



THE CONCEPTUAL AMBIGUITY OF TOTALITARIANISM, FASCISM AND POPULISM: REFLECTIONS ON CONTEMPORARY CONSTITUTIONAL CHALLENGES

A Ambiguidade Conceitual de Totalitarismo, Fascismo e Populismo: Reflexos Sobre os Desafios Constitucionais Contemporâneos

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ABSTRACT

The recent rise of authoritarian movements around the world requires an interdisciplinary reflection on the fundamental elements of democratic regimes. In fact, political typologies renew their complexity as a result of current economic, geopolitical and legal events. In this context, legal scholars have tried to explain the paradoxical relationship between constitutionalism and authoritarianism. Considering these concerns, in this paper we discuss the conceptual boundaries of totalitarianism, fascism and populism, in order to analyze how these concepts were incorporated into the debate on the crises of democracy and then connected with modern constitutionalism. The research was carried out with the qualitative and analytical-descriptive study of the concepts. As a conclusion, it was verified that, even though the current problems have different aspects from those of the past, there are structural characteristics of modern society that make it possible to understand the new authoritarian wave. The constitutional system challenge is to face anti-democratic pressures without losing its basic meaning. The paper seeks to contribute to the debate on the crises of constitutional democracies and to clarify key concepts to understand current problems.

Keywords: Totalitarianism; Fascism; Populism; Democracy; Constitutionalism.

RESUMO

A ascensão de movimentos autoritários em distintas partes do Mundo tem demandado reflexões interdisciplinares sobre os elementos que fundamentam os regimes democráticos. Nesse contexto, as tipologias políticas ganharam nova complexidade, a partir da associação com eventos econômicos, geopolíticos e jurídicos da atualidade. No Direito, passou-se a analisar como o constitucionalismo - tradicionalmente associado à democracia - pode conviver com formas jurídicas que fundamentam ações autoritárias. A partir dessa provocação, o trabalho objetiva traçar as fronteiras conceituais das categorias totalitarismo, fascismo e populismo, a fim de verificar como esses termos integram o debate atual sobre as crises das democracias e desafiam a compreensão do constitucionalismo moderno. Metodologicamente, utilizou-se de estudo qualitativo e analítico-descritivo dos conceitos e da literatura especializada. Como resultado, verificou-se que, ainda que se busque responder a problemas distintos daqueles diagnosticados no passado, existem traços semelhantes de descrição das sociedades modernas que contribuem para a compreensão do retorno de uma onda autocrática, o que revela a necessidade de resgate do sentido fundamental do sistema constitucional. O trabalho busca contribuir para o debate sobre as crises das democracias constitucionais, a partir da elucidação de conceitos-chave para a compreensão de problemas atuais.

Palavras-chave: Totalitarismo; Fascismo; Populismo; Democracia; Constitucionalismo.

INTRODUCTION

Totalitarianism, fascism and populism are terms that make up an important part of contemporary political, academic and legal discourses. Currently, these categories have regained prominence based on diagnoses of the dissemination of autocratic waves around the world, which would point to trends of hybridity between authoritarian and democratic forms, including in realities considered democratically consolidated.

Despite the wide and growing use, there is considerable difficulty in defining and conceptually differentiating these categories and, especially, in substantiating their association with typically democratic institutions. In fact, the emergence of terms such as abusive constitutionalism (LANDAU, 2020) and authoritarian constitutionalism (TUSHNET, 2015), despite having their own premises, reveal the need to understand the possibility of association between different non-democratic manifestations with the movement that, historically, represents the landmark of the recognition of the guarantee of the individual rights and the limitation of the powers of the State.

In view of this, the present work starts from a relevant concern to think about the conflicting scenario of contemporary democracies regarding the association of constitutionalism with non-democratic movements.

From the outset, defining the thematic focus of the text, it is clarified that the three categories analyzed are not thought of as interchangeable¹ or as dimensions² needed from similar sociopolitical events. On the other hand, the option for the joint examination, in a scenario of criticism of the inflationary use of these terms, seeks to reveal contradictions in the application, but,

¹ In this sense, it is the position of Kaiser and Álvarez (2016, p. 69-70, Epub) when they state: “*El nazismo alemán y el fascismo italiano, por ejemplo, aunque con un núcleo ideológico más depurado y otras importantes diferencias con lo que hemos visto en la región latinoamericana, también fueron movimientos populistas que hicieron del odio a la libertad individual y de la adoración del Estado su propulsor fundamental. Lo cierto es que, más allá de la complejidad de la comparaciones, ideológicamente, gente como Mussolini, Hitler, Stalin y Mao estuvieron en la misma trayectoria de un Chávez, Perón, Castro, Iglesias, Allende, Maduro, Morales, Correa, López Obrador, Kirchner y Bachelet [...]*”.

² This interpretation is taken from the work of Fausto (2020, p. 169, Kindle) when he mentions that: “Totalitarian forms evidently do not exhaust the list of contemporary social forms within a history in which there are regressions, lines of progress, and status quo. [...] Without intending to make a general presentation of contemporary social forms here, I will introduce another one that represents a form, so to speak, 'intermediate' [...]. In fact, there are certain formations which, without being properly totalitarian themselves, are as it were 'deduced' from totalitarian forms, because they have some things in common with them. [...] I think we could unite this genre by the term, very controversial and criticized, and by no means illegitimate, 'populism'. Maybe it would be better to talk about populisms.”

above all, to highlight common diagnoses of the format of modern societies. In these terms, ultimately, the text addresses the outstanding issues in the debates about the crisis of democracies³.

Initially, theoretical constructions about the key categories of work will be examined, in order to verify differences and possible ambiguities. The bibliographic examination of the themes was carried out with care to seek a variety of approaches, both with regard to the requirement of temporality - considered from the events that marked the 20th century and those that are presented at the beginning of the 21st century; as for geographic variety, from the north-south differentiation; and ideological spectrum of the authors, observing and explaining the premises of each one. Thus, it is not linked to the construction of an author's specific typology.

Then, the analysis of the text turns to the concreteness of the concepts, that is, to the examination of the use from the social diagnoses verified in the constructions of the categories, in order to demonstrate that the conceptual confusions and the abundance in the uses result from the very characteristics of modern societies. At this point, it is not intended to establish an analysis based on specific historical events. The work focuses on the plurality of concepts created in the specialized literature in order to determine what is observed as a connection point between the social fabric and the political categories studied. However, as will be highlighted below, the construction of the analyzed concepts is a result of the multiple interpretations and resignifications of empirical facts experienced in different contexts, which is why, although in a transversal way, mentions will be made of some movements, in order to clarify the context behind the analyzed ideas. Finally, it seeks to demonstrate how these discussions affect the understanding of the constitutional phenomenon, highlighting the relevance of knowledge of these conceptual approaches and ambiguities to think about contemporary legal problems.

³ The controversy surrounding this idea of a democratic crisis cannot be ignored, due to an apparent “permanent crisis”. In fact, it is understood that the hallmark of democracies is incessant conflict and contingency, that is, the impossibility of rigidly delimiting moral foundations, decisions and collective identities, due to the diversity of available and permanently tensioned options. In this article, however, we chose to make this term explicit, as it constitutes a relevant part of the vocabulary used by some authors mentioned throughout the text.

1 NOTES ON CONCEPTUAL INACCURACIES

Despite the efforts already made to delimit and outline a set of elements necessary for the characterization of the categories referred to in this text, in practice, political manifestations present themselves at a level of complexity that makes it impossible to frame the experiences in rigid academic schemes. It is inevitable, therefore, that words such as totalitarianism, fascism or populism fall into everyday public clashes and are used as combat concepts (*Kampfbegriff*), as pointed out by Boisard (2020).

The terms analyzed here are marked by polysemy. In such a way, it is almost unanimous, in the works that analyze these phenomena, whether from the keys of philosophy, history, political science or social sciences, the existence of an introduction highlighting the difficulty of conceptual delimitation. In this sense, for example, the statement by Losurdo (2016, p. 76) is mentioned, for whom: “The fundamental defect of the category of totalitarianism is to transform an empirical description, relative to certain determined categories, into a logical deduction of a general character”.

Similarly, Aboy Carlés (2001, p. 02) stated that few terms had such precarious precision in the field of social sciences as populism. This fact results in a perception according to which the works that deal with this theme would conform a kind of “minor subgenre of academic literature”, as they are attached to a rigid and predetermined structure: they begin by highlighting ambiguities; criticize uses and application contexts; in the end, they seek to draw a definition of their own.

Confusing with the issue of conceptual vagueness, the literature points out another difficulty in dealing with these categories, which Kaltwasser (2019) called “chameleonic nature”, that is, the tendency to associate an idea with others that conveniently interest a person. political-electoral project. It would be the case, for example, to reduce populism to authoritarianism or fascism.

As a result, it is important to highlight the context of use of the concepts in dispute, which is why analyzes such as Boisard's (2020) are important, which, based on Quentin Skinner's methodology, highlights the need to understand what the use of concepts represents about who uses them, rather than against whom it is used.

2 INTERCOURSES BETWEEN TOTALITARIANISM AND FASCISM

Discussions about the differences between totalitarianism and fascism go back to the troubled period that preceded the beginning of the Second World War. Traverso (2005, p. 101) mentions that the term “totalitarian” started to be used, in the 1920s, by Italian anti-fascist groups, as a way of designating the dictatorial character of the government of Benito Mussolini. Later, the term was absorbed by the fascist movement itself, which openly proclaimed “the totalitarian nature of the regime” as a form of propaganda. In a different way, the author mentions that, in Germany, Adolf Hitler and Joseph Goebbels preferred the use of the expression “Racial State” (völkische Staat) instead of “Total State”.

Hannah Arendt (2012, p. 717, note 11) also highlights the self-designation of the Italian fascist government as totalitarian, however, she denies this conceptual framework, due to the absence of characteristic elements of what she defines as totalitarian government. For her, a proof of the non-totalitarian nature of the Italian regime would be the small number of political criminals and the softness of the sentences applied to them, which would be incompatible with the logic of Nazi or Bolshevik terror.

The author establishes a relevant difference between totalitarian movement and totalitarian government. While the first would necessarily be prior to the second and would have as its purpose the organization of the masses⁴, the second could only be established in territories with the specific characteristic of the existence of large superfluous masses that could be sacrificed, without this resulting in depopulation.

In this way, Arendt (2012, p. 438-439) verifies that totalitarian movements existed in several European countries – in Poland, Hungary, Portugal, Spain and Romania, for example -, and evolved into dictatorial governments of the non-totalitarian type. Total government, to be achieved, would depend on such a brute and destructive force that it seems impossible to be supported in small countries. In this line, the centrality that the idea of terror exerts in the construction of the author's thought is verified. When dealing with the psychological warfare carried out by Nazism, the famous Nazi propaganda machine is seen by it as an important element for the organization of

⁴ Arendt defines the masses by the need for social atomization and extreme individualization and by the feelings of indifference and superfluity, essential to feed the machine of totalitarian destruction. On this he states: “The term mass only applies when we are dealing with people who, simply because of their number, or their indifference, or a mixture of both, cannot integrate into an organization based on common interest, be it a political party, professional organization or workers' union. Potentially, the masses exist in any country and constitute the majority of neutral and politically indifferent people, who never join a party and rarely exercise the power to vote.” (2012, p. 438-439). Later, he points out: “The main characteristic of the mass man is not brutality or rudeness, but his isolation and his lack of normal social relationships”. (2012, p. 446).

the masses and, above all, for communication and confrontation with the non-totalitarian world (external or extra-party propaganda). Nevertheless, what marks the essence of totalitarian government is the terror and total domination of individuals in any and all spheres of life.

Propaganda is, in fact, an integral part of “psychological warfare”; but terror is more. Even after its psychological objective has been achieved, the totalitarian regime continues to employ terror; the real drama is that it is applied against an already completely subjugated population. Where the reign of terror reaches perfection, as in the concentration camps, propaganda disappears entirely: in Nazi Germany, it was even expressly prohibited. In other words, propaganda is an instrument of totalitarianism, possibly the most important, to face the non-totalitarian world; terror, on the contrary, is the very essence of their form of government (ARENDT, 2012, p. 476-477)

Using other tools to characterize this type of regime, Juan Linz (2000, p 58) does not identify terror as the central category that defines totalitarianism. For the author, the centrality of the analysis resides in the relationship established between the people and the rulers or, more specifically, in the existence of a monist power center from which all the government’s ideological legitimization derives, in addition to the way in which political participation is encouraged and channeled by the single party.

It is true that the author identifies several manifestations of non-democratic regimes, whether authoritarian or totalitarian. For the purposes of the examination proposed in this work, it is important to highlight that the characterization of different forms of authoritarian regimes and the differentiation of totalitarian regimes is possible from the analysis of “limited pluralism or the level and type of participation and apathy” (LINZ, 2000, p. 178). That is, the role played by political apathy and the controlled mobilization of citizens allows for very varied manifestations of ways of legitimizing a regime, representing relevant indicators also for the analysis of contemporary movements.

In this framework drawn by Linz (2000, p. 217), fascist regimes would not be confused with totalitarian regimes. In fact, those would be a form of authoritarian regime of the mobilization type, which emerged in societies that had already experienced the introduction of liberal values and constitutional or semi-constitutional governments, but that were going through social and economic crises, which called into question the legitimacy of democratic regimes in the process of consolidation. This would be, for example, the scenario of part of the European countries after the 1st World War.

Despite this and other interpretations and typologies - including, on the original release date of Hannah Arendt's book (1951), the concept of totalitarianism had already been under debate for a considerable period - the German author's contribution was received with particular

refinement. During the Cold War period, however, the interpretations of the author's writings, then residing in the United States, were modified in socialist left-wing political circles, only having been rescued from the 1990s onwards critical way the use of the concept of totalitarianism and the narrative that was tried to establish, especially from what, as defined by Žižek (2001, p. 15-16, Epub), was conceived as “the main weapon of the West in the ideological struggle of the Cold War”.

The author's judgment on the political category “totalitarianism” is an example of the clash over the strategic use of the concept. For him, the very notion of totalitarianism aims to maintain hegemonic politics, “rejecting the left-wing criticism that liberal democracy would be the obverse, the ‘twin sister’, of the right-wing fascist dictatorship” (ŽIŽEK, 2001, p. 16, Epub). A reading of this nature is affiliated with a spectrum of anti-hegemonic thinking and, therefore, incompatible with the theses that seek to analyze the weaknesses and propose tools for the revitalization of liberal institutions. On the contrary, when examining the remnants of what could be a “totalitarian threat” (new ethno-religious fundamentalisms; right-wing populism; and digitization of society that threatens freedoms), he finds denominators that strengthen “the legitimacy of liberal hegemony”. In a similar vein, Chasin (2013, p. 17) emphasizes the need to verify how liberal ideology seeks to perpetuate itself through the use of universal and abstract categories to maintain concrete privilege structures. In this way, it problematizes what is hidden behind the defense of the universal and abstract use of the category totalitarianism.

The concern of both authors turns against the maintenance of a supposedly democratic and universal ideology, which, concretely, hides a reality of racism, corruption, exploitation and violence. They thus reject the notion of totalitarianism constructed by liberal critics of the dictatorships of Mussolini, Hitler or Stalin.

Despite the validity of the critique of the unresolved shadows of liberalism, it cannot be disregarded that the construction of the concept of totalitarianism has, as a starting point, the search for the profound meaning of events marked by extreme violence, genocide, extermination of groups and institutionalization of the horror. As a result, the symbolic appropriation of the concept is defended as a characterization of nefarious events that go beyond and particularize the very notion of tyranny and violence. The stigma of ideological use or distortion that places it as the necessary antithesis of liberalism - from the establishment of a thesis according to which the “free world” won “totalitarianism” and all sociopolitical forms contrary to the prevailing pattern in the West are, irremediably, totalitarian -, instead of weakening, reveals the need to preserve this political category, that is, it corroborates the perception that it is necessary to build a concept that goes

beyond a certain historical experience and serves as a parameter for the evaluation of democratic practices and autocratic.

The “conformist and resourceful use of the concept” (TRAVERSO, 2005, p. 100), which even leads to the loss of clarity of its meaning, points to the need for a clearer establishment of the symbolic role that these categories play. It is a fact that Hannah Arendt, despite the popularity of her writings, turns to events with specific characteristics, difficult to repeat with exactness. On the other hand, the descriptions of elements related to the social and institutional organization that contributed to or made possible the propulsion of the movement and the establishment of the totalitarian government demonstrate a considerable capacity for active and latent continuities, which escape the temporal delimitation of the events that occurred in the first half of the 20th century. Thus, the importance of these concepts, in terms of analysis and criticism of liberal society, is to identify the elements that weaken the expansion of democracy and pluralism, and lead to depoliticization and social disenchantment.

3 INTERCOURSES BETWEEN POPULISM, FASCISM AND PROGRESSION

The ambiguities of the concept of populism and the variety of political circumstances in which it is employed make this category as – if not more – complex than those mentioned above. While totalitarianism and fascism are undeniably related to anti-democratic and anti-liberal aspects, there is no similar center that guides the readings of the various so-called populist movements.

The term is used, for example, to designate the Russian reformist and progressive experience of the 19th century (BOISARD, 2020, p. 26), moving away from anti-democratic or fascist characteristics. At the same time, in a very distant way from this interpretation, in other readings, it has identified its beginning in the second post-war period, as a continuity of fascism and totalitarianism, although not confused with them, – a kind of “post-fascism” (FINCHELSTEIN, 2019), which tries to adapt to the democratic context, but which carries anti-liberal and authoritarian traits.

For the latter author, there is no confusion between fascism and populism, insofar as, “[on] a world scale, populism is not a pathology of democracy, but a political model that thrives in particularly unequal democracies”. (FINCHELSTEIN, 2019, p. 287, Kindle). Thus, even though it poses a risk of weakening democracy, populism does not destroy it. If all democratic forces are usurped, the stage of dictatorship will have been reached; equally, in the event that the discursive enemy is converted into a physical enemy, who is persecuted or seeks to eliminate, fascism will

have been established. Populist authoritarianism is therefore not to be confused with the ultraviolence of fascism.

The attempt to establish the relations and oppositions between fascism, populism and democracy became more prominent from the recent events in Europe and North America, related to the rise of governments characterized as right-wing populist, whose most striking traits are xenophobia, religious intolerance and extreme nationalism. These movements are not to be confused with those identified in the totalitarian and fascist events that took place in Europe in the first half of the 20th century. In fact, these are new forms of manifestation of elements that already existed and that were influenced by past episodes. However, they assume symbolic and discursive contours that are different from the violence and terror that marked previous events and, naturally, respond to more current economic events and geopolitical disputes. Indeed, even if one tries to delimit the similarity between totalitarianism, fascism and populism from the opposition to liberalism and the rejection of morality expressed in institutions, this is hampered by the diversity of manifestations and influences of the numerous movements designated populist.

Despite the influence of events that took place in Europe throughout the 20th century, and in North America, more recently, for current readings of populist movements, the truth is that, for a long time, an interpretation prevailed according to which populism would be a typically Latin American manifestation (KAISER and ÁLVAREZ, 2016). This perspective has been overcome, as well as its updated version, which verifies the tendency of left-wing populisms in the Region, while, in Europe, right-wing populisms would predominate, given that experiences belonging to both political spectrums are visualized, and more or less authoritarian, on both continents. Parallel to this debate is the one that points to a more progressive and inclusive character of Latin American populism, and more reactionary of European and North American populism (MACKERT, 2019), in opposition to those who point to the anti-democratic aspect in any of the spectrums (KAISER e ÁLVAREZ, 2016).

These interpretational dissonances reinforce the initial premise of this work, according to which it is not possible to reduce populism to a rigid category. However, at the same time, these discrepancies in analysis reveal relevant points for the materialization of the use of this terminology. In Latin America, the different perceptions about the characterization of populist movements are relevant to the diversity of conceptions about the possibility of expanding state functions or regulations. It is, ultimately, an economic clash, accentuated in the dispute between state intervention and freedom of action of the private sectors. This signals a complex discursive relationship between social democracy, progressive politics and populist practices.

Traditionally, at least three waves are identified⁵ of governments mentioned as populist in Latin America: a) classical populism (the 40s to the 70s), related to movements originated in contexts of crises of oligarchic regimes and associated with redistributive economic policies, nationalism, expansion of the right to vote and the formation of structures social and labor assistance; b) neopopulism (1990s), marked by neoliberal economic policies, antagonistic to statism and redistributive nationalism; c) and left-wing populism (the 2000s), which, from an economic point of view, is closer to classic populists because they aim at redistributive and nationalist measures, opposed to neoliberal interests. (DE LA TOWER, 2013)

From the point of view of the dynamics between these different waves and the democratic institutional structures, in the first case, there was an attempt to identify the leader and his support base, based on the construction of a supposed homogeneous popular will, disregarding the democratic pluralism and the opposition. The most classic example is that of Juan Domingo Perón, in Argentina, but similar movements are identified in practically the entire region, including Brazil during the Vargas Era.

In the second wave, despite the difference in economic perspectives, leadership training maintained the personalist pattern, with immediate support from voters. The governments of Carlos Menem and Alberto Fujimori are mentioned as examples. De La Torre (2013) mentions the controversy over these examples, as the economic policy employed is the antithesis of the traditional statist and nationalist practices of previous populist governments. In this sense, in the second wave, governments, instead of incorporating more social sectors, appealing to the figure of the great leader or national hero, excluded popular sectors.

In the wave defined as left-wing populist, in the 2000s, leaders are associated with bearers of mystical missions or the rewriting of history, based on messages of carrying out new processes of independence or the re-foundation of States. The cases mentioned are those of Hugo Chávez, Evo Morales and Rafael Correa. It is discussed whether the government of Luiz Inácio Lula da Silva would fit into this wave. There is a tendency, however, to characterize it as a progressive government, not a populist one, given that it lacks the centralizing and reformist elements present in the other mentioned governments. Furthermore, during the period of his two governments, there was no erosion of the role of the parties as bodies of representation or a relevant attempt to remove the opposition.

⁵ It is necessary to highlight that the Brazilian case of rapprochement with right-wing populism, from the 2018 General Elections, is not punctuated as part of a regional movement. Commonly, it is connected to the concomitant experiences of different regions of the world, especially from the influence of the United States of America government, so it is not punctuated as part of a specific regional wave.

The fact is that the imprecision about the pattern of economic policies employed by populist governments and the socioeconomic diversity of the regions of the world that have been affected by so-called governments have led the debates to consider elements more related to the issue of identities constructed by the discourses populists.

In this scenario, trying to reduce conceptual malleability, including to serve as a normative category of analysis, Graziano (2018, p. 14) identifies the most relevant dimensions for the conceptualization of populism: ideology, communicative style and organization (leadership).

Populism, according to this reading, is an ideology, a set of values or visions, which places the people, simultaneously, as subject and object of democracy and describes them as pure, endowed with common sense, but prevented from thriving due to the existence of a dominant political class. A similar path is highlighted by Landau (2018, p. 524), when he mentions that he finds a common element in populist discourses based on the intention to build the image of a “pure people” and to point to a “corrupt elite”, which needs to be fought.

The configuration mode of these subjects (people and elite) varies greatly according to the national context. However, the antagonism between the people (good and pure) and the enemy (economic, political, institutional or intellectual elite) is the basis for populist discourse. The discursive appeal is aimed at the mobilization of collective affections, based on the definition and demonization of the enemy; the emphasis on the need for change; and in the construction of the image of the subject capable of saving the people, who will become the nation's leader, relegating the rational argument about the party's proposals to a much less relevant point. From this perspective, it can be seen that, in a common way, populist and fascist movements turn to disaffected and politically disengaged sectors. They reproduce, therefore, from the evils arising from modern society and unsatisfied social demands.

According to Linz's (2000, p. 217) reading, the fundamental role of mass mobilization in fascist governments, which would be a necessity arising from the social complexity experienced by countries that had already approached liberal and democratic values, would be carried out through the use of a “populist component”, which would represent the distortion of the idea of democracy and the dissemination of the supposed inability of democratic leadership to institutionalize the necessary mechanisms for conflict resolution. There would therefore be a need to build a strong ideological element capable of justifying the reduction of pluralism and, at the same time, inciting popular participation in favor of the party's objectives.

The perception of the approximation between these aspects of populist and fascist regimes and the outstanding characteristics of contemporary societies cannot, however, be interpreted outside the keys of discursive combat, that is, without considering the way in which the approximation between political leaders and the people is articulated and how respect for democratic institutions, values and symbols is expressed.

In fact, a relevant point of tension in the use of these categories is seen in the difficulty of differentiating a movement that actually threatens democratic structures from those that seek ways to deepen democracy and include historically marginalized sectors. In the struggles for the meaning of terms and the narrative of reality, the strategy of associating any progressive government with populism – and of reducing it to authoritarian experiences, fascist or not – reveals an attempt to stifle the emancipatory potential of democracy and to keep under suspicion sectors that stand in opposition to the hegemonic order.

4 POPULISM AS AN INEVITABLE DISCURSIVE PHENOMENON

The diversity of political experiences, including in the treatment of economic and nationalist ideals, gives rise to criticisms about the attempt to trace a conceptualization of populism that takes into account only one of the component sides of the historical cases (capacity of manipulation of a leadership or the reforming potential of a political movement), which would lead to a reduction in the complexity of this phenomenon. This is what Aboy Carlés (2001, p. 36) points out when defining populism as a way of gestating the inevitable tension that inhabits every political identity, moving away from the conception that attributes an essentially negative view to this category.

This idea dialogues with the concept coined by Laclau (2005, p. 220), according to which populism is not limited to the idea of charismatic leadership, irrationality or simplification of reality. For him, as a discursive phenomenon, populism is a product of the central task of politics: to build an idea of people, as a real expression of the relationship between social agents.

Considering this articulation of the people as a construct, that is, an identity in constant dispute, Mouffe (2018) traces the idea that the way to fight a right-wing populism is the construction of a left-wing populism. The author centers her thesis on the idea that the neoliberal and social-democratic hegemonic model is in crisis and that it is necessary to present emancipatory and inclusive projects that oppose the xenophobic and excluding idea of people forged by the extreme right movements. The defense of the need to build a people had already been elaborated by Errejón and Mouffe (2015, p. 130-131) as part of a political strategy for the constitution of new hegemonic

forces. The author's thinking, therefore, also turns against liberal democracy and the tendency of "consensus at the center" established by social democracy.

It is curious to notice that, despite centralizing the analysis of populism from the critique of liberal democracy, the author does not reduce it to a strategy of the defenders of neoliberalism, to a lie or a mystification. By proposing the maintenance of the political struggle for the determination of the hegemonic conception, it seeks to move away from the reduction of dissent to the field of morality or the false idea of the end of antagonisms. Under other premises, but also emphasizing the constancy of this political logic, Boisard (2020, p. 31) warns that populism is supported by the ideological orientation of the social base that sustains it. Therefore, it is present in practically all parties and does not present itself as a distinction between right and left.

As can be seen, such different experiences could not lead to even a consensus on the undemocratic character of all the governments mentioned as populist. The historical cases are not identical even in terms of how the relationship between the leader and the people is articulated. Therefore, even if populism is considered to be related to the discursive support of certain weaknesses and incongruities of liberal democracies, this finding does not imply the necessary recognition that it is an "intermediate form" or an "attenuated totalitarianism" (FAUSTO, 2020), and it is essential to reveal the intentions of those who articulate the discourse opposing the supposed populist government.

5 CONSTITUTIONALISM, AUTHORITARIANISM AND DEMOCRACY

The difficulty in defining the categories examined and the breadth of the possibility of experiencing non-democratic experiences also resonate as legal problems, especially from the tension over the ability to preserve democratic structures in the face of governments with a centralizing and anti-liberal intention.

In this sense, Harel (2020, p. 28) states that one of the characteristics of contemporary democracies is the persistent conflict between liberalism and populism. For the author, this clash is involved in discussions about the very meaning of representation. While populists appeal to the idea of representation of the popular will, in the sense that leaders are able to express the exact decisions that would be taken directly by the people, liberals are more attached to forms of legitimation based on public reason, such as the guarantee of individual rights and freedoms, which also presupposes the defense of political action by non-representative bodies. One is not talking, therefore, in any form of representation. On the contrary, populism presents itself as a very specific reading of representative bodies, which, as they seek directly the image of the people as a source of

legitimation, has little tolerance for intermediary bodies, such as activist courts, the media or non-governmental organizations. .

The conflicts faced by this way of articulating representation, as demonstrated in the previous topics, resonates with historical events in which there was a serious democratic and constitutional breakdown. In this regard, it is also relevant to highlight the concept of militant democracy, developed by Karl Loewenstein in the 1930s, in the context of the rise of fascist regimes in Europe. For him, far from being an isolated problem, fascism would present itself as a “seemingly irresistible wave, comparable to the rise of European liberalism against absolutism after the French Revolution” (LOEWENSTEIN, 1937, p. 417-418, our translation). The establishment of this type of government would presuppose the replacement of the rationality and calculability of constitutional government by a form of opportunistic emotional government. As highlighted by the author, “fascism is not an ideology, but a political technique”, whose characteristic would be the “incessant repetition of exaggerated assertions and simplifications” (LOEWENSTEIN, 1937, p. 423, our translation).

This political technique, despite being guided by emotion and by the articulation of rivalry between different layers of the people, could only be victorious due to the conditions offered by democratic institutions. In other words, the authoritarian appeal and mobilization of the masses was made possible by tolerance and the inability to prohibit the enemies themselves from using democratic instrumentality, specifically the language of the law. Based on these premises, and on the idea that the central principle of democracy is legality, Loewenstein (1937, p. 424) pointed out that states were unable to contain fascist movements disguised as political parties, including because democratic regimes would not be capable of forging the false and appealing emotional bond characteristic of fascist regimes. As a result, the author proposed a realistic defense of democracy, based on the idea that democracy itself should become a militant in order to fulfill its projects. For the execution of its superior purposes, it should erect legislative barriers against extremism, which includes the “prohibition of anti-democratic parties or partisan militias; restrictions on basic civil rights, such as freedom of assembly and expression; and the establishment of a political police” (MALKOPOULOU, 2019, p. 01, our translation).

Despite the purpose of defending democracy, the construction of this political strategy is considered to be, in itself, illiberal and undemocratic. For this reason, Malkopoulou and Norman (2019, p. 92) seek to analyze alternatives that serve for the self-defense of democracy without becoming anti-popular or elitist practices, as they consider Loewenstein's construction to be.

This critique is centered on the ideological aspect of Loewenstein's militant democracy, which associated the emotional appeal with mass mobilization, approaching traditional elitist theories, which is why he built a strategy that rejected popular participation. This elitist conception presupposes the defense of the rupture of channels of communication and action of “volatile citizens” or undesirable actors, which, ultimately, characterizes the legitimacy of arbitrariness at the center of democracy (MALKOPOULOU E NORMAN, 2019, p. 94).

The challenge lies, therefore, in building forms of self-defense for democracy without falling back into elitism or social atomism, which is even seen as one of the necessary elements for the mobilization of the masses by fascist and totalitarian movements. There is a need to protect the liberal element, but also to strengthen the social base of democracies.

Populist leaders, for example, not only present themselves as representatives of the people; they embody the idea that they are the only ones – or at least the most – legitimated to express the general will. Corrupt elites, pre-defined in their speeches, and all those who oppose their projects are relocated in the public space and delegitimized. The way in which this process of alienation of political forces operates can occur in a more or less subtle way. The attack on democratic institutions does not necessarily take place through the closing of bodies or the abandonment of the constitutional discourse. On the contrary, through the language of law, reforms are carried out that have an illiberal and anti-democratic nature, by undermining guarantees, weakening the separation of powers and seeking to consolidate the concentration of power. A project of this nature depends on the creation of a discourse capable of generating a feeling of generalized crisis and of isolation and social polarization, whose apparent solution will be in the operation of major reforms or in the very rupture of the current constitutional text.

When analyzing what he defined as “Populist Constitutions”, Landau (2018, p. 522) highlights the close relationship between the ideology that divides the world between two antagonistic groups - the pure people represented by the populist leader and the corrupt elite against whom one must act -, and the great constitutional reforms that seek to refound the political and social order. For the author, the constitutional changes operated under populist discourses have three very defined functions: to deconstruct the existing political regime; serve as an ideological critique and promise of overcoming the flaws of the constitutional system; and consolidate the centralization of power in the hands of the populist leader.

It is not surprising, therefore, that the discourse against the various other instances of political manifestation is centered on the idea that there are, supposedly, blocks or distortions in the representation of the popular will. Speeches against the media, for example, are systematically repeated by politicians labeled as populist. In this regard, when analyzing the example of the Donald

Trump administration, Kakutani (2018, p. 32) highlights that “Trump’s lies, his efforts to redefine reality, the violation of norms, rules and traditions, his normalization of the discourse of the hatred, his attacks on the press, the judiciary, the electoral system” would have resulted in “a stronger and faster deterioration of American democratic standards than at any other time on record”.

Faced with this confrontation, the need for vigilance against measures of deconstitutionalization is emphasized, even if operated under the language of reforming power. This understanding is so relevant that Albert (2019, p. 02-03, our translation) even states that “no part of a Constitution is more important than the procedures used to modify it”. In fact, constitutional amendments, which traditionally operate as mechanisms for updating and stabilizing the text, can also point to a potential for the destruction of the Constitution.

Based on these considerations, Albert (2019, p. 263) develops the concept of constitutional dismemberment⁶. For the author, the changes made to the Constitution work from two opposing mechanisms: constitutional amendments and dismemberments. While the former seek to maintain the coherence of the constitutional project, the latter are characterized by a conscious effort to break with the commitments or pillars of the Constitution. There is, therefore, a marked difference between the process that is based on maintaining fidelity to a specific project of State and society, and the other that operates, from within the system and supported by its language, as a corrosive force. In this context, constitutional amendments do not actually have a reforming nature. These are attempts to repudiate the essential qualities of the Constitution and break the foundations that structure it. In practice, a new order is erected, based on principles contrary to the old order, forcing society, political actors and judges to adapt to a new order, even breaking with the precedents consolidated in the previous order. (ALBERT, 2018, p. 02-03)

These elements point out that the risks to the maintenance of the constitutional order need to be considered not only from the perspective of constitutional design, but also from the dynamics of the functioning of power relations. In this sense, Whittington (2002, p. 2147) warns of the risk of abuse of the use of crisis language to serve as a stimulus to political and constitutional irregularities. In other words, when determining the existence of a constitutional crisis, a legal limit is broken and extraordinary solutions are sought to resolve political problems. There is, therefore, a need for constant vigilance about the risk of the crisis discourse being intentionally created as a way of justifying attempts to claim new powers or dismantle oppositions.

⁶ Nunes (2018), analyzing the recent Brazilian experience, based on what the doctrine has called abusive constitutionalism, identifies that Constitutional Amendment No. of 1987/1988. Such a change, even if it causes long-term effects, fits into the idea of dismemberment presented in the present work.

The warning that attacks on democracy do not necessarily resemble tanks on the streets or the invasion of Presidential Palaces - they can even coexist with the maintenance of the ordinary electoral route, the validity of the Constitution and the nominal functioning of democratic institutions (LEVITSKY and ZIBLATT, 2018, p. 17) -, has been systematically identified by political scientists and constitutionalists.

This is the meaning of what Landau (2020) defined as abusive constitutionalism, that is, the use of the constitutional order, in a subtle way, in order to make it difficult to monitor or cancel governmental acts. It is not an integral authoritarianism, but the reduction of democratic power and the exposure of the inexistence of mechanisms to deal with violations, resonating with the weaknesses of self-defense of democracy that had been diagnosed by Karl Loewenstein (1937). Barboza and Robi Filho (2019) draw attention to the fact that abusive constitutionalism can be structural or episodic, and consider that, in Brazil, despite hyper-presidentialism, judicial review and checks and balances mechanisms would work to prevent abuses structural. They therefore consider that there would be only episodes of abuse here.

In any case, this recognition of vulnerability renews the need to reflect on how Constitutions can be used to confront threats to democracy. When analyzing the experience of Singapore, for example, Tushnet (2015, p. 438) questions the possibility of thinking about a constitutional theory that considers the existence of governments in which there are relatively free elections, but the guarantees of individual freedoms are violated. The acceptance of the compatibility of constitutionalism in realities with moderate levels of repression is the demonstration of another way of contesting liberalism. For the author, there would be an authoritarian constitutionalism, in which, despite the precariousness of individual rights, there would be a certain level of commitment to the normative character of the Constitution. In fact, the example of authoritarian Singaporean constitutionalism would point to a higher level of commitment to constitutional normativity than the typical findings of abusive constitutionalism, even though they are supposedly more committed to liberalism.

These experiences and theoretical identifications lead to the need to uncover the weaknesses of formalist conceptions of the Constitution and return to the need to understand the uses of language and the weapons of symbolic delegitimization of political rivals. Political agents, institutions and society need to be rescued in the commitment to a real constitutionalism, which only works when married to truly democratic values. Materiality controls and the protection of constitutional identity are relevant to guaranteeing democracies.

Therefore, it is argued that it is a matter of central importance for constitutionalism to verify the manipulation of the idea of crisis and the mobilization of ambiguous political categories as a basis for adopting exceptional measures and for changing, formally or informally, the Constitution. There is even a mistaken interpretation about the functioning of the emergency powers provided for in the constitutional text, given that they, even if they temporarily suspend the effectiveness of certain rules, need to be interpreted within the constitutional design. Therefore, in the logic of constitutionalism, there is no such thing as an extra-constitutional power or a legitimate force to act against the political text, even if on grounds of defense of order, security and peace.

It is for this reason that, unequivocally, the protection of the essential core of the Constitution is maintained during periods of exception, and the adoption of measures that offend its fundamental principles or that disintegrate the constitutional project is not defensible. As pointed out by Paixão and Benvindo (2020, online), “They [crisis mechanisms] establish quick procedures for decision-making, but they must function as sunset clauses: they impose deadlines for urgent measures, keeping institutions vigilant to provide of accounts and the system of checks and balances”.

A political crisis is not to be confused with a constitutional crisis. Although both have potential for a relationship, the constitutional crisis is only verified when the legal system itself is challenged and put to the test. The crisis of a government or the disputes of political groups cannot be confused with the legal order; on the contrary, the constitutional system serves as a guide for these conflicts. Reinforcement of allegiance to the Constitution should inform all constitutional functioning, especially during a period of political crisis.

In relation to the Brazilian case, specifically, it is also relevant to highlight what Bonavides (2010, p. 124), when analyzing the constituent process formally initiated in 1987, defined as the difference between a constitutional crisis and a constituent crisis. For the author, there would be, in the country, not a crisis of the constitution - considered by him less serious -, but a true constituent crisis, that is, not only the contents of the texts were disputed; the Brazilian crisis was structural, “as it affects the essence of society and the core of institutions”. As it was structural, the constituent crisis could not be resolved with the writing of a new policy letter, insofar as it was related to the lack of recognition of the legitimacy of the established consensuses. Bonavides (2010, p. 115) explains that the abuse of authoritarian governments in issuing normative acts transformed the constitutional crisis into a constituent crisis, revealed by the absence of popular approval and the idea of “permanent revolution”.

The loss of fidelity is not to be confused with criticism of the inadequacies of the liberal model adopted by the State or the modernity of its structures. As long as the text serves as a parameter of legality and legitimacy, the debates about the appropriate models are not converted into constitutional crises. Clarity about its meaning is an instrument for limiting rhetoric that favors arbitrary practices. The differentiation between law and politics – and between constitutional crisis and political crisis – is a central element of modernity and needs to be respected.

FINAL CONSIDERATIONS

From the interpretations about the analyzed categories, it is possible to verify how such notions remain active in contemporary political discourses, mingling with new events and reinforcing sensitive points of the very model of society erected in modernity.

Despite the difficulty of defining universal concepts that account for the plurality of experiences lived in different parts of the planet, the attempt to establish contours for these categories is not superfluous. In fact, the contributions, even when starting from antagonistic premises, reveal essential elements for thinking about the functioning of democratic institutions.

In this sense, Hannah Arendt, for example, when alerting to the role that the politically indifferent played in the formation of the totalitarian government, based on the support of the masses, remains current, insofar as it reveals the liberal utopia that representative government would be the effective manifestation of the will of the majority of the people. Likewise, it highlights essential points about the risks that exacerbated individualism and apolitical manifestations, typical of consumer society, tend to deepen.

Furthermore, it was demonstrated that, despite the ambiguities, the differentiation between the categories of totalitarianism, fascism and populism is important for the control of argumentative rationality, even in environments marked by strong emotional appeal. In fact, whoever necessarily associates populism with fascism runs the risk of reducing any popular movement to mass movements of a fascist nature.

Thus, it is not possible to establish an essential link between totalitarianism, fascism and populism. On the one hand, terror – associated with absolute evil – is not an element identified in populist experiences, whether right or left. On the other hand, authoritarianism and the state of exception are certainly political-legal diseases that constantly need to be kept away from democracies. However, they are not necessarily framed in totalitarian gravity.

The opening to the uncertain – and, to a large extent, insecure – future that marks, at the same time, plurality and democratic plasticity, also results in movements that threaten this structure, based on the expression of aspirations for the closure of choices possible in a complex society. Precisely for this reason, it is necessary to establish the difference between the social claim for legitimate egalitarian policies and populist situations, considered in their negative sense.

These political conflicts do not go beyond the law. In fact, the seriousness of using the constitutional system against itself has been highlighted as one of the facets of the attack on democracies. There is an increase in the intensity and frequency of deviations from the use of the Constitution and the appropriation of power structures by leaders who, to a greater or lesser extent, try to hide authoritarian pretensions behind the discourse of representation of the general will of the people.

Anti-liberal movements that have been developed in several countries challenge democratic institutions and, at the same time, call into question the project of constitutionalism developed over the centuries. At the same time that it is necessary to recognize the disputes around the meaning of the Constitution, the need to renew the spirit and the shared belief in the constitutional project is pointed out, in order to reinforce the primordial intention of imposing limits on the power of the State, governing political action and guarantee the roll of rights, instead of seeking an infinite and unpredictable reinvention of the nation.

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