

DEMOCRACY, THE IMMANENT SOVEREIGN AND THE END OF EXCEPTION: A CRITIQUE OF CARL SCHMITT'S DECISIONISM

DEMOCRACIA, O SOBERANO IMANENTE E O FIM DA EXCEÇÃO: UMA CRÍTICA AO DECISIONISMO DE CARL SCHMITT

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ABSTRACT

Decisionism is the structure of Schmitt's political and legal thought. Hence the famous figure of the exception. Hence, too, the central figure of the theistic sovereign. Our objective in this article is to analyze the assumptions of Schmitt's decisionism, showing how such assumptions are incompatible with immanence and, therefore, with democracy. We will then present some central features of a notion of democracy based on immanence, such as the end of the exception and the immanent sovereign. Methodologically, we will read Schmitt's writings in which the notion of decisionism is elaborated, in addition to prominent commentators who deal with the issue.

Keywords: Decisionism, exception, sovereign, democracy, immanence

RESUMO

O decisionismo é a estrutura do pensamento político e jurídico de Schmitt. Por isso, a famosa figura da exceção. Por isso, também, a figura central do soberano teísta. Nosso objetivo nesse artigo é a análise dos pressupostos do decisionismo de Schmitt, mostrando como tais pressupostos são incompatíveis com a imanência e, portanto, com a democracia. Apresentaremos, então, alguns traços centrais de uma noção de democracia baseada na imanência, como o fim da exceção e o soberano imanente. Metodologicamente, faremos uma leitura dos escritos de Schmitt nos quais a noção de decisionismo é elaborada, além de comentadores destacados que tratam da questão.

Palavras-chave: Decisionismo, exceção, soberano, democracia, imanência

INTRODUCTION

Decisionism must be taken seriously for the correct understanding of Schmitt and the consequences of his thought, especially with regard to the issue that interests us here, knowledge, democracy. There is no democracy in Schmitt because his thinking is structured around

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decisionism: democracy and decisionism are incompatible². Decisionism as the central structure of Schmitt's reflections prevents any real approximation of democratic thought because such decisionism is a strange figure to immanence³. We will then analyze decisionism to present its fundamental characteristics and traits. Only then will the criticism we are making of Schmitt will be clear.

The first question that must be asked is the reason for decisionism. What is the question that decisionism intends to solve, why does it appear in Schmitt's work? Many discussions take place around decisionism. There are many aspects that it raises and suggests. However, we would like to highlight a specific feature, a question of its own. In a very abstract way, we would like to emphasize that decisionism refers to a judgment, a justification, a reason. Schmitt's repeated assertion about the existential character of a decision and its opposition to normativism should not lead to inattention to the imminent problem of the search for a foundation. That's what we're calling here asymmetry. Decisionism is a very specific way of tracing this asymmetry, of justifying a distinction. What justifies a rule or norm being characterized as asymmetrically preferable to others? Why choose one norm or rule over others? In short, how to trace this asymmetry? The answer to this question requires that a distinction be made and that this distinction be justified in some way. Decisionism is an answer to this question. Although this is not the place for a broader discussion on the subject, we would only remember the permanence and currentness of the problems that decisionism poses⁴.

Before moving on to a more detailed analysis, we would like to emphasize that Schmitt, quite correctly, places decisionism in a much broader scope than simply a legal issue. Decisionism, in fact, is also a legal issue. The treatment of decisionism as a matter of the proper field of law receives, therefore, a prominent role from Schmitt. Obviously, this could not be different when dealing with a jurist, but decisionism goes far beyond legal discussion and Schmitt is fully aware

² Our hypothesis is that there is a continuity between Political Theology (1996c), Roman Catholicism and Political Form (1984) and Constitutional Theory (2003). Continuously, although slightly different, the theme of decisionism remains.

³ It is this unresolvable tension between the structure of the transcendence of decisionism and the immanence of democracy, as we will see later in the text, that explains the ambiguous place of representation in Schmitt: "to represent means to present and make visible a non-visible being through a present being publicly" (SCHMITT, 2003, p.209). This discussion reappears in several central texts on representation, such as that by Hanna Pitkin: The Concept of Representation. There is a brief commentary on Schmitt in the book. What stands out is that the most abstract notion of representation thought by Pitkin is exactly that notion of transcendence by Schmitt: to represent is to make an absentee present (PITKIN, 1967, p.9). Another important reference is Hofmann's book: Repräsentation (2003). Schmitt is discussed in several passages. Finally, although not dealing directly with Schmitt, but with the tension between transcendence and immanence, we have Voegelin's book The New Science of Politics (1952). A comment on the approximations and distances of Schmitt's thought escapes our purposes. On the Voegelin – Schmitt relationship, see GALLI (1996, p.274).

⁴ In a text on the problem of legitimation in late capitalism, Habermas, when criticizing Weber's concept of legitimation, draws an approximation between Schmittian decisionism and Luhmann's conception of law (HABERMAS, 1975, p.98).

of this. In his *Political Theology* (1996c), there are several passages referring to theology, politics, science. A privileged space for a good perception of the amplitude of the theme of decisionism is, in particular, the third chapter whose title is precisely *Political Theology*. There, as the title shows, there is a broad discussion of the place of decisionism in theology, its approach to theism and opposition to deism. Furthermore, an opposition between decisionism and the natural sciences is drawn. The field of decisionism issues is, therefore, quite extensive. We will then present the structure of decisionism to present some of its characteristics. These are the characteristics that will allow us to understand the issue of democracy.

DECISIONISM

Let's start with the book *Political Theology* (1996c). Schmitt opens his book with the notorious definition of sovereign: “sovereign is the one who decides on the state of exception [Ausnahmezustand]” (SCHMITT, 1996c, p.13). The relationship between decision and exception is necessary and it is only this that makes us understand the exact meaning of decisionism. This is what makes Schmitt claim that the decision on the exception is a decision in an eminent sense. The opposite of the exception is a general rule. Schmitt's intention to take the idea of decision and exception to the legal sphere is clear when he states that the general rule is the expression of a normally valid legal sentence. This is the typical composition of the rule of law he intends to criticize. The problem with a general rule is that it can never cover an exception. Logically, therefore, it cannot substantiate a decision. And, as for Schmitt, there is an exception, so the general rule and, consequently, the rule of law do not measure up to the central question of law. This is the motto that will be repeated by Schmitt not only throughout the book, but also in other works.

Schmitt offers a more specific description that allows for an even more precise definition of decisionism and its relationship to the exception. It is a description by negation: “the case of exception [Ausnahmefall], that case not circumscribed in the valid legal order” (SCHMITT, 1996c, p.13). This is the key to understanding the exception. Again, the exception lies outside the general rule, the exception cannot be circumscribed in a legal order of the rule of law. Then, the figure of the sovereign emerges: “this case [of the exception] makes the question about the subject of sovereignty current, that is, the question about sovereignty in general” (SCHMITT, 1996c, p.14). One begins to understand then how Schmitt thinks of the sovereign's place as the space of exception and how it is the place of decision. If there were no exceptions to the general rules of the legal sphere, there would be no need for the sovereign. The exception is such a radical figure that in relation to it “in a state legal sense, there is no competence. The Constitution can at most indicate who should act in such a case” (SCHMITT, 1996c, p.14). It is from this observation that Schmitt

states that the sovereign "is outside the normally valid legal order and, however, belongs to it, as he is competent to decide to suspend the Constitution in toto" (SCHMITT, 1996c, p. 14). Against the prevailing view of constitutionalism, as understood by the liberal tradition, the Constitution implies the existence of someone with the ability to suspend it, since, for Schmitt, Constitution is decision⁵. It is in this sense that he says with great propriety that "all tendencies of modern legal state development are aimed at eliminating the sovereign" (SCHMITT, 1996c, p. 14). If a view of legal norms as general norms prevails, then there would be no need for the sovereign. Fundamentally, there would be no need for the decision. As Schmitt asserts, whether the extreme case of exception can be eliminated from the world is not a legal issue, but depends on historical philosophical and metaphysical convictions.

Schmitt rigorously derives the consequences of the figure of the exception and decisionism. Commenting on the establishment of competences through legal norms, Schmitt affirms that obviously if there are clear competences for the case of exception, then the issue of sovereignty will be removed, but not eliminated. The exception requires nothing less than "the suspension of all existing order" (SCHMITT, 1996c, p. 18). The conclusion is very clear: in the exception, the State remains and the law retreats. This intriguing place of exception is the place where, not being anarchy and chaos, there is order but not legal order. The existence of the State guards a superiority over the validity of the legal norm. The decision is unequivocally described: "the decision frees itself from any normative bond and becomes, in its own sense, absolute" (SCHMITT, 1996c, p. 18). Nothing more, nothing less than that. Another passage must be mentioned here, as explicit as this one, which shows the radicality of what Schmitt understands by decision: "considered from the content of the norm taken as a basis, that moment of decision is something new and strange. The decision, normatively considered, is born out of nothing" (SCHMITT, 1996c, p. 37). Here is the interplay between decision and norm. Only in this way can it be understood why it is necessary for the decision to arise from a normative nothingness and, therefore, according to any norm, be arbitrary⁶. From a normative point of view, therefore, decisionism is arbitrary. This is the crux of decisionism⁷.

⁵ One must consider the exact meaning of the Constitution in Schmitt's writings. Constitution is decision and not a set of norms: "the Constitution in a positive sense contains only the conscious determination of a specific form of totality for which a political unit decides" (SCHMITT, 2003, p. 21). It is this understanding that would shed some light on what we are trying to draw attention to here, namely, the permanence of decisionism even in the Constitutional Theory.

⁶ Schmitt offers a subjectivist and personalist interpretation of decisionism, in a controversial text written after *Political Theology*: "the normativist claims for himself objective, impersonal justice, against the decisionist's personal [Willkür] will" (SCHMITT, 2006, p. 12). This extreme interpretation eliminates the tension, always present in *Political Theology*, between the objectivity of the founding character of the sovereign's act and the subjectivity of the subject who decides. Strauss refers to this writing as a "pamphlet" (STRAUSS, 1995b, p. 130).

⁷ If decisionism is arbitrary, from a normative point of view, the question of its justification arises. Therefore, it is not in a norm that we can find its reason. As we will see in detail, the majority interpretation, even with some divergences, is the idea that the justification of the sovereign decision is its capacity to bring order or, in other

In the last part of the first chapter, in a process of growing abstraction, Schmitt once again declares his fascination with the figure of the exception. Rationalism denies the exception and asserts that only the normal object can be of scientific interest, since “the exception disturbs the unity and order of the rational scheme” (SCHMITT, 1996c, p.20). What Schmitt calls “a concrete philosophy of life” must not retreat from the exception and the extreme case, but must be intensely interested in them, because, for her, “the exception may be more important than the rule” (SCHMITT, 1996c, p.21). Not only more importantly, Schmitt also claims that “the exception is more interesting than the normal case” (SCHMITT, 1996c, p.21). This is because “the normal proves nothing, the exception proves everything; it not only proves the rule, the rule generally lives only from the exception” (SCHMITT, 1996c, p.21). In a progression of grandiose images, Schmitt asserts that “in the exception, the effective life force breaks through the crust of a rigid mechanic that repeats itself” (SCHMITT, 1996c, p.21). Kierkegaard is the quoted Protestant theologian⁸. The most important part of the extensive quotation is the one that states: “the exception clarifies the general and clarifies itself (...) the exception thinks the general with energetic passion” (SCHMITT, 1996c, p.21). This view of the exception will not disappear from Schmitt's thinking. It is the basis of his permanent structure of decisionism.

In the third chapter of his Political Theology, Schmitt presents his sociology of concepts. With such a sociology, he can establish analogies and similarities between different realms. In the case in question here, it is about the relationship between theology and jurisprudence, fundamentally with regard to the notion of sovereignty. From the analysis of the set of legal concepts, one arrives at the “ultimate, radical and systematic structure” (SCHMITT, 1996c, p.50) which must be compared with “the conceptual use of the social structure of a given period” (SCHMITT, 1996c, p.50). The two spiritual but substantial identities must be demonstrated. We will not discuss this procedure, its correctness or validity for an approach to legal and theological concepts. What interests us here is the discussion carried out in a more abstract scope than the one previously made. Now this is not just a legal problem, but as a “sociology of concepts” intends to show, the issue also involves theology. What we want to highlight is the much broader and more fundamental place in which Schmitt wants to establish his decisionism. It goes far beyond a mere problem of law. We have already highlighted this before, but in this chapter this aspect is very clear. In other words, decisionism establishes deep roots in Schmitt's thought.

words, the old problem of the realization of the right (Rechtsverwirklichung). This is the case for both Galli (1996, p.333-347) and Hofmann (2002, p.49-64).

⁸ For a comment on Schmitt's reference to Søren Kierkegaard and the change in the meaning of the quote, see HOFFMANN (2002, p.59).

The first paragraph of this chapter is enlightening and sets out the main ideas that will be discussed below. Schmitt begins by stating that “all relevant concepts of modern state theory are secularized theological concepts” (SCHMITT, 1996c, p.43). Schmitt needs this hypothesis if his sociology of concepts is to make sense. It would not be just a matter of transmitting or transporting a set of concepts from a certain field to another, in this case, from theology to the theory of the State, when the Almighty God became the omnipotent legislator. What Schmitt is looking for is the “systematic structure”. That's your strong thesis. The exception, then, plays a prominent role here and presents analogies with theology: “the state of exception has a similar meaning for jurisprudence to that of the miracle for theology” (SCHMITT, 1996c, p.43). Only when one is aware of these similarities is it possible to consistently understand the development of state philosophical ideas in recent centuries.

Schmitt begins to differentiate the basic notions that constitute the concept of the rule of law from those used by him to describe decisionism, such as the exception. On the theological plane, the modern rule of law is similar to deism and, in turn, decisionism is related to theism. According to Schmitt, therefore, the idea of the modern rule of law is impregnated by deism, that is, “by a theology and metaphysics that expels the miracle from the world” (SCHMITT, 1996c, p.44). Deism denies the rupture of natural laws by exception through immediate intervention, just as the sovereign intervenes immediately in the current legal order. While Enlightenment rationalism rejected the exception case in all its forms, the theistic conviction of the conservative writers of the counterrevolution (Donoso Cortes, de Maistre and de Bonald) led them to attempt to found, with analogies, the personal sovereignty of the monarch in a theistic theology. Present here are the main distinctions and analogies with which Schmitt will establish his discussion. Deism is likened to the rule of law and its necessary laws. There is no place for exception, which is to say that there are no miracles. The exception is close to the notion of the miracle, which shows the analogies with theism. The exception requires the sovereign, as it is he who suspends the laws in force. As in theism, God can suspend natural laws at the moment of a miracle. It is from this sociology of concepts that Schmitt will direct his polemical critique against positivism, against Kelsen, against the liberal rule of law, against rationalism and other adversaries.

Schmitt points out several similarities between theological themes and the discussions that take place around the state and law. In the literature of positive jurisprudence, it is described how the State interferes in all spheres, as a *Deus ex machina* that decides a controversy that the free action of positive legal knowledge would not evidently resolve. The State also presents itself “always with its inexplicable identity, as a legislator, as an executive, as a police, as an instance of clemency, as assistance” (SCHMITT, 1996c, p.44). This reveals that the State is thought “under

many guises, but always acts as the same non-visible person” (SCHMITT, 1996c, p.44). The omnipotence of the modern lawgiver is not just a form of expression that originated in theology. The theological reminiscences always emerge in the minute of the argument. Schmitt, therefore, shows how there is indeed a strong similarity between theology and the theory of the state. But as he makes very clear, what he tries to show through his sociology of concepts is the structure common to both. Furthermore, it is necessary to understand here how the theistic view is being designed and specified in contrast to deism. Theism here is decisionism.

Schmitt proceeds to the comments of several authors, relevant to the debate at the time, who explained the relationship between theology and law: Laband, Jellinek, Preuß, Stein, Bernatzik, Schulze, Gierke, Stahl, Stobbe, among others. All of them present important elements that would help to explain the thesis that Schmitt wants to prove. However, the most outstanding of them all and the one that is most carefully analyzed is Hans Kelsen. Kelsen himself would have indicated since 1920 “the methodical kinship between theology and jurisprudence” (SCHMITT, 1996c, p.46). Here not only are some comments made about Kelsen, but Schmitt also begins a critique of his positions. So, his vision would be based on the thought of the natural sciences, on the repudiation of all will and on the search for the expulsion of all exceptions from the scope of the human spirit. When Kelsen presents his vision of democracy, the natural sciences mathematized form of his thinking becomes clear. Democracy, for Kelsen, would be “the expression of political relativism and a scientificity free from dogmas and miracles, founded on human understanding and the doubt of criticism” (SCHMITT, 1996c, p.47). Here we can see how Schmitt's analysis leads to a harsh judgment of Kelsen's thought. That this attitude towards Kelsen appears at many points in Schmitt's work is well known. However, what we are trying to emphasize is the contrast that Schmitt creates in relation to theism and everything that goes with it. In this way, their opponents function as a kind of justification for the opposite of their positions.

Schmitt quotes Rousseau: “immit les immutables decrets de la Divinité”. According to Schmitt, this expression, taken from the article *Économie Politique*, was typical of eighteenth-century rationalism and indicated the ideal of state legal life. Rousseau would very well reveal the politicization of theological concepts specifically regarding the notion of sovereignty. Seventeenth-century theory would identify the monarch with God. Such a monarch would have the same position in the State as the God of the Cartesian system occupied in the world. The idea of the sovereign as a personal unit and the last author is postulated. For Schmitt, the seventeenth and eighteenth centuries were dominated by this view and especially Hobbes remains a personalist and postulates a concrete and decisive last instance. Furthermore, it elevates your Leviathan to a monstrous person, in the mythological sense.

However, a subtle and continuous change begins to take place. It is in the description of this change that we can see even more clearly Schmitt's position in relation to decisionism and the reason for his criticism of what he calls sometimes rationalism, sometimes normativism, and now deism. This third chapter of *Political Theology* should even be read in conjunction with the brief text *The era of neutralizations and depoliticizations* (1996e). Although short, this text is quite dense and illuminating Schmitt's positions. What Schmitt goes on to describe now as a more pronounced shift in favor of deism from a continuing supremacy of the natural sciences view is also indicated in the text on neutralizations and depoliticizations. Schmitt states that, of all the changes in European history, the most relevant was the one that took place in the 17th century, “from traditional Christian theology to the system of a 'natural' scientificity” (SCHMITT, 1996e, p.88). This was such a marked change that “until today, the direction that all further development would have to take was determined” (SCHMITT, 1996e, p.88). At the heart of such a move was the tendency to reach a neutral sphere. This is the reason for this writing: the analysis of such a trend and how it remains the same, albeit in different forms in European history. We will not review this specific description⁹. We only want to point out the permanence of this issue in Schmitt's writings and his concern with a process that has the following consequence: “the general validity of a legal sentence is identified with the valid legality of nature, without exception” (SCHMITT, 1996c, p.52). It is this view that is opposed to decisionism. It is as a critic of this broader movement that Schmitt places himself with the figures of exception and decision.

Schmitt claims that after the sovereign is placed as a mere assembler of the machine by deist thought, with the success of the natural sciences, the same sovereign disappears and the machine works by itself. There is, then, an equivalence between the notion of the general will and that of God himself and the sovereign. In an important step, the people become sovereign. With that, “the decisionist and personalist element of the concept of sovereignty existing until then is lost” (SCHMITT, 1996c, p.53). The will of the people comes to be understood as good and virtuous. However, the unity that refers to the people cannot be compared to the unity of the personal sovereign who issues commands, which has a decisionist character. This growing weakening of the personalist and decisionist character makes “the concept of theistic God as well as that of the deist become incomprehensible to political metaphysics” (SCHMITT, 1996c, p.53). Again, Kelsen

⁹ We would just like to emphasize once again the parallels between these two writings. Shortly after the passage we quoted from *The Age of Neutralizations and Depoliticizations*, Schmitt reports how theological thought is relegated and God, in the metaphysics of seventeenth-century deism, is thrown out of the world. God becomes a neutral instance against all struggles and oppositions. In *Political Theology*, on the other hand, it is said that the sovereign, although outside the world in the deist construction, remained as the assembler of the machine. With this great movement of the natural sciences, the sovereign is finally dislodged and “the machine works by itself” (SCHMITT, 1996c, p.52). On the relationship between the two writings, see GALLI (1996, p.333).

would be the typical representative of such a movement that marked metaphysics and political theology of the nineteenth century, when he understood democracy as the expression of impersonal and relativistic scientificity. Once again, Schmitt presents the contrast: while in the 17th and 18th centuries the concept of God presupposes his transcendence before the world, as well as a transcendence of the sovereign in relation to the State, this is not what happens in the 19th century. In this, the ideas of immanence increasingly predominate and “all the identities that return to the political and legal doctrine of the state of the 19th century are based on such notions of immanence” (SCHMITT, 1996c, p.53). Thus we have the democratic thesis of identity between rulers and ruled, the doctrine of the organic State and its identity between State and sovereignty, Krabbe's state legal theory and its identity between legal order and sovereignty and, finally, Kelsen's theory and the identity of the state with the legal system.

When restoration writers such as Donoso Cortes, de Maistre, and de Bonald developed a political theology, critics of the current order turned with a growing awareness against belief in God. This more clearly than against the more extreme fundamental expression of the belief in domination and unity. Under the influence of Auguste Comte, Proudhon embraces and develops the struggle against God. Bakunin takes such combat to its ultimate consequences. Schmitt recalls that among the educated “all ideas of transcendence perish and a more or less clear kind of pantheistic immanence or a positivist indifference towards all metaphysics becomes evident” (SCHMITT, 1996c, p.54). Schmitt states that philosophy of immanence, whose highest expression would be Hegel (SCHMITT, 1984, p.16), introduces God into the world and makes law and the State emerge from immanence. In the most extreme radicals, a consequent atheism prevails. Left Hegelians were aware of these transformations and came to the conclusion that humanity would have to take the place of God. This account by Schmitt shows his judgment of this growing process of an immanent perception of the world. And this also ends up revealing its position in relation to democracy thought of as immanence. The consequences of such a process produce two remarkable facts: “the elimination of all theistic and transcendent ideas and the formation of a new concept of legitimacy. The traditional concept of legitimacy patently loses all evidence” (SCHMITT, 1996c, p.54). It should be noted the nexus established here. If theistic and transcendent ideas indicated a certain notion of legitimacy, the crisis of those implies the shake of the latter. Schmitt neither denies this nor proposes a return to the traditional notion of legitimacy.

According to Schmitt, since 1848, the theory of the State has become positive and even starts to found all power in the *pouvoir constituant* of the people. This means that in place of the thought of monarchic legitimacy there is now that of democratic legitimacy. Donoso Cortes, Catholic philosopher of the State, representative of decisionist thinking and aware of the “metaphysical center of all politics” (SCHMITT, 1996c, p.55), realized the great rupture that such

movement meant and, because of that, stated that the royal age had come to an end. Therefore, there was no longer any legitimacy in the traditional sense. The consequence of all this is inevitable: the dictatorship. For Schmitt, Hobbes also reached such a result, mixing mathematical relativism and consequent decisionism. Hence, the phrase Schmitt so often repeated: *auctoritas, non veritas facit legem*. The end of the text is very characteristic of Schmitt's argumentation and resumes the dichotomy he constructs. Donoso presents a type of theological thought in line with medieval thought whose structure is juridical (QUARITSCH, 1988). All of this is contrary to the scientificity of the natural sciences. What such scientificity prevents is, therefore, decisionism and its essentially legal and personal character.

BASIS OF DECISION

After briefly reworking the most direct description of decisionism given in the book *Political Theology*, we will address a central issue for our theme. The central point of our discussion is based on the question about the foundation of the authority of the subject who decides. In other words: why does the subject of the decision have the prerogative to decide, to draw the distinction, to establish an asymmetry? When Schmitt refers to two types of legal scientificity at the end of the second chapter of *Political Theology*, he says that the classic representative of the decisionist type is Hobbes. Schmitt then quotes a passage from *Leviathan* that will be repeated in several other moments of his work: *auctoritas non veritas facit legem*. Here the preposition is between *auctoritas* and *veritas*. It should be noted that this is the crux of decisionism: not only that there is an *auctoritas* and not a *veritas*, but also on what such *auctoritas* is based. In other words, what is the foundation of asymmetry? In a structure open to transcendence, this problem has already been resolved, including the centrality of personalism¹⁰. Personalism in decisionism is the indication that the discretion of the decision is shifted to the extraordinary character of the subject who decides. Here the theistic origin of this structure is revealed. Schmitt's argument for relating decisionism and personalism in Hobbes at the end of the second chapter of *Political Theology* is interesting. It is an explanation that does not explain but only describes. Personalism would be central to Hobbes

¹⁰ As for the centrality of personalism, there is a similarity between charismatic domination (WEBER, 1992, p.159-166) and Schmitt's decisionist structure. Galli takes a position contrary to the one we established when dealing with the specific issue of the decisionist sovereign. He highlights the difference between "sovereign political action" and "the personal will of an empirical individual" which he ends up bringing to the "Weberian charisma", although he does not explain why (GALLI, 1996, p.340). But if charismatic domination were just "the personal will of an empirical individual," it wouldn't even exactly be domination [*Herrschaft*] for Weber. A much more nuanced position by Galli himself is found in note 46 on page 119 of his book. In this very instructive note, Schmitt's various references to the Weberian theme of charismatic domination are cited, as well as some studies that analyze the issue.

because he does not conceive of an abstract order, an abstract power difference. What there is is a concrete state sovereignty or a real power difference. But the answer to our question has not yet been given: on what is the authority of the subject who decides based?

The question of authority in Political Theology is generally understood by interpreters as being based on the problem of order, as we have already indicated. The one who decides would derive his authority from the capacity to bring order. It is interesting to note how a fundamental theme of Schmitt, the theme of the realization of law (*Rechtsverwirklichung*), analyzed in several previous works¹¹, it is now translated into precise decisionistic form. The first chapter of Political Theology deals with this question that appears as the problem of the exception or the place of the exception in relation to the norm. As, for Schmitt, the exception exists, the figure of the sovereign is fundamental. The sovereign decides on the exception and maintains the State, to the detriment of the right. From the point of view of the legal sense, order continues to exist, although not as a legal order. Here, then, the old Schmittian problem of the realization of law (*Rechtsverwirklichung*) becomes quite evident. Hence, the statement that “the norm needs a homogeneous medium” (SCHMITT, 1996c, p.19). Hence, too, the even more demanding assertion that “factual normality” belongs to the immanent validity of the norm itself. As “there is no standard that is applicable to chaos”, then “order has to be established so that the legal order has a meaning” (SCHMITT, 1996c, p.19). The role of the sovereign is made explicit, so:

“a normal situation has to be created and the sovereign is the one who definitively decides on this, if such a normal state really rules. Every right is 'situational law'. The sovereign creates and guarantees the situation as a whole in its entirety. He has a monopoly on that last decision. Herein lies the essence of state sovereignty, which must be correctly defined not as a coercive or domination monopoly, but, legally, as a decision monopoly” (SCHMITT, 1996c, p.19).

There is a direct relationship between exception and state authority, as “the state of exception reveals the essence of state authority most clearly. Here, the decision is separated from the legal norm and, to formulate paradoxically, the authority proves that, in order to create a right, it does not need to have a right” (SCHMITT, 1996c, p.19). What Schmitt reveals is the relationship that exists between authority and the need to create the “normal situation” and enforce the right. As we have said, the old problem of the realization of law (*Rechtsverwirklichung*) now comes back, sharply, in the form of the discussion of sovereignty and exception.

The decisionist structure remains in the Constitutional Theory. The Constitution for Schmitt is a decision and he even speaks of an existential decision. Furthermore, such a decision presupposes, as it should be, a subject. Such a subject, the subject of the constituent power, is clearly

¹¹ See, for example, the preface to the 1921 first edition of *A Ditadura*. The notion of dictatorship is directly related to the problem of realizing the right (SCHMITT, 1994, XIII-XX).

related to the notion of will. And if the basis of authority in the form of decisionism in Political Theology is the ability to establish order, something similar occurs in Constitutional Theory. Schmitt states: "every existing political unit has its value and its 'reason for existence' not in the justice or utility of norms, but in their existence" (SCHMITT, 2003, p.22). There is a fundamental question about the unity being justified only because it has the capacity to exist as a unity. There is a circularity here, almost a tautology in this "existential" argument.

Although it is always necessary to be cautious in the approximation between Political Theology (1996c) and On the three modes of legal thought (2006), in this last writing, to which we have already referred, Schmitt establishes even more explicitly a relationship between authority and the capacity to carry out the right. Once again Hobbes is called the classic case of decisionism. Law is the decision of the sovereign and the sovereign is not a derivation of any legitimacy, but the one who decides sovereignly. Law is law and law is command that decides the conflict. The statement is repeated: *auctoritas non veritas facit legem*. At that moment, for Schmitt, even the distinction between *auctoritas* and *potestas*¹² disappears, for the sovereign decision is *summa auctoritas* and *summa potestas*. It is stated, then, that "whoever establishes tranquility, security and order, is sovereign and has all authority" (SCHMITT, 2006, p.23). This is the phrase in which, most unequivocally, Schmitt associates the sovereign's authority with his capacity to produce order.

As we said, it is interesting to notice that several approaches tend to minimize the importance of the structure of decisionism, originally theistic, in Schmitt. Basically, decisionism and its theistic structure is something so demanding and so radical that there seems to be a constant attempt by various interpreters to domesticate, to contain, to subject the radicality of Schmittian decisionism. The problem with this strategy is to minimize the importance of the notions of exception, decision and the place of the subject of the decision. We will provide a description of the more general structure of decisionism to highlight the elements that are relevant to our discussion of democracy.

The most abstract structure of decisionism is a two-sided figure: rule and exception. The question of the rule is only understood if contrasted with the exception. The exception is, exactly, the absence of the rule. What this figure tries to highlight is clearly the question of the beginning, of the beginning of the rule. At the same time, it has the function of denying any kind of solution to the basis of the rule with the possibility of the existence of a previous rule. That would be deism. This is Schmitt's greatest opponent. If there were a previous rule, whatever its status, the problem of the foundation, the problem of the beginning would not exist. The problem at the beginning

¹² The conceptual pair *auctoritas* and *potestas* is similar to the pair, in opposition, *régner* and *gouverner*, from the 19th century French constitutional debate (SCHMITT, 1996b, p.135-136).

would lose any specificity or urgency. If there is already a rule (a distinction), then the foundation is that rule. Here deism can take many forms, but the structure remains. The important thing is that the rule is already somehow justified by another previously existing rule. Obviously, such a previous rule will keep some kind of ascendancy over the other rules in the sequence. If that is the case, then, in that precise sense, there is no decision. All the weight of the act of deciding and the serious responsibility that arises from this distinction without prior parameter, therefore, necessarily arbitrary from a normative point of view, all this is diluted, in fact, in an almost deduction from the previous rule. So there is no will. What predominates is ratio and not voluntas. In this precise sense, there is no discretion, as there is no decision in an eminent sense, only deduction from something that already exists. In other words, the distinction, the partition that results from a decision, the act that radically inaugurates something new, this true beginning, all of this is eliminated by deism.

What interests us here is to emphasize that there are two defined fields: the exception and the rule. The classic question, then, is how to move from one to the other, how to move from the exception to the rule. Again, this is a question that only arises when you are not situated in the Deist framework. Schmitt's repeated criticism is that, in the deist scheme, this question never arises, which would only hide the essential moment of decision. The passage from one moment to another, from one space to another is made by a decision, by a cut, by a distinction. There is a split that inaugurates a difference and an asymmetry: here is the emergence of the rule. That's decision. But for Schmitt, for theism, for every anthropomorphic structure that is a continuation of theism, every decision presupposes a subject. Then, it should be noticed how all the weight of the beginning and all the responsibility of the beginning is shifted onto the subject. Therefore, this subject is obviously not just any subject, he is the subject who plays a fundamental role. He is the subject who decides, who separates, who splits, who draws the distinction, who founds the rule and establishes order. All the weight, uncertainty and discretion of the decision, from a normative point of view, are carried over to this eminent figure and to his ability to establish order. It is not fortuitous that Schmitt always returns to the problem of the place of this subject, the status of this figure, the origin of his situation of asymmetry. That's the question that keeps coming back in the form of the question about auctoritas. Basically, auctoritas tries to point out the justification for an asymmetry and the clear problem that arises is what it is based on. Therefore, in decisionism, if the decision is necessarily arbitrary, from a normative point of view, because there is no rule that justifies the decision, then it is the order established by the subject that decides what limits such arbitrariness and founds that decision. If the moment of passage from exception to rule is made by the subject who decides, if the decision is really an act that inaugurates, then, necessarily, "the decision, considered normatively, is born from nothing" (SCHMITT, 1996c, p.37) . Every time you want to weaken decisionism, this is exactly the point to be criticized. But the decision is either born out of nothing

or it is not a decision and there is only deism, immanence. On the other hand, the *auctoritas* of this subject who decides ends up “solving” the problem of the arbitrariness of the decision, insofar as it establishes order. Asymmetry is shifted from the decision to the subject of the decision that establishes the order. *Auctoritas* founds this asymmetry. Another fundamental point is that, in this decisionist structure, there is a constitutive dualism that can only be united by the subject who decides. It so happens that, from the point of view of the space of the rule, the subject occupies an ambiguous position of externality¹³. It's not about immanence, it's about theism, decisionism.

DEMOCRACY AS IMMANENCE

Let us now go to the heart of the question proposed here: the relationship between sovereignty, decisionism and democracy as immanence. What is the problem of democracy as immanence for Schmitt? What is the problem of a decisionist structure to think of democracy as immanence? What, then, would be the main features of democracy as immanence? These are the questions we intend to answer.

It is from the immanence that one must start to think about democracy. Democracy occurs in immanence and arises from immanence. There is no externality of the subject who decides in relation to the rule of democracy. Circularity necessarily implies the same field where subjects and rules, citizens and laws are located. Exteriority is impossible in immanence. Therefore, also, in the Schmittian sense of the term, there is no sovereign. There is no theistic sovereign because there is no exception, there is no miracle in democracy, there is only the rule and nothing outside of it. There is no dualism in democracy. All the problem that, in the end, concerns Schmitt, namely the conflict, is not resolved by resorting to an agent external to the participants. The one who decides is an instance authorized by the rule, which decides on the rule, within the rule.

However, when it is said that the one who decides belongs to the rule, the question always remains: what about the one who ultimately decides? If it is inevitable that there is the figure of the one who decides in the last way, since the conflict can never be eliminated, then something from the place of the sovereign must be taken up again. Thus, something of the sovereign does not seem to be extinguished from the political and legal field. A decision has to be made, as the field of rules is neither mechanical nor self-evident.

However, if the figure of the sovereign is necessary, then it must be rehabilitated outside of theism, outside of theistic decisionism, because the time of democracy is the time of immanence.

¹³ This ambiguity is very clear in Schmitt: the sovereign "is situated outside the normally valid legal order and, however, belongs to it, as he is competent to decide to suspend the Constitution in toto" (SCHMITT, 1996c, p.14).

In other words, democracy must take the place and role of the sovereign seriously, but, paradoxically, within the rule itself. Therefore, what makes the question about the subject of sovereignty relevant is not the case of exception, as Schmitt states, as this simply does not exist in democracy. The exception is a strange figure to democracy, as it is impossible in immanence. The exception in democracy is simply the harbinger of civil war and the end of democracy itself. Furthermore, the notion of exception is very much tied to a dichotomy composed of machine and life, necessity and contingency, that is, rule and exception. The understanding of democracy as a political and legal phenomenon must go beyond this dichotomy. It is in this sense that the figure of the sovereign must be taken up again. And such a figure is necessary, as there is a fact perceived by an entire legal tradition that has reflected on this issue: a rule does not apply by itself. Furthermore, it must be recognized that conflict is constitutive, conflict is never eliminated. Therefore, it is necessary to determine the place of the one who ultimately decides. But if there is no figure outside the rule, who is the one who ultimately decides, then?

We then propose a definition based on the structure of immanence. Sovereign is not the one who decides on the exception, this path is closed for democracy. Who is the sovereign then? The sovereign of democracy is the immanent sovereign, namely, the one who decides on the rule within the rule. A kind of circularity is inevitable¹⁴. No founding and saving asymmetry can resolve this circularity. And that also concerns the Constitution. The Constitution cannot be such an asymmetry because it needs interpretation. There is no Constitution apart from the permanent clash of interpretations. There is no Constitution before interpretations¹⁵. The Constitution is the interpretation of the Constitution. The question, then, is who plays ultimately. As the Constitution does not exist “in itself”, the immanent sovereign is the one who carries out the final interpretation, among the various possible interpretations. Again, circularity. The immanent sovereign, therefore, does not decide but interprets. His interpretation is the one that counts as the final word in the interpretive conflict. Regarding the question of the sovereign, it is clear how his decision (derived from an interpretation), in democracy as a rule, occurs in the realm of immanence. There is no theistic decisionism here, there is a decision (derived from an interpretation) of an immanent sovereign within the rule.

¹⁴ Every definition of an immanent sovereign has some kind of circularity, there is no way to avoid that. For example, sovereign is the one who determines the correct interpretation of the rule of democracy within the rule of democracy. Or, still, sovereign is the one who interprets the correct adequacy of legality to the rule of democracy, however, within legality. Or, also, the place of the sovereign is where the difference between rule and law disappears, as there is no longer a space beyond legality as an interpretation. Finally, the immanent sovereign is the one who has a legal competence to decide on competences, including his own. As we said, circularity is inevitable.

¹⁵ Even Kelsen, so criticized by Schmitt as a deist and rationalist, knew this very well. This appears clearly in the controversial chapter on the interpretation of the Pure Theory of Law (KELSEN, 1994, p.90-106).

What is first in democracy is not a decision, but a rule, the rule of democracy, that is, the rule of self-determination. However, no rule is self-evident and makes sense in itself. Every rule is an interpreted rule and there are always several possible interpretations, hence the conflict¹⁶. Furthermore, every interpretation is an act of creation that puts itself in a double tension: on the one hand, it offers a novelty or difference in relation to the meaning already set, on the other hand, it needs to establish some relationship with this set meaning. It is from this constitutive tension that a possible interpretation emerges. Precisely for this reason, we can describe this interpretive act as an immanent decision, namely, a paradoxical kind of “redundant innovation”.

Put bluntly: what is the problem with the Schmittian approach to democracy? Stated clearly: the problem with Schmitt's approach to democracy, which not only makes it difficult but, ultimately, prevents any understanding of what democracy is by Schmitt, is his theistic decisionism as a basic structure¹⁷. Or, which means the same thing, your conscious refusal of immanence and all that it implies. Decisionism retains the vertical structure, even though it has already lost its opening to transcendence. Hence, the numerous criticisms of immanence, hence the recurrent reduction of immanence to individualism, to economics, to the technical. The corollary of the refusal of immanence is the concomitant rejection of democracy. Whoever enters the marvelous and fascinating space of the exception, in immanence, will only encounter the purest will. Transcendence has met its end. All that remains is nostalgia.

One point must be clearly highlighted. The problem with Schmitt's approach to democracy that we are highlighting is not directly related to his attitude against liberalism. That Schmitt fights liberalism in all his work is obvious¹⁸. What we want to show is that there is a specific issue regarding democracy in Schmitt that is independent of his anti-liberalism. The problem of an

¹⁶ If there was consensus on the rule, there would be no need for the sovereign. In other words, the sovereign is only necessary because there is conflict. Therefore, the sovereign is the one who, among others who interpret in a different and even opposite way, has the final decision. The issue of conflict is intensified in immanence because there is no superior figure outside the rule, since everyone is constituted by the rule. This is the strong sense of immanence. What, then, would be the criterion that defines who is sovereign among different interpretations? The criterion is that interpretation that is taken as final, as it is accepted by most of those who are within the democratic rule.

¹⁷ Perhaps the assertion that decisionism structures all of Schmitt's work is reckless. In any case, already in the first paragraph of the introduction of *Political Theology II*, published in 1970, all the themes dear to decisionism are present (SCHMITT, 1996d, p.12). Criticism of the idea of overcoming all political theology or political metaphysics by science. The reference to theism and its relationship with decisionism. Not without irony, the recognition of the “death” of God. The criticism of the vision of immanence, which ultimately prevails, and the circularity that derives from it, circularity expressed in notions composed with the prefix “auto” (selbst). The permanence of the questions in Schmitt is so marked that we could even begin our critique of his vision of democracy precisely from this introduction. What we are saying is that democracy necessarily derives from immanence and circularity, therefore, the suffix “self” is always present. Therefore, democracy is necessarily self-determination, self-legislation, self-reference.

¹⁸ This relationship with liberalism is well explored by Strauss in his short writing *Notes on The Concept of the Politician* by Carl Schmitt: “Schmitt carries out the critique of liberalism in a liberal world and we suggest, therefore, that his critique of liberalism occurs in the horizon of the liberalism” (STRAUSS, 1995a, p.119).

understanding of democracy in Schmitt lies fundamentally in the structure of theistic decisionism, which goes beyond its anti-liberalism.

FINAL CONSIDERATIONS

Our article started from Schmitt's decisionism, a notion that is central to his writings. In fact, decisionism reveals the most comprehensive structure of Schmitt's political and legal thought. We highlight some elements of the notion of decisionism, seeking to present its theistic vertical structure. In this analysis, the figures of the theistic sovereign and the exception emerged. The Schmittian sovereign and the space of exception are closely linked. In fact, it's both sides of the same form. From this, we analyze the problem of the foundation of decision, indicating the theme of order within the broader question, and always present in Schmitt, of the realization of law (*Rechtsverwirklichung*). Finally, we present the question of democracy and immanence. Democracy is a figure of immanence, because of its presupposition and presentation. Therefore, the entire vertical figuration of Schmittian decisionism has to be abandoned for the correct understanding of immanence and, therefore, of democracy. Democracy, taken as immanence, prevents the figures of the theistic sovereign and the exception. As we said, transcendence no longer has a place, only nostalgia remains. The rule of democracy is self-determination, a rule that can only be carried out by those within it. On the other hand, as rules are not self-instituting and due to the fundamental fact of the conflict, it is necessary that someone has the final word, however, within the rule. That is why the immanent sovereign emerges, determined by his role as the ultimate interpreter of the rule, within the rule. There is no longer a space located "outside" which, precisely because of this location, would resolve the disputes for its superior position. The ultimate interpreter of the rule is situated within the rule, being, therefore, the immanent sovereign of democracy.

Finally, we will present just two more points of what would be the immanence of democracy or immanent democracy: the centrality of conflict, hence the need for the immanent sovereign. The first would be the rejection of any vertical structure as a transcendence for thinking about democracy. Democracy, being the result and consequence of immanence, has to be thought of from horizontal structures. On the other hand, there is hierarchy in democracy. The alternative to hierarchies would be extreme optimism about the ability to resolve conflicts, as if they would resolve themselves. This is not a contradiction, but exactly the theoretical challenge of democracy: how to think of hierarchies from immanent structures? How to think of asymmetry based on the symmetric? Conflict is the background of the problem.

If the conflict is considered the starting point of the democratic form, then there is a need to return to the figure of the sovereign. Disregarding the figure of the sovereign means having an

optimistic view of conflicts and their solution. But here we are no longer dealing with Schmitt's theistic sovereign. The sovereign has to be brought into immanence. The sovereign is not outside the rule of democracy, that is, outside the game. The sovereign is situated within the rule, he does not decide from scratch, he interprets from the rule. The immanent sovereign belongs to the form of democracy and remakes it at every decision. He is responsible for the last interpretation of the rule, among the various interpretations suggested. This is immanence, this is the rule of democracy.

REFERENCES

GALLI, Carlo. *Genealogia della politica. Carl Schmitt e la crisi del pensiero político moderno*. Bologna: Il Mulino, 1996.

HABERMAS, Jürgen. *Legitimation Crisis*. Boston: Beacon Press, 1975.

HOFMANN, Hasso. *Legitimität gegen Legalität. Der Weg der politischen Philosophie Carl Schmitts*. 4. Auflage mit einer neuen Einleitung. Berlin: Duncker & Humblot, 2002.

_____. *Repräsentation. Studien zur Wort- und Begriffsgeschichte von der Antike bis ins 19. Jahrhundert*. Vierte Auflage mit einer neuen Einleitung. Berlin: Duncker & Humblot, 2003.

KELSEN, Hans. *Reine Rechtslehre. Einleitung in der Rechtswissenschaftliche Problematik*. 1. Auflage. Pfuldstadt: Scientia Verlag Aalen, 1994.

PITKIN, Hanna. *The concept of representation*. Berkeley, Los Angeles: University of California Press, 1967.

QUARITSCH, Helmut. "Die Zweideutigkeit der ‚Entscheidung‘ – Thomas Hobbes und Juan Donoso Cortés im Werk Carl Schmitts". In: *Complexio Oppositorum. Über Carl Schmitt*. Berlin: Duncker & Humblot, 1988, p.193-232.

SCHMITT, Carl. *Die Diktatur. Von den Anfängen des modernen Souveränitätsgedankes bis zum proletarischen Klassenkampf*. Sechste Auflage. Berlin: Duncker & Humblot, 1994.

_____. *Die geistesgeschichtliche Lage des heutigen Parlamentarismus*. Achte Auflage. Berlin: Duncker & Humblot, 1996a.

_____. *Der Hüter der Verfassung*. Vierte Auflage. Berlin: Duncker & Humblot, 1996b.

_____. *Politische Theologie. Vier Kapitel zur Lehre von der Souveränität*. Siebente Auflage. Berlin: Duncker & Humblot, 1996c.

_____. *Politische Theologie II. Die Legende von der Erledigung jeder Politischen Theologie*. Vierte Auflage. Berlin: Duncker & Humblot, 1996d.

_____. *Römischer Katholizismus und politische Form*. 2. Auflage. Stuttgart: Klet-Cotta, 1984.

_____. *Verfassungslehre*. Neunte Auflage. Berlin: Duncker & Humblot, 2003.

_____. *Über die drei Arten des rechtswissenschaftlichen Denkens*. Dritte Auflage. Berlin: Duncker & Humblot, 2006.

_____. “Das Zeitalter der Neutralisierungen und Entpolitisierungen”. In: _____. *Der Begriff des Politischen. Text von 1932 mit einem Vorwort und drei Corollarien*. Berlin: Duncker & Humblot, 1996e, p.79-95.

STRAUSS, Leo. “Notes on Schmitt’s *The Concept of the Political*”. In: MEIER, H. *Carl Schmitt & Leo Strauss. The hidden dialogue*. Chicago, London: The University of Chicago Press, 1995a, p.89-120.

_____. “Three Letters from Strauss to Schmitt”. In: MEIER, H. *Carl Schmitt & Leo Strauss. The hidden dialogue*. Chicago, London: The University of Chicago Press, 1995b, p.121-131.

VOEGELIN, Eric. *The New Science of Politics. An Introduction*. Chicago, London: The University of Chicago Press, 1952.

WEBER, Max. “Die drei reinen Typen der legitimen Herrschaft”. In: _____. *Soziologie. Universalgeschichtliche Analysen. Politik*. Stuttgart: Kröner, 1992, p.151-166.

Trabalho recebido em 13 de outubro de 2021

Aceito em 31 de outubro de 2021