



## Populists and authoritarians? Discussions about uses of the concept

*Populistas e autoritários? Debates sobre usos do conceito*

**Heloisa Fernandes Câmara<sup>1</sup>**

<sup>1</sup> Universidade Federal do Paraná, Curitiba, Paraná, Brasil. E-mail: [heloisafcamara@yahoo.com.br](mailto:heloisafcamara@yahoo.com.br). ORCID: <https://orcid.org/0000-0003-3220-9266>.

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**Abstract**

The concept of populism has resurfaced as a factor explaining the process of democratic decline underway in several countries. This article takes up part of the historical and political theoretical tradition of research on populism to question the adequacy of identification between authoritarianism and populism. It argues that, to the extent that populism explains the conflict over the role of the people in politics, it allows democratic improvement.

**Keywords:** Populism; Constitutionalism; Populist constitutionalism.

**Resumo**

O conceito de populismo ressurgiu como fator explicativo do processo de declínio democrático em curso em vários países. Este artigo retoma parte da tradição teórica histórica e política de pesquisa sobre populismo para questionar a adequação de identificação entre autoritarismo e populismo. Defende-se que, na medida em que populismo explica o conflito sobre o papel do povo na política, permite aprimoramento democrático.

**Palavras-chave:** Populismo; Constitucionalismo; Constitucionalismo populista.



## 1. Introduction<sup>1</sup>

With the ongoing process of declining liberal democracies, the use of the concept of populism was resumed as a descriptive and explanatory element of the phenomenon. That said, regimes that operate quite differently from each other are qualified as populists<sup>2</sup>, but have, as a common characteristic, the existence of a leader identified with charismatic leadership. In the current context, the adjective “authoritarian” is sometimes added as a way of saying that such populisms have the bias of democratic and liberal implosion.

One of the few consensuses regarding the uses and concepts of populism is that it holds a diversity of meanings, varying according to the author, historical moment and territory<sup>3</sup>. That is why absolutely different regimes have been treated under the cover of populism.

Thus, the first finding is that the plurality of meanings and uses makes its operation difficult and demands that the first caution be precisely the delimitation of what is understood by populism. However, even this first task is not simple. Especially because in the context of Latin American politics the term has a historical meaning that must be taken into account.

Isaiah Berlin exposed, in 1967, at a conference at the London School of Economics and Political Science (LSE)<sup>4</sup>, the inherent duality of the concept of populism. A vast concept big enough to fit all populisms is absolutely inapplicable, because the more connotative it is, the less denotative it becomes<sup>5</sup>. One could not imagine that there would be a “pure” concept of populism: “we must not suffer from a Cinderella complex, by which

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<sup>2</sup> The term populism has been used to refer to Donald Trump, in the United States; Evo Morales, former president of Bolivia; the Syriza movement, in Greece; Jair Bolsonaro, in Brazil; the Somos movement, in Spain; the Occupy Wall Street, in the United States; Viktor Orbán, in Hungary; Recep Erdogan, in Turkey; among others.

<sup>3</sup> In a provocative exposition, Gerardo Aboy Carlés says that the literature on populism faces a rigid and pre-determined structure in which demonstrates the term's ambiguity, criticizes its uses and contextualization, and a specific definition is established (CARLÉS, 2001: 2). In this work I follow the exposed script, with the exception of the last part for considering that a new concept is not necessary, but rather the consistent theoretical and political use of populism.

<sup>4</sup> BERLIN, Isaiah. To Define Populism. The Isaiah Berlin Virtual Library (1968), <<http://berlin.wolf.ox.ac.uk/lists/bibliography/bib111bLSE.pdf>>.

<sup>5</sup> In simple terms, connotation means using the word in a figurative state, going beyond its literal meaning, while denotation is precisely the literal use of the word.



I mean the following: that there is a shoe - the word 'populism' - for which somewhere there must be a foot". On the other hand, Berlin argues that it should also not be assumed that the term is simply a homonym and that movements in different places have very little in common.

As it can be seen, the academic debate about populism is not new, and, as I will demonstrate, neither trivial, since it touches on the central axis of democracy: the people in politics. The main objective of this article is precisely to analyze part of the literature on populism as a way to identify whether this concept is adequate to summarize the current democratic threat's phenomenon. That being said, I will also deal with the term constitutional populism, due to the fact that it has been used to describe the democracy threatening events and also directly affects the constitutionalism.

The article will be divided in two parts: the first is the retake of the theories about populism. Starting with Brazilian's historical literature and, in sequence, going to Ernesto Laclau's political theory, which changed the way of understanding populism, and, finally, some of the theoretical and political uses of populism nowadays. In the second part, theories about constitutional populism are evaluated to ascertain which meanings are attributed and, equally, whether the term is appropriate to describe the phenomenon of democratic decline. Inspired by Foucaultian's genealogy, the objective is to start from the divergences about populism and, from its contradictions, think about the contradictions of democracy and constitutionalism.

The hypothesis sustained is that the constitutive ambiguities, inherent to populism, reduce its explanatory capacity, not only because there is no discursive agreement, but, especially, because they reduce the fundamental conflict about the constitution and the role of the people in politics to an external anomaly. When the concept is used as a synonym for authoritarianism the situation is even more blurred, as it erases the legitimate demands for greater popular participation and joins together totally different situations. Thus, furthering democracy involves recognizing what populism makes explicit: there are disputes over the role of the people in politics, so that many do not consider themselves effective participants in the political games.



## 2. Populism: meanings of a term

As pointed out above, the term populism has many definitions, as well as quite different approaches, such as in politics and history, for example. In this article, I start from the use of populism in history, because that was the key to explaining Brazilian and Latin American society in the 1970s, and no current usage can ignore this tradition. The goal is not to make a storyline of the concept, or to recover a supposed original meaning in a way that disqualifies other possible ones. It is about recognizing the plurality of meanings, changed both in time and space, but which has in common the issue of dealing with the role of the people in politics in the process of social modernization. Therefore, even if the historical sense does not affect current uses, it has to be on the horizon of the authors.

This work was structured in two axes: the historical and the political theory. In the historical axis, Brazilian's literature on populism went through several moments. One point in common was the use of populism as an explanatory key to the modernization carried out in the 1930's Revolution, and with the ways of including the people - or for some, the masses<sup>6</sup> - in politics. In this work I bring the research of Adriano Codato and Angela de Castro Gomes, who, respectively, organize the debates and proposes a new perspective on populism. Note that populism was treated by central authors of Brazilians political thought such as Francisco Weffort<sup>7</sup> and Octavio Ianni<sup>8</sup>, and thinkers from the Itatiaia Group<sup>9</sup>, for example.

In the political theory's axis, I will bring Ernesto Laclau's work on populism. His analysis in the field of political theory reverses the common axis of considering populism as a form of political anomaly or manipulation, and inserts it as an ontological axis of politics. Still in this perspective, contemporary theories will be presented in which they seek to explain the phenomena of democratic fall as populist manifestations. In this sense, experiences from countries like Hungary, the United States, the growth of the extreme right in Europe and Brazil, are presented as populist governments. In this last part, several

<sup>6</sup> The elite theory, a theoretical line started with Gaetano Mosca, used one of the lines of thought based on "mass psychology". Represented by authors such as Gustav Le Bon and Gabriel Tarde, it identified that most of society - the masses - would be characterized by irrationality, and therefore unable to act rationally in the political sphere.

<sup>7</sup> Especially in the book *O Populismo na Política Brasileira* (1980).

<sup>8</sup> In works such as *O Colapso do Populismo no Brasil* (1968), and *Populismo na América Latina* (1975).

<sup>9</sup> The group participated, among others, Alberto Guerreiro Ramos, Cândido Mendes de Almeida Magalhães, Hélio Jaguaribe. GOMES, 2001: 22.



definitions will be presented so that we can have a basis of comparison to evaluate the similarities and differences, essential to test the explanatory potential of the term.

### 2.1. Walkthrough the history of the concept of populism

In Brazil, the term populism has been used to explain national politics between 1930 and 1964, and especially as a way of answering the question of why workers supported Vargas during the Estado Novo, and, between 1945 and 1964, voted for PTB. The term appears in the midst of theories that linked cities to charismatic leaders and masses and sought to understand the reason for supporting certain leaders. Populism appears imbued with a negative perspective of political participation. In the words of Jorge Ferreira, the term appears rather as “an unworthy and negative image of the political adversary, and only later as an explanatory category of an academic scope” (FERREIRA, 2001: 9).

The concept of populism was disseminated in Brazilian’s social sciences in the 70s and 80s as a way of explaining the period beginning in 1930 and the existing arrangements between the state and workers. However, there was a popularization of the term, thus being incorporated into common sense in such a way that “the notion of 'populism' became so elastic and, in a way, a-historical, that it started to explain everything – and, as it happens in these cases, therefore explaining very little” (FERREIRA, 2001: 13).

The most ingrained notion identifies populism as being the negative notion of politics in which there would be a primacy of sentiments over rationality. In this sense, the populist leader would be the prototype of the charismatic leadership, which manipulates the voter through clientelistic practices and public rituals in which the masses would be co-opted. This model of leader could be represented by Getúlio Vargas, who through his speeches, control of his image as “father of the poor”, use of radio technology, among other devices, was adored by the masses. Following this line, populism is an accusation of political practices in regimes that are absolutely different from each other. The concept update describes leaders who use modern communication technologies as a means of mobilizing their voters<sup>10</sup>.

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<sup>10</sup> An example of this line of interpretation is the book “Engenheiros do Chaos” by Giuliano Da Empoli: “Together, these chaos engineers are in the process of reinventing advertising adapted to the era of selfies and social networks, and, as a consequence, transforming themselves nature of the democratic game. Its action is the political translation of Facebook and Google. It is naturally populist, because, like social networks,



Leaving the reference of the charismatic leader, from a more technical point of view, populism serves to describe “a specific type of connection between the leader and the masses” (CODATO, 2012). Francisco Weffort was a key name in the study of populism. For him, populism was a form of domination in conditions of political emptiness, in which no class had hegemony (WEFFORT, 1981: 159). Based on Weffort's research, Adriano Codato synthesizes the complexity of populist politics considering it as:

ideology and politics typical of a society undergoing modernization. Ideology and politics combine the factors "order" (social) and "progress" (economic) as a result of the transition processes from an agro-export economy to an urban-industrial economy (CODATO, 2012: s / p).

In this way, the leader's charisma would be just one of the characteristics of populism, but not what defines it. In the economic area, populism is a national development policy through industrialization. In the political area, it is a policy of mediating conflicts between the dominant classes and responding to the process of incorporating the popular classes into the political world. This incorporation is done through a leader, popular and charismatic, and not thanks to its own political and party organization. Thus, the link between the leader and the masses would be direct, outside parties. In the social area, populism would be marked by being “a policy of integration of the working class and low middle classes into the developing economy through the granting of social rights and the raising of their consumption and income patterns” (CODATO, 2012: s / P). The populist social welfare policy occurs without autonomous unionism, that is, without the possibility of effective worker participation. Only "official" unions, which are those recognized and controlled by the State, could act, corroborating the thesis of workers' co-option.

In summary, the populist state policy is dubious, as it is both the manipulation and repression of the interests of the urban popular masses, and the policy of granting economic prerogatives and rights.

Angela de Castro Gomes reworked a historical analysis of populism, partially opposing the tradition of studies on the subject. In the research initiated in her doctorate, the author replaced the term, going for the word “labor”. This is because it rejects the explanation that there was merely a co-option of the workers, with the consequent

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it does not support any type of intermediation and places everyone on the same plane, with a single parameter of assessment: likes, or likes” (DA EMPOLI, 2020: 22).



withdrawal of any role of the workers as subjects. For her, the concept of populism emphasizes the dimension of state control, and denies the class status of workers, who would have no organization and conscience (DE CASTRO GOMES, 2001: 46).

We have, therefore, that populism describes a conflictive relationship involving people in politics. So much so that in some theories we don't even talk about people, but about the masses. Populism would be precisely the form of inclusion of the masses after the 1930 revolution. It would be a form of cooptation that, in exchange for political support, the State would commit to through policies to satisfy these masses. The lack of class conscience of the workers would mean that there was no elaboration of real demands on the State and be content with small improvements. In a way, it is the repeated explanation of cooptation through clientelistic practices, synthesized in the repeated expression "the people do not know how to vote".

## 2.2. Populism in Ernesto Laclau's political theory

Argentine Ernesto Laclau reformulated the way of analyzing populism in political theory. In the 2005 book "A Razão Populista", the author demonstrated how the concept of populism is incapable of simultaneously establishing universal parameters and being applied in specific regimes. When establishing universal parameters, it becomes excessively generic, so that it applies to almost any political regime; being specific, it loses the explanatory feature for different regimes. The novelty of Laclau is to disregard that the difficulty in conceptualizing populism means ideological use, and to assume populism as the ontological constitution of politics, and therefore always marked by conflict.

Based on psychoanalysis and discursive theories<sup>11</sup>, Laclau considered populism to be an empty signifier. This implies that the vagueness of the populist discourse is not ideological or a failure of the discourse, but a consequence of the discursive constitution of the people. The political sphere is constituted by the conflict, so that the conflict also manifests itself in the referent people, implying the absence of a predetermined

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<sup>11</sup> Laclau was a political theorist who, under the influence of the works of Derrida, Heidegger and Lacan, developed research on themes related to identity, hegemony, ideology and discourse. In his theory, the notion of discourse is central: there are no fixed structures that definitively establish meaning, but only discursive structures and restructurings. The speech is practical and, as such, articulates linguistic and non-linguistic dimensions" (LOPES, MENDONÇA, 2018: 9-10).



definition. Therefore, insofar as populism is the way to build the unity of the people, it is ontologically linked to the existence of politics, and not to its alienation.

For Laclau, the construction of the people is a social operation based on antagonism and hegemony<sup>12</sup>. The existence of antagonism causes the unmet social demands, which may have started as a mere request, to increase and through relations of equivalence<sup>13</sup> to become popular demands. It is these demands that at an incipient level begin to constitute the people, the potential historical actor of such demands (LACLAU, 2018: 122-124). There is, thereby, no existing people a priori to social relations. There is a pattern of antagonisms and equivalences that produces the people in an always open manner, subject to reconfigurations.

Following Laclau's theorization implies giving populism dignity, taking it out of the conception of deceptive ideology to recognize it as the heart of politics, as a way in which politics works. This implies that the identification of populism with authoritarianism is wrong, or at least incomplete since it would be a way of doing politics, and not its content. In the sense given by Laclau, if populism has as its central point the operation of forming people, it is expected that democracy in this context cannot be identified with institutions, which explains the populist struggle against institutional appeasements. Hence the consideration that “populism and institutionalism in its 'pure' (ideal-typical) forms would be the extremes of this ongoing process. Extreme institutionalism (and, as such, impossible) would be the pure and simple replacement of politics by administration” (LACLAU, 2018: 21).

Populism in Laclau's sense is against extreme institutionalism, however this can be done both in order to increase popular participation and to reduce it. We could consider that populism in authoritarian policies has exactly the sense of essentializing the people, identifying them to a closed group, defined by preconceived identities, such as nationality. In this sense, we must recognize that despite being the foundation of sovereignty in a democracy, the people are also an undetermined power.

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<sup>12</sup> Antagonism and hegemony are central categories of Laclau, largely developed together with Chantal Mouffe. Due to antagonism, it is a condition of politics because it represents the moment of constitution of identities (see MENDONÇA, 2012). Hegemony is the operation of assuming universal meaning through particularities (LACLAU, 2018: 120).

<sup>13</sup> For Laclau, there are two preconditions for populism: 1 - formation of an internal antagonistic frontier that separates people and power, 2 - equivalent articulation of demands, which enable the emergence of the “people”. Add the precondition of the unification of several demands, which, until political mobilization is more advanced, will be a feeling of vague solidarity (LACLAU, 2018: 124).



Pierre Rosanvallon deals with the different concepts of people and points out the democratic contradiction between the existence of a disembodied society and the need to create a fictitious person who represents everyone, a contradiction that leads to the permanent search “of figuration that can never be completely fulfilled” (ROSANVALLON, 2018: s / p). That is, despite presenting itself as a democratic ideal, the construction of a representative body is unattainable, so we must take into account the existence of different models of people.

For Rosanvallon, there is not one form of people, but different “peoples”: arithmetic people, social people, principle-people and random people. The arithmetic ones are the electoral people, the sum of votes. Although important, the electoral notion of the majority cannot claim to address the whole of society. The social people are those that exist through claims related to conflicts, similar to what Laclau brings about the constitution of people through demands. The principle-people are defined by the foundations of common life, it is the people represented - and that explain - the constitutional “we, the people”. The random people, finally, are the ones that are constituted through a lottery, as, for example, in the jury selection.

Thus, we conclude that in democracy the people is, at the same time, the essence of politics and indefinite. The struggle for inclusion and recognition is the essence of democracy, which is never fully effective. And, precisely for that reason, it allows such struggles - or antagonisms in laclauian language. Populism in the sense of Rosanvallon can be considered a symptom that such demands are being insufficiently answered, and that is precisely why the simplifications<sup>14</sup> inherent in populism respond to such desires.

Therefore, populism is born out of the fundamental conflict of democracy, sometimes exploiting it to the extreme in order to offer a reductionist and appeasing solution for a defined and essentialized people. But it should be noted that this populist response does not present itself as an external to democracy, but the exploration of a fracture constituting popular sovereignty as a democratic pillar.

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<sup>14</sup> Rosanvallon identifies that populism rests on a triple simplification: a - political and sociological, b - procedural and institutional, and, c - conception of social bond. The first refers to the reduction of the people as an evident subject, opposed to the elite; the second considers that since democracy and institutions would be dominated by elites, the only truly democratic form would be the referendum. The third simplification considers that the social bond is formed entirely from identities, that is why the absence of this identity, as foreigners would by definition represent the “other” that does not belong to the social bond (ROSANVALLON, 2018: s / p).



### 2.3. Populism and democratic decline

After the consensus that liberal democracy had historically prevailed without any possible opposition (the well-known thesis of the end of Francis Fukuyama's history), the process of democratic and liberal decline<sup>15</sup> is affecting the countries<sup>16</sup>. In the elaboration of explanatory theories of the process, the concept of populism has been widely invoked. In this topic will be exposed how some authors currently work on the topic.

In terms of time, Karen Stenner and Jonathan Haidt provocatively wonder if the far-right “wave”<sup>17</sup> with xenophobic, misogynistic and anti-globalist speeches, would be, in truth, not “temporary madness”, but an eternal dynamic in liberal democracies<sup>18</sup>. Stenner and Haidt's question marks the central question about what would be an anomaly and the normal functioning of the policy. However, the authors do not establish a definition of the concept of populism, identifying it with extreme right policies.

Cass Mudde's definition, often cited, identifies populism against opposition between people and the elite. For him populism is:

an ideology that considers society to be separated into two homogeneous and antagonistic groups, ‘the pure people’ versus ‘the corrupt elite’ and who argue that politics should be an expression of the “people’s *volonté Générale*”. This “centered ideology could easily be combined with other ideologies, including communism, ecologism, nationalism or socialism” (MUDDE, 2004: 543-544).

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<sup>15</sup> It is essential to realize that democratic and liberal traditions are fundamental to the formation of modern constitutionalism; however, they are conflicting political traditions. The democratic tradition, at least without its Rousseauian sense, is guided by popular sovereignty in the sense of an absolute power whose source is the people. On the other hand, the liberal tradition, under the prism of potestative pessimism, has as its axis precisely the limitation of power, including the popular. Although in the current phenomena there are as much affront to democracy in the sense of belonging to certain groups, as to institutions, which could not confront majoritarianism, both traditions are not confused.

<sup>16</sup> Between 1974 and 2014 29% of all democracies in the world collapsed. Since 2000, there have been 25 collapses. Of these, only 8 were the result of military interventions; 13 occurred through the strengthening of the executive carried out by elected executives (DIAMOND, 2015, 147).

<sup>17</sup> (...) far-right populism is a momentary madness caused by recent environmental stressors (the global financial crisis, the decline of manufacturing, the inevitable displacements of globalism) and exploited by irresponsible leaders who divert patients' anxieties to scapegoats (migrants, refugees, terrorists) for their own political gain. The central point of this diagnosis is the notion that patients' fears are irrational and can be alleviated by more responsible treatment and by reducing stress (increasing the economy or increasing social support). With appropriate interventions and the removal of toxic influences, it is believed that our populists will 'get out of this' and return to their senses (STENNER, HAIDT, 2018, p 178).

<sup>18</sup> In the same sense, Pierre Rosanvallon: “(...) contemporary populism is a globally structuring fact of contemporary democracies. (...) There is, therefore, an urgency to think about populism today, as a constitutive fact of the life of our democracies and not simply as a kind of momentary or localized turn” (ROSANVALLON. 2018: s / p).



The central issue pointed out by Mudde is the antagonism between two groups in which one claims to be the genuine people and the other is, in his eyes, a corrupted elite. The irremediable opposition between these two groups would be the very essence of populism. But precisely because it does not have an underlying content, only the definition from the opposition, populism is a cover that hides different contents. And again, the question arises as to what constitutes the people. If we consider that the antagonistic constitution process is typical of politics, would populism be a matter of gradation of so-called normal antagonisms or would it be an antagonism based on a different logic?

Pippa Norris and Ronald Inglehart also think of populism as a model of politics anchored in the opposition of people and elites. For them, populism is “a style of rhetoric that reflects first-order principles about who should rule, claiming that legitimate power rests with the 'people' and not with the elites” (NORRIS, INGLEHART, 2019: 4). Populism would be a specific rhetoric that can adopt different ideological values and principles, which can be progressive or authoritarian, for example. However, even though it has no underlying authoritarian content, populist discourse could weaken liberal institutions<sup>19</sup> by questioning the legitimacy of elected leaders.

The mentioned above authors deal with different perspectives, but have in common the establishment that the constitutive aspect of populism would be the conflicting relationship between the people and the elites. This opposition leads us to the fundamental fracture that runs through the constitution and the role of the people in democracy.

The place and role of the people in politics is at the center of political theories about democracy. Some, like the elitist, analyze their inclusion by expanding the right to vote, with fear considering that the “masses” would be incapable of effective participation. The dilemma is also at the center of the process of forming constitutionalism. If, on the one hand, constitutionalism was founded under the brand of

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<sup>19</sup> “First, populism defies the legitimate authority of the ‘establishment’. It questions pluralist beliefs about the correct location of power and authority in any state, including the role of elected representatives in democratic regimes. Second, populist leaders claim that the only legitimate source of political and moral authority in a democracy rests on the ‘people’. The collective will of the ‘people’ (‘Most people say ...’) is considered unified, authentic, and unquestionably morally right. Therefore, populist rhetoric seeks to erode faith in the legitimate authority of elected representatives in liberal democracies. But the revolution finds it easier to destroy the old than to rebuild the new. The danger is that this leaves the door ajar for soft authoritarians who attack democratic norms and practices” (NORRIS, INGLEHART, 2019: 4-6).



“We, the people”<sup>20</sup>, on the other the people invoked as a foundation of legitimacy and object of the constitution disregarded large contingents such as blacks and women. The questioning of who is, how it is constituted and the role of the people in politics, characteristic of populism, can bring broad and restrictive foundations and results. Expansive in the sense of expanding who the people are, and their possibilities for participation. Restrictive in denying the dynamic character of politics and wanting to make people a stable and fully determinable signifier, excluding all those who are not in this political mirage.

The plasticity of populist discourse mentioned by Mudde, Norris and Inglehart indirectly shows that populism exposes how liberal democratic institutions treat the people in an ambiguous way: if on the one hand it is the foundation of constitutions (as in the Constitution of the Federative Republic of Brazil of 1988, 1<sup>st</sup> article), for another must have his passions controlled against abuse, and any unmediated practice that directly addresses these people is criticized as populist. As Rosanvallon writes: “Populism is carried out while the principle of people's sovereignty is exalted. What hides this paradox? How to understand it?” (ROSANVALLON, 2018: s / p).

Therefore, by giving greater participate on to the people, the populist discourse can be a discourse of democratic defense against the limitations of real democracy, which promotes the withdrawal of the people from political decision-making. It follows that not every populist is authoritarian (DALY, 2019: 3). Rob Howse distinguishes “good” populism from “bad” populism”.

Good populism [like 'bad' populism] implies a claim against elites, but the claim is pluralist, not anti-pluralist. It is not a demand for popular hegemony, but a critique of the subinclusiveness and underrepresentation of the (great element) of the "people" in a political system dominated by trained elites. Good populism seeks a policy in which decisions are made for the good of all, not a minority; but "everyone" even includes the interests of the elites. Bad populists will target minority rights, they will engage in actions such as arbitrary seizure or nationalization of “elite” property, punitive taxes, deportation of foreign workers, and so on. (...) The policies of good populists must be consistent with inclusion and pluralism - on the economic side, as Rodrik suggests, these would be New Deal initiatives that tax and regulate wealthy and large companies, but at the same time allow them to participate and continue to thrive in politics (HOWSE, 2018: 3-4).

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<sup>20</sup> Note that the invocation of the people in the “we, the People” formula was not the unanimous political response. It was used in the American Declaration of Independence (1776) and in the North American Constitution (1787). However, in France, the political formula used was man and citizen as an object of protection and the foundation of political legitimacy was the nation, as exposed in the classic work of Emmanuel Sièyes “What is the third state?”.



In this view, populism in politics would not give us any precise indication of how a given regime works, it would only illuminate the existence of conflicts over the inclusive and representative character of democracy, not over the proposals to resolve this conflict. In a different sense, we have Jan-Werner Müller, for whom: “in addition to being anti-elitist, populists are always anti-pluralists. The populists claim that they, and only they, represent the people” (MÜLLER, 2016: 2-3). For him, populists see conflict not only as disagreement about politics, but personalize and moralize conflicts, for them others are corrupt and work against the people (MÜLLER, 2017, s / p).

We see, consequently, not only vagueness, but essential divergence in the concept. As will be presented in the next item, these characteristics are not overcome when dealing with constitutional populism, leaving disagreement about the authoritarian and illiberal character with regard to popular demands in constitutionalism.

### 3. Populist Constitutionalism

The current processes of political change have been reflected directly in constitutional law, through breaches of constitutional rules, minimization of the importance of fundamental rights, changes in the constitution itself and, in a broad sense, questioning the relationship between the constitution and politics. It is in this horizon that the concept of populist constitutionalism has been used.

The meaning of populist constitutionalism, like populism, has little consensus among the authors. Among the issues raised are the characterization, the (in)compatibility with constitutional democracy and the (im)possibility of democratic deepening through this model of constitutionalism.

For Paul Blokker, populist constitutionalism and popular constitutionalism are related to each other<sup>21</sup> based on the common element of defense of the popular sovereignty.

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<sup>21</sup> Although this is the most used term, it comes close to what Halmai called political constitutionalism. In this line are grouped authors such as Larry Kramer, Akhil Amar, Jack Balkin, Sanford Levinson, Richard Parker and Mark Tushnet who share the concern with elitism in legal theory. Among other items, there is a concern with limiting the power of the judiciary in favor of channels of deliberation that are more permeable to public debate. In this sense, the limitation of judicial control of constitutionality and distrust of the constitutional court's thesis as the holder of the “last word”.



First of all, there is an internal link between populism and the idea of popular sovereignty. It is also said that modern constitutionalism finds its final legitimation in the people (cf. Loughlin and Walker 2007), basing a democratic regime on institutions of order and self-limitation and on self-government (cf. Blokker 2017). Populists claim that the principle of popular sovereignty is insufficiently guaranteed in liberal constitutional regimes. A key question therefore arises, that is, what is the difference in interpretation or understanding, if it is said that modern constitutionalism and populism are based on popular sovereignty? (BLOKKER, 2017, s / p, my emphasis).

The defense of popular sovereignty leads to distrust with institutions, including those that are at the heart of liberal constitutionalism. Hence, when in power, populists engage in broad constitutional reforms that may imply a risk to constitutional structures.

Second, an intrinsic part of populism concerns a form of legal skepticism, in the sense that populists are cautious about the institutions and limits of liberal constitutionalism, even if they are not necessarily against the idea of a constitutional order as such. In other words, populist constitutionalism can be understood as a strongly critical countercurrent to modern constitutionalism in its liberal appearance. In this sense, in particular, the views broadened by Carl Schmitt can help to explore this dimension further (cf. Antal 2017; Kahn 2011; Urbinati 1998). Third, populism includes political engagement in constitution and constitutional reform projects. Populists, when in power, are often involved in intense reform (and abuse) of existing constitutional arrangements, indicating the crucial dimension of state power in populist projects, in contrast to the idea that populism consists of a merely oppositional antipolitical phenomenon. (BLOKKER, 2017, s / p, my emphasis).

In short, for Blokker, populism is a response to liberal constitutionalism and its limitations to popular sovereignty<sup>22</sup>.

But as a question prior to the debate on manifestations of popular sovereignty, we have the initial divergence of who is the people who compose it. The theme is fundamental in constitutional theory and has already been debated in brilliant works such as “The Identity of the Constitutional Subject” by Michel Rosenfeld, and “Who is the People? The Fundamental Question of Democracy” by Friedrich Muller. The classic works show us that the identity of the people, in a constitutional sense, is not immediately determinable. The consequences of this constitutive incompleteness are shown in the constitutional process, in the exercise of constitutional rights, and also in the establishment of those who have the power to respond to constitutional conflicts.

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<sup>22</sup> Gábor Halmai differentiates between political constitutionalism, whose exponents are Richard Bellamy, Jeremy Waldron, Akhil Amar, Sandy Levinson and Mark Tushnet, and legal constitutionalism. This would have as central points the defense of the constitutionality control and technocratic mechanisms that end up alienating the citizen.



In countries with a history of adopting authoritarian measures, such as Poland and Hungary, part of the defense of modifications in the Supreme Courts had as a central argument the existence of political constitutionalism to the detriment of liberal (HALMAI, 2019: 302), in a way in line with Blokker's theory. However, for authors like Jan-Werner Müller, Bojan Bugarcic and Gábor Halmai populist constitutionalism is not related to popular constitutionalism because it is precisely the negation of the pillars of constitutionalism, such as separation of powers and fundamental rights.

Under the influence of the Hungarian case<sup>23</sup>, the question raised by Halmai is whether authoritarian populisms can be constitutional. The interrogation is important, but before thinking about the answer, we must focus on the terms in which it was stated. The first question is what differentiates an authoritarian populism from an authoritarian regime. Halmai argues that populist authoritarians generally come to power through elections and change the rules to stay in power; he also quotes Kim Scheppele (2018) to substantiate that the distinction between the two types of regimes is that authoritarian populists depend extensively on legal instruments<sup>24</sup>. This answer may be applicable to the Hungarian case<sup>25</sup>, but it certainly does not allow universalization and does not observe other experiences. The use of legal instruments is not directly related to populism, as the Brazilian experience in the military dictatorship proves<sup>26</sup>. There was legal justification and justification, including the creation of a new legal type, the institutional act, but the

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<sup>23</sup> Hungary has been considered one of the laboratories of the current process of democratic decomposition. Viktor Orbán, prime minister and leader of the far-right Fidesz party, has been in power since 2010, with great help from an approved electoral law that makes it difficult for the opposition to win. Orbán has among its guidelines the closing of borders to migrants, the appreciation of Hungarian religiosity, the elimination of studies related to gender. For Levitsky and Ziblatt, the Hungarian case demonstrates the gradual weakening of liberal democracy by actors considered non-extremists. The authors note that "Orbán and his Fidesz party started out as liberal democrats in the late 1980s; and in his tenure as prime minister, between 1998 and 2002, Orbán governed democratically. His authoritarian turn after returning to power in 2010 was a genuine surprise" (LEVITSKY, ZIBLATT, 2018: 31).

<sup>24</sup> In this same sense, Yaniv and Tamar Brandes (2019), who compare that the current democratic erosion process is different from the dictatorships of yore where power was established by force through a coup. The authors point out that populist leaders can limit the power of the judiciary, but at the same time they modify it and appoint loyal jurists. The same treatment given to the press.

<sup>25</sup> In a previous text (2018) Halmai clarifies that his arguments against the compatibility between constitutionalism and populism apply to populist constitutionalism in Eastern Europe, and do not necessarily apply to other parts of Europe, Latin America or the United States, where populism is characteristic different in relation to constitutionalism (HALMAI, 2018: 224). That is why we return to Isaiah Berlin's warning that, on the one hand, it is difficult to establish a universal concept of populism, on the other hand it is undesirable to consider that each situation is absolutely different from the others. In this way, the questioning of the Hungarian case analysis of the concept of populist constitutionalism is questioned instead of authoritarian constitutionalism, for example.

<sup>26</sup> Anthony Pereira demonstrates in "Dictatorship and Repression" that the Brazilian military dictatorship was highly legalistic, following existing tradition, including in the Estado Novo.



regime was never based on popular participation<sup>27</sup> or even popular rhetoric. This definition also contradicts what was said by the authors that populism would be precisely the demand for less institutionalization and greater direct participation of the people.

If we follow the above, which populism can have both a democratic and authoritarian character, constitutional populism would have the same duality. In the authoritarian sense, populists take a position contrary to the limit mechanisms established in the constitution and to the fundamental rights of vulnerable groups, in the last analysis because due to the anti-pluralist bias, these groups are excluded from the totalizing unit of “people”. On the other hand, constitutional populism can present the same demands that exist in popular constitutionalism to increase spheres of participation in constitutionalism. Part of these claims is the greater popular participation, with greater power to Congress and less to the courts, which implies models of weak control of constitutionality. In short, the rediscussion of the liberal mechanisms of control and constitutional concretization.

Halmai considers that there is no relationship between political - or popular - constitutionalism and populism, considering the expression “populist constitutionalism” as an oxymoron (HALMAI, 2018: 231). For him, the Hungarian and Polish models do not fit into any of the weak constitutionality control models<sup>28</sup>, which, as explained above, is one of the foundations of popular constitutionalism. But again, the cases of Hungary and Poland do not represent all types of populism, but, specifically, authoritarian ones. Although the author seems to agree with the existence of “good” and “bad” populism when dealing with constitutional populism, the examples do not reflect this duality, the models being notoriously authoritarian.

In a 2018 article called “Populist Constitutions”, David Landau sought to analyze how elected populist leaders use instruments of constitutional modification as a way to

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<sup>27</sup> On this point can be consulted: Anthony W. Pereira: Dictatorship and Repression, and Heloisa Fernandes Câmara: STF in the Brazilian military dictatorship: an adaptable court?

<sup>28</sup> Halmai follows the theory of Tamás Györfi, that there would be three distinct forms of weak constitutionality control: “In each lack one of the characteristics that define a strong constitutional revision, but they all want to achieve a balance between democracy and protection of human rights that differs from balance achieved by the “new constitutionalism” of strong judicial control. First, judicial review is limited if the Constitution does not have a charter of rights, as is the case in Australia. Second, judicial review is deferential if the courts generally deviate from the point of view of the elected powers, as in the Scandinavian Constitution systems, or are even constitutionally obliged to do so, as in Sweden and Finland. Finally, and probably the most important, there is the Commonwealth's model of judicial control, in which courts are allowed to review legislation, but the legislator has the possibility to revoke or ignore court decisions” (HALMAI, 2019: 303).



remain in power. Landau started from Cass Mudde's concept of populism, already presented, that populism would be the ideology that would divide the world into pure people and corrupt elite. In this way there would be a relationship between populist ideology and large-scale constitutional change that refuses the political and social order (LANDAU, 2018: 522). According to Landau, constitutional changes serve three functions: deconstructing the existing political regime, ideological criticism that promises to overcome flaws in the previous constitutional order, and consolidation of power in the hands of populist leadership.

In his diagnosis, the author brings as examples the constitutional changes made by Fujimori in Peru (1995), by Chávez in Venezuela (1999), Correa in Ecuador (2008), Evo Morales in Bolivia (2009), and the Fidesz party in Hungary (2011). But Landau's criterion is at least insufficient, since not all regimes considered populist are guided by changing the rules of the game. In the United States, for example, the demand is originalist interpretation, with the diminishing power of the courts. In western Europe, on the other hand, populism manifests itself on an agenda against migration, but does not question constitutional rules (KALTWASSER, 2013: 1-2). In this way, constitutional changes appear to be more of a tool than necessarily characteristics of populist - or even popular - regimes.

Roznai and Brandes also consider that constitutional change is quite common in populist regimes. This conclusion follows logically from the concept of populism adopted by the authors: process of democratic erosion with the use of legal instruments. Unlike the other texts mentioned in this article, the authors refer to other concepts to describe the use of constitutional mechanisms against democracy, such as "constitutional capture", "constitutional regression", "abusive constitutionalism", "autocratic legalism", in addition to "Populist constitutionalism". Nevertheless, there is no real question about the suitability of populism to the phenomenon.

On the one hand, the populist adjective is excessively imprecise to describe the regimes presented above, and on the other hand it does not outline the central characteristic of these constitutional changes: the desire to block the mechanisms of power limitation. In this sense, it is preferable to use a term that can more accurately describe the central elements of the process. An alternative is "authoritarian legalism" analyzed by Javier Corrales (2015), which is based on three elements: "the use, abuse and non-use of the right for the benefit of the executive". In his wake, Kim Scheppele uses the



concept to describe “the phenomenon of using electoral mandates and constitutional and legal changes to promote a non-liberal agenda” (SCHEPPELE, 2018: 548). The advantage of using authoritarian legalism is to demonstrate that regardless of the discourse given about the motive, the modus operandi is done in a way to weaken the mechanisms of checks and balances and constitute an authoritarian government. The reference to populist constitutionalism does not provide enough information to assess how the constitution is considered and applied, maintaining the same constitutive ambiguity about the role of the people that, as we have already seen, marks populism in politics.

In Latin America, the theme of populist constitutionalism must be read in the context of the new Latin American constitutionalism<sup>29</sup>. Rubén Martínez Dalmau (2018) questions whether the constitutions created in this model have worked to improve the living conditions of citizens, limit state power, reduce inequality and poverty, and improve the situation of civil rights. If so, it would be popular constitutionalism; if not, populist constitutionalism. Dalmau identifies populist constitutionalism to the constitutionalism proper to populist governments, that is, to the model that makes reference to constitutional texts without claiming normativity, but only as a manifestation of the personality of populist leaders (DALMAU, 2018: 44). Dalmau's concept of populist constitutionalism seems to echo Karl Loewenstein's semantic constitution<sup>30</sup>.

One of the few consensuses that we can extract when dealing with populist constitutionalism is the existence of movements of elected leaders that, through constitutional instruments, threaten the constitutional structure of the separation of powers and fundamental rights. Although it has different elements from previous threats, the current movement is not unprecedented, at least considering the Latin American experience, with an emphasis on the Brazilian one. Building adequate analysis models runs through the proper naming of the phenomenon. And, as we have seen, the term populist constitutionalism offers distinct and opposite evaluations. It is imperative to separate the themes: one is the study of new authoritarianisms and their influence on constitutional law. Another is the role of the people in constitutional law. May the urgency of the former not detract from the permanent relevance of the latter.

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<sup>29</sup> New Latin American constitutionalism refers to the processes initiated in the 1990s of creating new constitutions in which there was protection of pluricultural rights, especially of indigenous peoples.

<sup>30</sup> Semantic constitution is one whose text has no claim to normativity, serving to hide situations of constitutional disrespect.



#### 4. Final Considerations

We have seen in this paper that the concept of populism in Latin America has been historically marked. It has been so much used for the purpose of understanding political phenomena, it ended up becoming common sense and transformed into a synonym for a regime anchored in charismatic leadership with the power of cooptation. From this characteristic of domination of the masses, especially of the workers, a more nuanced academic interpretation was adopted, in which populism would represent an unequal pact, but still a pact, between workers and the State, having manifestations both in the political, social and economic spheres.

In the historical aspect, populism is a way of doing politics with the objective of resolving the conflicts caused by the entry of the people in politics, that is, the expansion of democracy through the right to vote and the simultaneous weakness of elite groups. Thus, the term populism is born marked with a negative stigma, a cry of order that serves as an accusation against any opponent.

In this already complex and imprecise scenario, the concept has currently been used as a way to understand the election of leaders who have an anti-pluralist and anti-system discourse. This description can be used to describe countries like the United States, Brazil, Poland, Turkey, Hungary, Venezuela, as well as acceptance of policies like Brexit. Although they may have converging points, especially the criticism of elitist politics, there are significant differences between countries. If we add to the list of populist governments countries like Bolivia, Spain, movements like Syriza and Occupy Wall Street, then the scenario becomes even more nebulous.

For some authors, populism can have two models, a democratic and an authoritarian one, or the good and the bad populism. For other scholars, populism is inherently anti-pluralist, against controls, in short, authoritarian. One could ask as a fundamental question the importance of debating the term to be used to designate countries in democratic decline. It could be argued that the words are not important, not least because the leaders themselves claim to defend democracy, and that we should be articulating legal and political strategies of resistance. However, words matter in politics. And words can mask situations that would otherwise require more attention. It is different to designate a government as populist, or as authoritarian, racist and xenophobic. The degree of collection is different. The correct framing of the regimes is



fundamental for the clarity of the risks faced. And the term populist is unable to provide such clarity. Even if Brazilian history and its meaning related to the process of inclusion of the people in politics are disregarded, and only the current meanings are dealt with, the term is excessively ambivalent, unable to provide the necessary framework for the assessment of such a complex moment. Therefore, we should be able to call situations by their real names, without fear of exaggeration.

Identifying populism with authoritarianism also results in ignoring the constitutive contradictions of democracy and constitutionalism regarding the role of the people. The demand for greater participation, less institutional mediation, greater decision-making capacity, reduction of inequalities is inherent to the democratic process. If we follow Laclau's indications of populism as an empty signifier, populism marks precisely the fundamental ontological political struggle. The risk of considering that populism is necessarily what happens in Hungary can lead to the minimization of popular claims and the defense of technocracies. The ambivalence of populism shows precisely the conflicts between democracy and institutions. Let us not consider that these contradictions will be resolved by institutionalism that excludes the people, or by majoritarianism that implodes institutions. We need to recreate our political and constitutional theories in a more inventive and bold way. We need to complexify our democracy, create a new, more inclusive social contract. As Rosanvallon (2018: s / p) points out, at the end of the 19th century, the crisis of representative government and equality had the answer to the formation of the Social State. It is not by uncritically defending the current model that we can respond to authoritarian challenges. May the ambivalences of populism be on the horizon in this project to expand democracy.

### **Tradução**

**Victor Pietro Nogueira La Croix**, Universidade do Estado do Rio de Janeiro, Rio de Janeiro, Rio de Janeiro, Brasil. E-mail: victorpnlc@gmail.com.

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#### About the author

##### **Heloisa Fernandes Câmara**

PhD in State Law (UFPR), Professor of State Theory and Political Science (UFPR), Researcher at CCONS and Tutor at PET Direito UFPR. E-mail: [heloisafcamara@yahoo.com.br](mailto:heloisafcamara@yahoo.com.br)

**The author is solely responsible for writing the article.**

