blocs' similar to those of the Cold War. The world remains interconnected through mercantile, financial, and communicative flows. Rather than severing interdependence, states are already seeking to use it as a tool for exerting non-military pressure. To avoid the costs and uncertainties of direct military interventions, states will aim to strengthen political warfare tools to weaken and destabilize rival states. At the same time, it is possible that Western states, in an effort to mitigate the risks of the 'grey zone,' may adopt approaches similar to those of China and Russia. After the 'colour revolutions' and the 'Arab Spring,' China and Russia began perceiving foreign influence behind every domestic protest, treating internal dissent as external threats (Leonard, 2021). The risk of the hybrid age is that the 'grey zone' will expand, legitimizing the use of hybrid warfare instruments against a broad range of 'hybrid enemies,' thereby blurring the line between peace and war and obscuring the distinction between armed conflicts and societal strife.

Half a century ago, in a series of lectures at the Collège de France that were recently published, Raymond Aron commented on Clausewitz's famous phrase that war is "the continuation of politics by other means." Aron urged the lecture's attendees to distinguish well between internal political conflicts and the armed violence specific to war (Aron, 2023). In those same years and in the same classrooms of the Collège de France, Michel Foucault invited the audience of his lectures to overturn Clausewitz's maxim, recognizing that, to decipher power strategies, it was necessary to see politics as "the continuation of war by other means" (2023). Both Aron's admonition and Foucault's provocation remain fundamental pieces of the twentieth-century discussion on the transformations of enmity and continue to provide important insights (Antoniol, 2023). In the hybrid era of the new regime of war—a time when systemic chaos seems to become structural, where the 'grey zone' between war and peace grows, and where interdependence and connectivity are used as weapons to weaken adversaries—politics does indeed seem to become the continuation of war by other means. The space of this social conflict risks being crushed within the logic of war.

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# THE CURRENT EUROPEAN REARMAMENT BETWEEN INTEGRATION AND FRAGMENTATION

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## Introduction

The purpose of this paper is to examine and discuss the implications of current rearmament, with a particular emphasis on the EU's initiative for a common defence policy. The ongoing and escalating conflict between Russia and Ukraine has refocused the commitment of European governments and the attention of public opinion on military spending. Notably, defence budgets have been rising significantly. Data from the European Defence Agency (EDA) in 2022 revealed a 6% increase in defence spending compared to the previous year, marking the eighth consecutive year of growth. Since 2022, the conflict between Russia and Ukraine has heavily influenced public discourse, often cementing certain arguments and beliefs without critical examination. This paper aims to analyse three commonly presented theses in greater detail.

The first thesis posits that the rearmament announced by various European governments will not only enhance the security of their countries but also contribute to winning the ongoing war by providing military support to Ukraine. The second thesis can be summarized by the phrase "more is better," implying that larger armies and arsenals ensure greater security. The third thesis argues that the current rearmament approach, which focuses on strengthening existing national defence systems, is the best or only possible method. This perspective overlooks potential alternative arrangements, such as an integrated EU defence structure, suggesting that the consolidation of national defence systems would be the optimal choice.

Among these theses, the first one—that the substantial increase in spending will decisively influence the outcome of the current war between Russia and Ukraine—presents the most weaknesses. This argument can be demonstrated as partly fallacious. First, military spending decided ‘today’ cannot immediately alter the course of the ongoing war, as many of the allocated resources will go towards equipment and weapon systems that will only become available in the coming years. Secondly, at the time of writing this article, the war between Russia and Ukraine has clearly reached a military stalemate. A stalemate is a situation in which neither of the two conflicting parties can decisively prevail over the other. Despite common perceptions, military stalemate is actually one of the most frequent outcomes of armed conflicts.

For example, among all the incidents of Militarized Interstate Disputes (MIDs) coded in Maoz (2005), stalemates account for more than half of the total cases. Specifically, the increase in military spending is a consequence of military stalemate, not the other way around. One of the outcomes of a stalemate is an indefinite increase in military engagement, without either of the conflicting parties gaining a decisive advantage over the other. Caruso (2007) and Caruso & Xiang (2017) have demonstrated that an increase in military spending follows a higher likelihood of stalemate. Within a non-cooperative Nash framework, it can be shown that when rational parties know a stalemate is likely, they increase military spending. In the current context, EU and US military support for Ukraine cannot decisively secure a Ukrainian victory. Inevitably, the resolution of the conflict can only come through a peace agreement, which, at the time of writing, does not seem achievable in the short term.

The other aforementioned arguments require further analysis because they pertain to how military spending is allocated and how security is achieved in a world that is, unfortunately, characterized by greater uncertainty than in the recent past.

### **More is better? The fallacy of deterrence**

The thesis behind the current EU rearmament can be summarized by the expression “more is better.” This idea is based on a static concept of deterrence typical of the Cold War era. In short, this argument posits that a wider availability of armaments is a prerequisite for greater security. By increasing military spending, a rational party signals a credible threat to its opponents. This belief has, therefore, contributed to motivating the recent rearmament policy. However, the idea of deterrence is ‘static.’ In a non-cooperative game, parties choose the optimal level of military engagement once and for all. The equilibrium concept adopted is the Nash equilibrium, which is stable by definition. Due to its analytical simplicity, this approach has become the reference theory in



international relations despite various criticisms. In general, the literature on military expenditures indicates that choices about military spending are interdependent and inherently dynamic. An increase in a state's military spending tends to induce increased military spending in other countries, especially non-allied ones. This is why an increase in military expenditure is perceived as a 'threat' by other countries, leading them to increase their own military budgets, resulting in a generalized proliferation that undermines security levels. This mechanism is known as an 'arms race,' which is a dynamic and inherently unstable process, as demonstrated formally by Richardson (1960) and Boulding (1962).

Specifically, the experience of nuclear deterrence and the absence of war between the United States and the Soviet Union during the Cold War have unfortunately led many to believe that more weapons not only increase a country's security but also enhance the stability of the international political system. This misleading belief is often used to justify rearmament processes. However, even on a robust theoretical basis, the deterrence of the Cold War era is not replicable. The Cold War was a bipolar system, and deterrence theories were developed for dyadic rivalries—scenarios involving just two actors, whether states or alliances. In a multipolar world with more fragile and undefined alliances, as is the current situation, the analysis of deterrence becomes more complex, and the conditions suggesting inherent stability in such scenarios tend to disappear. The likelihood that an actor will have significant incentives to disrupt the stability of the status quo is much higher when they can gain substantial returns by unilaterally changing their armament levels. Additionally, as the number of actors increases, so does the complexity of acquiring and sharing information compared to a dyadic relationship. This complexity significantly impacts the knowledge of the actors and their arsenals, ultimately affecting stability.

In this perspective, for example, Quackenbush (2006) introduces a three-party extended deterrence game, analysing it under conditions of both complete and incomplete information. The three actors involved are the Challenger, Defender, and Protégé. The findings suggest that deterrence is most likely to succeed when the alliance between the Defender and the Protégé is reliable. However, an intriguing dynamic emerges: neither the Defender nor the Protégé desires to be seen as a more reliable ally than the other. If there is an asymmetry in the perceived reliability of the allies, a Challenger is likely to target the more reliable state to avoid a multilateral conflict. Nakao (2020) also develops a simple model with three actors that proves to be unstable.

Secondly, Cold War deterrence was decisively characterized by the presence of nuclear weapons. In that context, the hypothesis of mutual destruction fundamentally al-

tered the incentives and expected outcomes for the involved actors (this assumption forms the basis of Mutual Assured Destruction). As demonstrated by Intriligator & Brito (1984), deterrence based solely on conventional weapons is not stable. A stable deterrence can theoretically only be achieved when the costs each actor can impose on the other are sufficiently high and unacceptable. The significance of the Brito & Intriligator model lies in its ability to identify levels of weapon availability that lead to unstable situations. From this perspective, even unilateral disarmament policies can be more unstable. In other words, for example, disarmament also would require coordination and organization.

Moreover, at the time this article is being written, we are experiencing a phase of technological advancement that exacerbates rivalries between states. As elucidated by the analytical models of conflict developed by Jack Hirshleifer and other economists, the advantage in military technology can increase the likelihood of armed conflicts.<sup>1</sup> In this historical phase, we are witnessing a pervasive diffusion of technology, even in the military domain. Consider as current examples the proliferation of drones and, more recently, the prospective applications of artificial intelligence.

In this context, it is worth noting the legacy of Nobel Laureate Thomas Schelling. Schelling who had developed the concept of "credible threat," in his famous book *The strategy of conflict* in 1960, only one year afterwards extensively discussed the necessity for arms control in his book "Strategy and Arms Control" (co-authored with M.H. Halperin in 1961). In this work, Schelling and Halperin underscore that technological advancements in the arms sector necessitate agreements between rival nations on arsenal management. For such agreements to be credible, continuous exchange of information and communication is indispensable. Mutual control of arsenals would help mitigate incentives for pre-emptive strikes, which arise from technological advances perceived as providing a significant battlefield advantage. In essence, according to Schelling and Halperin, an arms control regime would yield greater security benefits than unconditional rearmament. In simpler terms, they propose a cooperative model between rival states that acknowledges the critical shortcomings of a simplistic deterrence framework, ultimately fostering greater peace. History unequivocally supports this perspective, considering that nuclear deterrence would not be viable without the various SALT and START agreements, which involved reciprocal concessions in information sharing.

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<sup>1</sup> See among others Hirshleifer (1988), Skaperdas (1992), Skaperdas and Syropoulos (2007).

## Trends in military trends

In any case, it is almost unnecessary to reiterate that the trend towards increased military engagement and rearmament that we are witnessing is not a recent development, as it began well before 2022. From a strategic standpoint, it can be attributed more precisely to the early stages of Russian aggression against Ukraine, notably the invasion of Crimea in 2014. In the subsequent months, at the NATO summit held in Wales in September 2014, a Readiness Action Plan was approved along with the establishment of the 'NATO rule' requiring member states to allocate 2 % of GDP for defence. Less publicized but more significant was the decision to allocate a constant proportion (20 %) of defence budgets to the acquisition of new equipment and weapon systems. It can be argued that the NATO summit clearly marked the beginning of a new era in global military spending trends. This summit catalysed a global rearmament effort and reshaped the structure of military expenditures in the following years. This impact is evident in official military spending data, particularly in the notable increase in expenditures on new equipment. This surge in demand for military equipment has bolstered the defence industry, consolidating trends and characteristics that had been developing in previous years, including: (i) the 'dual-use' engagement of firms in both military and civilian sectors; (ii) a greater propensity for disclosing innovative military technology; (iii) increased productive interdependence between producer and client countries; and (iv) a less concentrated market.

Then, a primary characteristic is 'dual-use,' where many major global armaments companies operate in both military and civilian sectors. For example, Boeing is a global leader in commercial aircraft production while also being a major defence contractor for the United States, manufacturing military aircraft. A second characteristic is the increased openness of military firms to disclose their innovations. Traditionally, during the Cold War, the military industry was marked by deep secrecy, as exemplified by the Invention Secrecy Act of 1951 in the United States, which restricted patent grants for inventions considered a national security risk. This trend towards less secrecy is evolving, evidenced by the significant rise in military patent applications in recent years, facilitating greater disclosure of new technologies. As noted by Stowsky (2004), the digital information era has fostered a 'shared innovation' approach, expanding dual-use technologies.

The broader dissemination of military-applicable technology has also facilitated global production dispersion. Emerging countries have become producers and exporters of military equipment. For example, Turkish drones such as the Baykar have been utilized in various conflicts and are now available to several emerging countries such

as Albania, Bangladesh, Ethiopia, and Morocco. Data from the independent research centre SIPRI indicates significant increases in arms exports from dynamic and complex emerging economies like China and India, with rises of approximately 200% from 2010 to 2023 compared to 1996 to 2009. Other rapidly growing exporters include South Korea (+363%), Turkey (+572%), Jordan (+473%), and Brazil (+146%).

The global diffusion of military technology is facilitated not only by the dissemination of human capital and new technologies but also by offset clauses in arms trade contracts, which have become a significant component of international arms deals. Offsets involve the seller engaging in activities that ‘compensate’ the purchasing country, often through joint production or subcontracting. Direct offsets include the production of goods and services related to the purchased military equipment, while indirect offsets involve unrelated supplies. For example, the South Korea-AgustaWestland agreement for the Lynx helicopter included South Korea producing the engines, exporting them to the UK for assembly, and then selling the completed Lynx back to South Korea and other countries. Offsets frequently result in production relocation from the supplier to the purchaser. Despite their economic inefficiency, which can prevent economies of scale, offsets facilitate contract negotiations and help maintain close ties with client countries.

### **The EU common defence policy: myth or reality?**

In spite of recurring talks and declaration about common defence policy in EU, it must be also noted that the war between Russia and Ukraine has not augmented cooperation between EU countries in defence. Before the war between Russia and Ukraine, defence in the EU appeared to be moving towards a more integrated and distinctly European institutional framework. This perspective of a common defence would signify a significant evolution compared to recent history. Under the NATO umbrella, security in Europe had long been the mere aggregation of the defence systems of Member States. While cooperation among European countries from a strategic standpoint was acknowledged, the military budgets and practices of Member States remained separate to safeguard their sovereignty in defence policy, unlike in other critical areas such as monetary policy and international trade regulation. Larger countries tended to protect and subsidize their national arms producers, while smaller countries predominantly relied on imports from allied nations. Efforts towards a common European foreign policy and integration in security and defence can be traced back to the 1950s, with the unsuccessful attempt to establish a European Defence Community. As mentioned earlier, the Cold War system appeared to be evolving in recent years. The Maastricht Treaty represented a significant stride towards establishing a Common Foreign and Security Policy (CFSP), and

further progress was made with the Amsterdam Treaty, which took effect in 1999 and established a High Representative for the CFSP. At a subsequent summit in Thessaloniki in 2003, EU member states adopted a document outlining the principles and security policy of the EU. It reaffirmed the necessity for a more active, coherent, and capable EU to pursue its strategic objectives and play a role as a global actor.

In 2009, the Common Security and Defence Policy (CSDP) came into force, as outlined in Title V of the Lisbon Treaty, which includes a mutual defence clause among member states. Therefore, the CSDP serves as the framework for cooperation among European states in the field of defence. In the context of institutional evolution, greater cooperation within the military industry began to take shape. In July 2013, the Commission published the Communication "Towards a more competitive and efficient defence and security sector," outlining a future roadmap with three main objectives: (i) Establishing an integrated internal defence market, enabling European companies in the military sector to operate without discrimination across all Member States. (ii) Implementing a secure EU procurement regime for the armed forces of all Member States. (iii) Launching a European research program covering both security and defence. Since then, initiatives aimed at enhancing integration and cooperation in military affairs have gained momentum. In March 2015, the Council initiated a revision of the Athena mechanism, dedicated to funding common costs for EU military operations. In November 2016, the Commission proposed a Defence Action Plan (DAP), pivotal to which was the establishment of a multi-year financed European Defence Fund (EDF), along with strengthening the Single Market for defence.

In December 2017, the EU Council established Permanent Structured Cooperation (PESCO). Unlike previous initiatives, PESCO carried higher expectations, aiming to pave the way for a cohesive European defence policy with binding obligations and commitments for participating countries. Within PESCO, Member States are expected to develop joint operational capabilities in the military field. Two key instruments managed under PESCO include: (i) The Coordinated Annual Review on Defence (CARD), overseen by the European Defence Agency (EDA), monitoring military spending at both Member State and EU levels. (ii) The European Defence Fund, crucial for enhancing European defence capabilities. Regulation (EU) 2018/1092 on the European Defence Industrial Development Program (EDIDP) further supports the capacity of the European defence industry. Significant progress in 2021 included the replacement of the Athena mechanism with the establishment of the European Peace Facility by the Council, aimed at funding EU external actions. Its endowment saw substantial growth between 2022 and 2023.

On 21 March 2022, one month into Russia's invasion of Ukraine, the Council of the EU adopted a new action plan known as the 'Strategic Compass'. Described as an 'ambitious but achievable plan to strengthen [the EU's] security and defence policy by 2030', it aims to enhance and integrate expenditures on defence equipment, bolster international partnerships, and improve the EU's threat assessment and crisis responsiveness. Many objectives and propositions of the Strategic Compass directly target the EU's security and defence industry, specifically the European Defence Technological and Industrial Base (EDTIB). Proposed measures include increased investments in key technologies, selective protectionism, and reducing foreign dependence to improve the EU's security of supply and strengthen critical defence supply chains. By securing access to critical components, technologies, resources, and services like Maintenance, Repair and Operations (MRO), the Strategic Compass aligns with the EU's long-term strategic goal of enhancing the EDTIB.

However, despite recent progress and developments, decisions regarding military spending policies have remained primarily within the purview of the Member States. European disunity and fragmentation are notably pronounced in the military industry, often described by terms like 'duplication' and 'multiplication' due to the lack of integration among Member States, resulting in inefficiencies across numerous military industrial projects.

A prominent example is in combat aircraft development: France and Germany have collaborated on a next-generation fighter-bomber, while Italy, the Netherlands, and the United Kingdom are engaged in the Lockheed Martin F35 Joint Strike Fighter project. Sweden continues work on the Gripen fighter, also selected by the Czech Republic, Hungary, and Croatia. Additionally, Italy and the UK embarked on a joint venture for a sixth-generation fighter (BAE Systems' Tempest) in 2019. Mogherini and Katainen (2017) highlighted significant disparities within the EU, with 17 main battle tanks, 29 types of frigates, and 20 combat aircraft, compared to 1, 4, and 6, respectively, in the United States. Hartley (2020) further underscored the fragmentation with 180 different types of military equipment in Europe compared to 30 in the United States. Despite initiatives like Airbus and MBDA, the European military industrial landscape still revolves around 'national champions' with numerous national subcontractors.

Member States continue to rely on national industrial champions, often state-owned or closely allied with specific partners. Over recent years, some European 'national champions' have also emerged as leading exporters in the global arms market. Despite recent progress, the EU's defence industry remains marked by costly duplication in research and development (R&D) programs and limited production scales tailored to in-

dividual Member State markets. This lack of economies of scale leads to higher costs, hindered interoperability, fragmented R&D progress, and increased maintenance and operational expenses that burden defence budgets.

More integration, reduced spending, and increased efficiency. In brief, the disunity and fragmentation within the EU's military sector result in significant resource wastage. Therefore, it is unsurprising that both at the institutional level and in various studies (such as Fontanel and Smith (1991), Guyot and Vranceanu (2001), Hartley (2003), and Kollias (2008)), there has long been a shared recognition of the inefficiencies in current European defence systems. These studies also highlight the potential gains in efficiency and technology that could be achieved by leveraging economies of scale through a European reallocation of defence procurement elements. For instance, a study by the Bertelsmann Stiftung (2017), focusing solely on land forces and employing rigorous and conservative salary hypotheses, estimated potential annual savings between 3 and 9 billion euros. Similarly, a study published by the European Parliamentary Research Service at the end of 2020<sup>2</sup> used Data Envelopment Analysis (DEA) methodology to evaluate the efficiency of defence systems across member states, quantifying the waste of resources and resulting inefficiencies in operational capacity.

First, defence expenditure per capita was used as an input, and the number of deployed troops as an output. In a separate analysis, military equipment procurement was considered as input, with research and development (R&D) expenditure serving as a proxy for the future quality of equipment. Specifically, the ratio of 'deployable' troops to total military personnel (especially among land forces) was employed as an input, representing the number of troops that could be rapidly deployed in conflict out of the total. This ratio was interpreted both as a measure of a country's effective military capacity and its commitment to maintaining a well-functioning army.

However, according to the European Defence Agency in 2017, the average share of deployable forces among the EU27 was only 25.8 % of total land forces. The analysis covered data from 2005 to 2017, during which France and Italy deployed the most troops. Assessing efficiency in producing this output quantified the aggregate 'waste' of EU member countries. On average during this period, member states wasted approximately 46 % of their defence expenditure on troop deployment, totalling an estimated €32 billion in current waste. These findings were robust across various analyses.

In the second exercise, member states on average wasted about 50 % of their defence expenditure on military procurement, totalling an estimated €12.7 billion during the

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<sup>2</sup> Report available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654197/EPRS\\_STU\(2020\)654197\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654197/EPRS_STU(2020)654197_EN.pdf)

period under review. Both results underscored the potential benefits of further European integration in troop deployment. In summary, the analysis revealed that military spending based on national defence structures is inherently inefficient. Conversely, enhanced integration could lead to superior efficiency, ultimately resulting in reduced military expenditures.

As noted above, the war between Russia and Ukraine has not augmented cooperation between EU countries in defence projects. The reason is simple: war is a shock that requires short-term or very short-term responses, whereas integration is a medium- to long-term process with high transaction costs. In the short term, governments rely on existing institutions and structures, so increasing spending tends to amplify the existing fragmentation. Putin's regime-led war, while providing a significant stimulus for increased military expenditure, could plausibly have the effect of delaying rather than promoting the realization of a common defence. While the first point is not new, as military spending began increasing in 2015 and accelerated from 2022, the second point warrants reflection as it is presented as the mechanism to foster defence integration among EU countries. To this end, the objectives of the current plan of the Commission foresee an increase to 40% in collaborative projects in military technology by 2030 and intra-EU defence sector exchanges amounting to at least 35 % of the total defence market. However, these goals currently appear challenging to achieve. As noted above, the fragmentation of European military spending has been a subject of debate for several years, but the war in Ukraine appears to have setback integration processes. For instance, according to data from the European Defence Agency, in 2022, the commitment to joint projects in military technological innovation amounted to only 237 million euros, a modest share of 6.8% compared to the total of 3.5 billion euros and a decrease from 2021. In summary, the rearmament following the escalation of the war in Ukraine has not led to greater integration of the military industry.

There is another specific issue that makes further integration unfeasible in the short and medium term, namely the non-EU ownership of several EU-based defence companies. As noted in Kleczka et al. (2024), on average, approximately 25-30% of the largest EU defence firms are owned by non-EU investors. However, these foreign shareholdings are typically dispersed among numerous investment funds and financial services firms, making them less critical from a strategic standpoint. Ownership by systemic or geopolitical adversaries is virtually non-existent. Some strategically important firms have become subsidiaries of non-EU defence companies, primarily from the US and UK, but this does not necessarily threaten the EU's defence supply security. Nevertheless, there is an increasing trend where (1) non-EU firms participate in mergers and acquisitions



that are highly relevant to the EU defence industry, and (2) non-EU firms win a larger share of defence-related EU tenders. An analysis of four multinational military aircraft programs further illustrates that the EU's defence research and development (R&D) and production capabilities may depend significantly on external suppliers.

## Conclusion

In summary, the current EU rearmament does not seem to produce security in the way European leaders discuss it, namely as a pure public good. A pure public good in security would be non-rival and non-excludable for all European citizens. However, the fallacies of the current rearmament outlined above suggest that this ideal scenario is not being achieved. Security instead appears more like a quasi-public good, if not a club good, introducing inequalities in its provision among EU citizens. From a strategic perspective, if security is treated as a quasi-public good, the interaction between rival states resembles a Colonel Blotto game, undermining the notion of rearmament as a tool for static deterrence based on a pure Nash-like game of deterrence. Looking at the political implications, the fragmentation of EU military engagement further underscores concerning inequalities among citizens. In short, the current rearmament efforts require serious reconsideration and a stronger push towards enhanced EU integration on defence issues.

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# RESEÑA



# **GIANFRANCESCO ZANETTI, *EQUALITY AND VULNERABILITY IN THE CONTEXT OF ITALIAN POLITICAL PHILOSOPHY. ITALIAN EFFICACY*, SPRINGER, CHAM, 2023, 135 PP.**

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The volume stems from reflections emerged during classes of the PhD program in Italian Studies that Professor Zanetti conducted at the University of Berkeley (California) during the spring of 2021.

Thoughts arisen by his researches, but also by the debate with his students, gave the Author the opportunity to find a thread that connects the Italian political-philosophical agenda, that is to say: equality as practice (p. 4).

This 'kind' of equality, linked to a perceived phenomenon of vulnerability (p. 6-9), "is a way of making sense of that very world, at the same time criticizing those valuable narratives of universal equality that are meant to somehow legitimize bare efficacy phenomena" (p. 10).

Following the title of the book, it is possible to gather the contributions of the authors in three groups, relating to three key-concepts: equality, vulnerability and efficacy.

Starting from the notion of equality means starting from Giambattista Vico (1668-1744), particularly from the distinction between *basic equality* and *equality as a goal*.

The first notion implies to sustain that all human beings are equal, because God said to believe in it. However, it is possible that differences exist: there are some conditions that are not always equal. Not because the nature of some human beings is different, but because of the social structure, that makes some groups of people more vulnerable than others (and therefore not equal). In this case, it is possible to achieve equality, so that

equality as a practice becomes a prius, while basic equality becomes the outcome, the *posterius* (p. 60-61).

With the masterpiece of Cesare Beccaria (1738-1794), *On Crime and Punishments* (1764) it is possible to grasp some problematic issues of equality, through the lens of his twin notion of vulnerability. According to Beccaria, in fact, it is empirical evidence that each human being shares the same feelings and selfish reasons, which make their potential decisions and feelings predictable. However, this universal notion of ‘humanity,’ and therefore his narrative of equality and neutrality is about individuals (p. 70-71). In other words, Beccaria gives a formal notion of equality, so he cannot identify any situated vulnerability. Consequently, while general and abstract laws may effectively address certain issues of inequality—such as those pertaining to rigid caste systems—they may fail to address other cases of vulnerability that are equally substantial (p. 69-73).

For the fascist author Santi Romano (1875-1947), equality becomes something that does not necessarily exist. In fact—as Zanetti highlights—in authoritarian states, inequalities and discriminations *can* and *do* exist. However, inequalities can also exist in normative systems that claim to fight against it. Sometimes, a normative horizon may present equality as universal, even though it is, in reality, partial. In this way, inequalities and discriminations become *invisible* and perhaps even more insidious than explicit ones (p. 94).

Equality is strictly connected with vulnerability—the second key-notion of this book—in *The Duties of Men* (1862) of Giuseppe Mazzini (1805-1872). In fact, on the one hand, all human beings are equal, because they are all vulnerable; on the other hand, equality is more than just a static value defined once and for all; it is a practice activated in response to instances of contingent vulnerability, potentially facilitated by the natural sociability and inherent empathy of human beings. Furthermore, Mazzini recognized that situated individuals and their vulnerabilities result from practices and institutions of inequality, and he claimed the importance of the vulnerable groups to advance the general notion of *equality* (p.83-88). On the contrary, with Dante Alighieri (1265-1321), vulnerabilities are hidden: there is no need of “equality-as-a-practice” (p. 20), since every piece falls into place, thanks to the will of the God.

Concerning the notion of vulnerability, it is also possible to mention Niccolò Machiavelli (1469-1527) and his masterpiece, *The Prince* (1532), in which the figure represented as vulnerable is not a minority—as in Mazzini’s thought—but the Prince himself, mainly because of *fortuna*, the constantly changing background circumstances, which always carry the risk of ruin, *ruinare* (p. 25-29).

As it is known, Niccolò Machiavelli, has inspired many authors. One of them was Gerolamo Cardano (1501-1676), who—starting from Machiavelli—gave a different

meaning to the concept of *vulnerability*. In fact, according to him, the reason for human vulnerability lies in the fact that technical rules—necessary for success and achieving goals—are applied to individuals and, for this reason, operate to the detriment of other individuals (p. 38-39).

Then, ‘thanks to’ Emilio Salgari (1862-1911) and Cesare Lombroso (1835-1909), it is possible to analyze the main expression of situated vulnerability in Italy, that is, the one that emerges from the notion of ‘race’.

In particular, the lawyer and physician Cesare Lombroso claimed that criminal acts and sociopathic behaviors were linked to anatomical features and biology, while Emilio Salgari—author of more than eighty novels—appears to express full-fledged racist declarations, as Zanetti notes: “in his books, some ‘races’ are clearly seen as physically and morally superior than others” (p. 100).

Aldo Braibanti’s notion of vulnerability comes from his own experience. More precisely, this connection is shown by narrating the story of Braibanti and his friend, Giovanni Sanfratello (1940-2017), who was treated in a mental hospital for fifteen months, with several electroshocks and insulin shocks. Braibanti (1922-2014) was accused by Giovanni’s family of *plagio*, and after a long trial, he was condemned to serve time for nine years. According to Zanetti, this is a “tale of two vulnerabilities” (p. 119), since Braibanti was rendered vulnerable by the judicial trial, which accepted the narrative given by Giovanni Sanfratello’s father, while Giovanni Sanfratello was made vulnerable by his family and the treatments in the clinic.

In fact, Braibanti belonged to a minority, while Sanfratello to a majority. Nevertheless, they were vulnerable for the very same reasons: they were both artists, young intellectuals, bohemians, and homosexuals (p. 119-123).

As specified in the chapter on Pier Paolo Pasolini (1922-1975) (p. 127-135), figures like Braibanti, who are members of inclusive groups, are in a vulnerable position because they are considered to be in disharmony with the pre-existing mainstream narrative, in which they can and must be sacrificed (p. 132).

The last key-notion which links many authors in this book is the *efficacy*.

According to Gerolamo Cardano (1501-1576), this notion is strictly linked to virtue and basic vulnerability of every single human being. In fact, efficacy and a favorable position of power are essential for addressing the final challenge and achieving goals successfully. Furthermore, the goal must not be only a technical success; it also involves institutional values, preserved in the Italian republican tradition, such as virtue and glory (p. 42-45).

In the chapter about Giovanni Della Casa (1503-1556) and Giovanni Nevizzano (late XV cent.- 1540) the Author asks: “Could the peak and ground of legal validity be

efficacy?” (p. 47). In the light of all the reflections made in the context of this book, and particularly in this chapter, the answer could be: yes, of course; the condition of efficacy, endowed with its own legitimacy, is certainly a source of the law itself (p. 48).

Regarding efficacy, it is finally worth mentioning Arturo Carlo Jemolo (1891-1981), who described efficacy phenomena—which the Author called ‘islands’—as existing within a pluralism of narratives that are not necessarily compatible with one another. One example is the family, which is described as “the rock among waves, and the granite which forms the bedrock that belongs to the world of the affects, [...] to morality, to religion, not to the world of the law”<sup>1</sup> (p. 115).

In light of all these reflections, it is possible to state that *Equality and Vulnerability in the Context of Italian Political Philosophy* is an agile yet very dense book, through which it is possible to grasp crucial and acute suggestions, by examining Italian Philosophy of Law through the original lenses of equality, vulnerability, and efficacy.

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<sup>1</sup> A.C. (1957). La famiglia e il diritto. In L. Scavo Lombardo (ed.). *Pagine sparse di diritto e storiografia*. (p. 241). Giuffrè.