

Has the Welfare State failed? from citizen discontent to the possibility of institutional imagination

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Abstract: This essay aims to examine whether the *Welfare State* project has failed and how this apparent failure is intrinsically connected to the rise of citizen discontent. By tracing the historical roots of the *Rechtsstaat* and its development into the *Welfare State*, we highlight how the increasing gap between grand promises and their limited fulfillment has fueled widespread discontent. The much-acclaimed *Welfare State* seems to have transformed itself into a *Malaise State*, marked by a dual institutional failure: the inability to universalize its promises and the lack of political responses to the social discontent caused by that first incapacity. In this context, what was once considered a collective social desire has become (hyper)individualized within a “*turboglobalized*” world, inverting the traditional relation in which public improvement had the capacity to positively impact private life. Despite this, the responsibility of governments remains justified, as the transfer of power through democratic elections inherently carries the condition of accountability. However, democracy by itself seems unable to resolve these crises, especially when it comes to the well know populisms that carry out the so-called *policies of disconcertment*. Traditional institutional structures and power divisions also fall short, as the crisis of liberal democracy transcends national borders, becoming a shared Western dilemma. This scenario presents a paradox: while liberal democracy struggles with its self-created problems, abandoning its core values risks descent into tyranny. How, then, can we bridge the democracy gap while remaining democratic? We identify that a forward-thinking *State philosophy*, rooted in institutional (re)imagination and a reconstruction of the political and conceptual foundations of power, offers a viable pathway for addressing these impasses and envisioning effective solutions.

Keywords: Institutional imagination; State philosophy; Citizen discontents; Democratic experimentalism; Welfare State.

Resum: Aquest assaig té com a objectiu examinar si el projecte de l'Estat del Benestar Social ha fracassat i com aquest aparent fracàs està intrínsecament connectat amb l'augment del descontentament ciutadà. Traçant les arrels històriques de l'Estat de Dret i el seu desenvolupament cap a l'Estat del Benestar Social, destaquem com la creixent bretxa entre les grans promeses i el seu compliment limitat ha alimentat un descontentament generalitzat. L'Estat del Benestar social sembla haver-se transformat en un Estat del Malestar, marcat per un doble fracàs institucional: la incapacitat d'universalitzar les seves promeses i la manca de respostes polítiques al descontentament social causat per aquesta primera incapacitat. El que

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abans es considerava un desig social col·lectiu s'ha convertit en (hiper)individualitzat dins d'un món "turboglobalitzat", invertint la relació tradicional en què la millora pública tenia la capacitat d'impactar positivament la vida privada. Tot i això, la responsabilitat dels governs continua sent justificada, ja que la transferència de poder a través d'eleccions democràtiques porta inherentment la condició de rendició de comptes. Ara, la democràcia per si sola sembla incapaç de resoldre aquestes crisis, especialment quan es tracta dels ben coneguts populismes que duen a terme les anomenades polítiques del desconcert. Les estructures institucionals tradicionals i les divisions de poder també resulten insuficients, ja que la crisi de la democràcia liberal transcendeix les fronteres nacionals, convertint-se en un dilema compartit per Occident. Aquest escenari presenta una paradoxa: mentre la democràcia liberal lluita amb els problemes que ella mateixa ha creat, abandonar els seus valors fonamentals implica el risc de caure en la tirania. Com podem salvar la bretxa democràtica mantenint-nos democràtics? Identifiquem que una Filosofia de l'Estat d'avantguarda, arrelada en una (re)imaginació institucional i en una reconstrucció dels fonaments polítics i conceptuals del poder, ofereix una via per abordar aquests impasses i concebre solucions efectives.

Paraules clau: Imaginació institucional; Filosofia de l'Estat; Descontentaments ciutadans; Experimentalisme democràtic; Estat del Benestar social.

Resumen: Este ensayo pretende examinar si el proyecto del *Estado de Bienestar Social* ha fracasado y cómo este aparente fallo está intrínsecamente relacionado con el aumento del malestar ciudadano. Al rastrear las raíces históricas del *Estado de Derecho* y su evolución hacia el Estado de Bienestar Social, destacamos cómo la creciente brecha entre sus grandes promesas y el limitado cumplimiento ha impulsado el malestar generalizado. El *Estado de Bienestar Social* parece haberse transformado en un *Estado del Malestar*, marcado por un doble fracaso institucional: la incapacidad de universalizar sus promesas y la falta de respuestas políticas al malestar ciudadano provocado por esa primera incapacidad. Lo que antes se consideraba un deseo social colectivo se ha (hiper)individualizado dentro de un mundo "turboglobalizado", invirtiendo la relación tradicional en la que la mejora pública tenía la capacidad de impactar positivamente en la vida privada. Ahora, la responsabilidad de los gobiernos sigue estando justificada, ya que la transferencia de poder a través de elecciones democráticas conlleva inherentemente la condición de rendir cuentas. Sin embargo, la democracia por sí misma parece incapaz de resolver estas crisis, especialmente cuando se trata de los conocidos populismos que llevan a cabo las llamadas *políticas del desconcierto*. Las estructuras institucionales tradicionales y las divisiones de poder también fracasan, ya que la crisis de la democracia liberal trasciende las fronteras nacionales, convirtiéndose en un dilema occidental compartido. Este escenario presenta una paradoja: mientras la democracia liberal lucha contra sus problemas autocreados, el abandono de sus valores fundamentales genera el riesgo de la tiranía. ¿Cómo podemos solucionar la brecha democrática sin dejar de ser democráticos? Creemos que una Filosofía de Estado vanguardista, basada en la (re)imaginación institucional y en la reconstrucción de los fundamentos políticos y conceptuales del poder, ofrece una vía viable para abordar estos impasses y concebir soluciones efectivas.

Palabras clave: Imaginación institucional; Filosofía del Estado; Malestares; Experimentalismo democrático; Estado de Bienestar Social.



INTRODUCTION

The much-acclaimed Welfare State, the very cradle of neoliberalism, has now become a *malaise state*, the result of a shared negative feeling about the failure to universalize the promises of its predecessor. The well-being of some has become the malaise of all, who have been affected by social injustice and widespread economic inequality, as well as disbelief in the legitimacy of political representation.

Meanwhile, social demands have become (hyper)individualized, inverting the center of reference that used to presuppose the ability of public improvement to impact and potentialize the private life. The generalized discontent that we see in today's society is the result of unresolved crises, in other words, complex problems that have arisen for certain reasons and have been abandoned or ignored by the powers in place. Although disasters and unexpected events are common to human life — they are part of everyday routine — it is the responsibility of the State, as the unity of previously disorganized private wills, to foresee and, above all, to effectively deal with them.

The government's responsibility to deal with the crises that arise is justified because power is transferred to the representative through the vote. So, the condition for this concession is also the responsibility for the use of this power. It is certainly not expected, due to a lack of any viable possibility, that there will be full anticipation of the setbacks that appear at every moment. However, it is the State's duty to anticipate most crisis scenarios and avoid them effectively, as it is the legitimate — and therefore responsible — holder of power.

Well, although total predictability is not possible requirement, it is the duty of the institutional structure to face up to and resolve what is presented, because political power is given to it by the people. Power is only handed over on the assumption of being responsible and that the elected person will fulfil their objective of satisfying the national will, enabling the powers of each citizen to flourish. Thus, we argue there is such intensive discontent because the State has not been able to resolve the crises that caused it. Here, we need to explain what kind of discontent we are dealing with. Discomfort, unease and anguish have always been present in human beings (Fernández Garcia, 2001), but in contemporary times they have taken the form of destructive malaise, not interested in building something new, but in destroying everything that is in place. The problem posed by present discontent — or even so *accommodated well-being* — is its destructive or stagnant tendency, which feeds back into authoritarian and fatal behaviors.

We are currently experiencing a process of hyper-individualization of discontent. Again, it is important to emphasize that this 'discontent' is inherent to human beings and not a new phenomenon in contemporary times. However, the novelty brought by it was a fast and intense transfer of responsibility for current malaise: the blame fell entirely on the individual. This turn has contributed to the impediment of an effective group organization for structural changes — a human capacity that has become more explicit since the *age of revolutions* (Hobsbawm, 2005) — since the cause of subjugation is no longer some dictator or repressive institution, but the people themselves (Han, 2018). Thus, the personal responsibility immediately blocks any anti-systemic rebellion, since the system has camouflaged itself through its own fragmentation.

Seeking a solution to the current situation, we have one previously observation: democracy has allowed the alternation of power and has brought us evidence that a different government is ineffective in resolving these impasses, especially when it comes to populisms that implement *policies of disconcert* (Mayos, 2020), since they were especially elected because of generalized discontent with the system in place. Even if a radical left or right government

is elected, the neoliberal background remains the same. Neither do the different traditional designs for the division of power, taken alone, offer any possibility of change, since this is a malaise that cuts across all the West. What this means is that if we want to effectively confront the imposed crises and resolve the current malaise, we need to reconstruct the meanings, not simply the designs or techniques, of what incarnates the power.

Therefore, this essay aims to discuss whether the Welfare State project has failed and how this apparent failure is connected to the rise of citizen discontent. By understanding these connections, a forward-thinking *State philosophy* emerges, proposing an institutional reimagining that seems to offer a possible path toward resolving these impasses.

1 FROM WELFARE TO DISCONTENT

1.1 *The promise of welfare*

As the British historian Eric Hobsbawm (2005) rightly points out, the history of Western civilization has revolutions as an essential core for Modernity. From the end of the 18th century, revolutions have changed their semantic meaning moving from a spatial to a temporal notion (Koselleck, 2020). Also, the concept itself left the movement of flaming astros identified by Copernicus (1543) to become politicized and one of the most important terms in political history. Although revolution, as we understand it today, is a concept created by Modernity, it is not dated. When a concept is created, it can turn to the past and give new meaning to phenomena that were previously senseless or had a different historical perspective. At the same time, it can turn towards the future and indicate paths to avoid or to follow. It opens a range of possibilities that can take us in directions not previously imagined and — for that reason — quite impossible (Straehle, 2024).

The importance of the revolutions for our work lies in the fact that they, especially the first ones (France, United States and United Kingdom), also changed the Western desire for the declaration of rights. Whether with the *The Declaration of the Rights of Man and of the Citizen* (1789) or with the *Bill of Rights* (1689), the revolutionaries were seeking to recognize and guarantee freedoms that previously could only be granted by absolutist divine power. In fact, historian Lynn Hunt (2009) reminds us that the idea of these *human rights* was only made possible by a symbolic change in the epistolary literature that preceded that period. Rousseau's (2000) novel *Julia*, as a central example, focuses on a woman and her impossible passion for her lower-class teacher. There is an innovation in this kind of literature: people outside the nobility are also considered subjects, who have passions and build their social lives based on their own possibilities. Well, if people outside the nobility also experience adventures, loves and disappointments, and can be main characters in literature, they could begin to be seen and treated as subjects of rights.

The realization of human rights was the result of this historical circumstance, but their foundation and validity are not limited to historical relativism. Instead, it is based on the presupposed universality of these same rights. It is up to history to update the focus of human rights to a certain demand of a determined place or time, but it is not their condition of existence; they are, in fact, self-evident. Hunt (2009, p. 19) says: "In order for rights to be human rights, all humans in all regions of the world must possess them equally and only because of their status as human beings."

It is interesting to note that it took this gap of almost two centuries for the self-evidence of human rights to manifest itself in a *Universal Declaration*. Moreover, this gap was not simply a stalling of debates, but the taking of a contrary path to the one taken by those illustrated philosophers and that society radically influenced by the pamphlets and epistolary novels of the 18th century. During this gap period, humankind debased itself to such an extent that it took the end of a bloody war to reveal the need to guarantee freedoms for itself.

The progress made by the revolutions towards guaranteeing rights and setting up a political organization to ensure them was what made the rise of the *Welfare State* possible, which we will try to explain below.

1.2 *The pendulum of the history of the Rechtsstaat*

Several attempts have been made to explain the history of Western thought. For us, one of the most elucidating is the emblematic dyad between *power* and *freedom* proposed by the Brazilian jusphilosopher Joaquim Carlos Salgado (1998). For him, the interpretation of the unfolding of Western culture lies in this clash — often violent — which determines, through the hegemonic affirmation of one of the two categories, the direction and spirit of each era.

Along these lines, throughout history we can notice symptoms in the different spheres of human life (political, economic, social), the attempt to establish hegemony of either freedom or power. These affirmative movements offer visible benefits, but when excessive, they can become harmful and even destructive.

One of the symptomatic particularities that reflect the disputed cosmovision of each time are the moments of the *Rechtsstaat*². Based on this understanding, the Brazilian jusphilosopher José Luiz Borges Horta proposes an interpretation in his doctoral thesis of the *pendulum in the history of the Rechtsstaat*, which shifts between the Dionysian and Apollonian affirmations of the human soul: “we think of the Dionysian spirit as a living force, and the Apollonian spirit as reason, measure, order, balance. Power belongs to Dionysus, freedom to Apollo.” (Horta, 2011, p. 22, own translation)

Before going any further, it is important to highlight that the division between the State and the constitution is false. The constitution is the organizational design of the State, which reflects the ideals and wills of its people, establishing the freedoms that the State must guarantee (constitutional right of freedom) and the organization of its power (constitutional right of power) (Baracho, 1986), consequently, the constitutionalism that accompanies the paradigm of each *Rechtsstaat* is also a reflection and result of the spirit of its time: “constitutionalism, in each of its stages, reveals a way of thinking and a set of themes that are first and foremost assumed to be necessary or even just for the constitutional order of the future.” (Horta, 2012, p. 784, own translation)

For this reason, we can identify a *liberal Rechtsstaat*, when the State relies on a constitutionalism that affirmed civil and political rights in order to free itself from the oppressive bonds of absolutism; so, classical constitutionalism limited the power of the State in order to formalize the Apollonian freedom of that paradigm. Following this path, the *social Rechtsstaat*, in response to the lack of collective guarantees of participation and inclusion, which did not satisfy the new demands of the population, was accompanied by a constitutionalism centered on the value of equality, which determined the need for social and economic citizenship, not just a political one. It is essential to remember that the battle in the history of Western thought and the pendulum in the history of the *Rechtsstaat* are dialectical movements, which means that previous demands for freedom are incorporated into new assertions of power, so the paradigm shift is cumulative. For example, individual freedoms,

² It is important to note that the term “Rule of Law” is not used in this context due to its different connotations in the Western experience and in English-speaking countries: “Of course, we cannot take for granted that expressions such as *Rechtsstaat*, *État de droit*, *Stato di diritto*, and *Estado de derecho* refer to the same phenomenon. The semantic field of these expressions seems to be the same because of their linguistic kinship but the historical and conceptual specificity of the underlying ‘national traditions’ should not be overlooked. Even if we were inclined to minimize differences within continental Europe, the dramatic contrast between civil law and common law systems would prevent us from considering ‘rule of law’ and *Rechtsstaat* (with similar expressions) as simply synonyms.” (Costa; Zolo, 2007, p. ix)

despite being less prominent, were present concomitantly with collective freedoms in the social *Rechtsstaat*.

The excessive Dionysian moment of power inebriation, even with significant gains in the social and economic spheres, condemned the 20th century as a period of *ethical deluge* (Stolleis, 2003), in which totalitarian experiences emerged and directly attacked the dignity of the human person.

From this excess of power, a countermovement of freedom was necessary. However, it is in this interpretation that the overwhelming majority of jurists go wrong: by calling ‘*democratic Rechtsstaat*’ the moment in which the pendulum is swinging in the opposite direction to power. We believe there is an intention to put an end to history itself (Fukuyama, 1989). In fact, what was required in that cosmivision was the *universalization* of Western fundamental rights for the whole of humanity, i.e. it was necessary to make hegemonic the empire that won the Cold War. Under the pretext of preventing Nazifascism and Stalinism from recurring, the United States of America, the dominant country in the West, managed to confuse the interests of humanity with the wills of the Pentagon (Mouffe, 2015). A movement backed by political rationalism theorists such as Habermas and Rawls, who proposed liberal democracy as an unbeatable model — again, as the end of history.

Democracy has been present, albeit timidly at times, in both the liberal and social paradigms. To say what we are currently experiencing is the empire of democracy would be to say that the pendulum has stalled and, in consequence, the battle between Apollo and Dionysus is over, because any movement towards change would be anti-democratic, in other words, contrary to the highest ideal of Western culture.

According to the interpretative theories we have drawn on so far, the pendulum movement is seeking Apollo, after the violent excesses of Dionysus that ended up being blamed not just on totalitarian regimes, but on all politics — blaming the concept itself rather than its inebriated use.

In this context of the Universal Declaration of Human Rights and the internationalization of *freedoms*, with the aim of guaranteeing the dignity of the human person regardless of their cultural differences, the most appropriate term would perhaps be the *universal* or *universalist Rechtsstaat*, reflecting the current debate between universalists and relativists. This new paradigm would have this universalizing and international will as its companion constitutionalism, even without strategic multipolar perspectives.

As often happens, excessive economic freedom, backed by political rationalism and Cold War-winning industrial capitalism, allowed neoliberalism to emerge and erode power structures in order to impose its hegemonic cosmivision, causing damage to the *Rechtsstaat* itself.

In this unstable context, it is worth recalling the contributions of Maria Paula Dallari Bucci (2023), who proposes a systematic exposition of the *Welfare State*. According to the author, from the 1980s onwards, the Welfare State model began to decline. This period follows its peak after the post-war years, in which there were a series of measures in favor of social and economic development.

For Bucci, the decline of the industrial economy, neoliberalism and the fall of the Berlin Wall were the inaugural factors in the crisis that became more acute post-2008. This economic crisis did not receive an adequate response from the US and Europe and highlighted the fragility of the global economic system organized by neoliberalism. We should therefore try to outline the general characteristics of neoliberalism as the main cause of contemporary discontent.

1.3 Neoliberalism

Neoliberalism is not just an economic policy, an academic project or an ideology. As Dardot and Laval (2016) put it in normative and Foucauldian terms, it is the new *reason of the world*. However, this new rationality did not come out of nowhere, it is the result of a long-term historical process in which capitalism moved from the industrial dimension to pure speculation. The genesis of neoliberalism is not only explained in economic terms, but also in the political events that have marked and caused real changes in the world. Although we should consider the Thatcher and Reagan governments as attempts to implement a theory devised by the Chicago School, it is more important for this essay purpose to deal with what preceded the governments of neoliberal policies, i.e. the flood of neoliberal reason in the world. The fall of the Berlin Wall and the subsequent dissolution of the Soviet Union were the milestones in the collapse of the dam that allowed this phenomenon to emerge. The decline of the wall that separated right and left, capitalism and communism, West and East, also symbolized the beginning of a post-ideological era (Horta, 2012), marked by the *de-ideologization* of human relations (Bell, 1980) and the extreme fragmentation of ideas. Although for many the socialist utopia was not actually implemented with the socialist governments, its end represented on a symbolic level the failure of what was dreamt of and desired by left-wing thinking.

In this deideologized scenario, there was also a *turboglobalization* (Mayos, 2012), which means that there was not only an exponential acceleration of the processes of connection and exchange flows of that time, but also an intense growth in their quantity and quality. The *turboglobalized world* has turned out to be the ideal scenario for industrial capitalism to be transmuted into financial capitalism, “with immaterial and post-industrial modes of production” (Han, 2018, p. 14, own translation), the main characteristic being the extreme mobility of capital, which no longer needs to be connected to a specific territory, even less to specific workers, and always seeks the lowest costs and the highest profits, obtained simultaneously through speculation.

In the realm of thought, the most studied theorists reflect the *statophobia* of that time, in which politics loses ground to technique, antagonism is avoided at all costs and the predominant tendency is characterized by a rationalist and individualist approach, typical of Liberalism, which, in order to be coherent, needs to deny the political, since its fundamental point of reference is the individual (Mouffe, 2015). For them, liberal democracy is the *democracy of consensus*, which seeks to establish a fundamental connection between morality and politics through communicative rationality. The liberal democratic system is even seen as the end of history, the only possible apex of humanity, which would then solve its problems consensually through rational discursive logic.

It is in this scenario that the biggest problem, for us, of contemporary times comes to the fore: neoliberalism, which is not merely an ideology or economic model of today, but the ultimate expression of this *Zeitgeist*. Just as Margaret Thatcher (1981) said: “Economics are the method; the object is to change the heart and soul.” Neoliberalism has appropriated the values of Western history in order to exercise more effective control over society. This history developed as the realization of the value of *equality* in an initial period (the classical period), incorporating into its meaning the value of *freedom* from modern history, and finally, in contemporary history, assimilating a new value of European culture, (...) *labor* (Salgado, 1996, p. 28).

Furthermore, the liberal democratic system and financial capitalism, far from preventing instability, proved that the 21st century would be the stage for major financial crises (2008), populist and authoritarian governments, migratory and health crises, terrorism, armed conflicts and other problems specific to our time.

There are, initially, three major differences between liberalism and neoliberalism. The first lies in the fact that the transition from one model to the other has replaced the logic of the social contract with the logic of social Darwinism. In this model, the free market appears to be the ultimate natural selection. Secondly, it should be remembered that there are types of goods and labors that are not products in liberalism. In neoliberalism, on the other hand, the symbolic becomes a merchandise, that is, it becomes an important commodity. The third difference lies in the *proletarianization* of liberal professionals in neoliberalism. In this context, neoliberalism creates an environment where life becomes a constant struggle for survival, the main idea of which lies in the individual's ability to succeed as a self-made entrepreneur. (Dardot; Laval, 2016)

The hyperaccelerated society, as shown by Gonçalo Mayos (2023), places us in a situation of excessive uncertainty. The project of life becomes fleeting when there is no certainty that fulfilling social and cultural requirements, such as education up to higher level, will generate minimal well-being or, even less, happiness. Previous modern society provided a relative reward for daily effort, albeit with the injustices presupposed by the so-called meritocracy.

There was, therefore, a destination that could be seen during the course of life, which made it possible to formulate long-term plans — no matter if they were ever fulfilled, because their mere existence gave the walker encouragement. Neoliberal contemporaneity, on the other hand, has overshadowed every possible *destiny*. It has brought intense instability to the permanence of work, emotional relationships, the building of assets and many others. The human capacity to see points of arrival is suppressed to such an extent that the only possible end, because it is stable and secure enough, becomes death. The results brought about by this new reason of the world have created a widespread sense of unease among the people, who have lost their identity and faith in the political system.

2 MALAISE STATE (OR POIETHICAL STATE)

2.1 Ethical State and poiethical State

According to Joaquim Carlos Salgado (1998), power is defined as a will that determines another will and can be exercised by force (physical or spiritual) or by persuasion. In fact, consent is the differentiating element between violence and power.

Power becomes institutionalized when it is formalized in a constitution, which represents the union of power and legal norms, politics and law, authority and freedom. The effectiveness of power is measured by its ability to become institutionalized and juridically recognized.

For Salgado (1998), it is possible to distinguish three theoretical levels for the justification of power in the form of the State, namely the *classical*, the *modern* and the *contemporary* periods. The first of these, in the form of the *Immediate Ethical State*, seeks to justify itself by its ethical purpose (*telos*). Which ethics are we referring to? We consider that *ethos* exists from a rational point of view, it is characteristic of men's freedom. Because men are free, they create their culture and, within it, their ethical world, their ethics (Salgado, 1998). Ethics therefore implies freedom, and the opposite is also true. From this involvement we have the notion of the good, whose evaluative parameter is freedom itself. Thus, the good is found in being free. Not coincidentally, the term used by Aristotle to define an ethical action imbued with freedom is *pratein*.

This freedom, to the extent that man builds it for himself and for society as a whole, can only be realized in the realm of law. Objectified freedom, the *ethos* in its highest form and content, is the juridical order, insofar as it guarantees subjective rights (those

who don't have these rights don't have freedom), in other words, the reintegration of the essence that has been alienated from its substantial reality by the split between power and individual freedom, which takes place with the advent of the contemporary democratic *Rechtsstaat*. (Salgado, 1998, own translation)

Then came the *Modern Technical State*, whose exponent was Machiavelli. At this new moment, there is no longer an intention to achieve the good or freedom, but power is turned in towards itself. Legitimacy no longer lies in its finality, instead its justification is power itself, which uses techniques to achieve and remain dominant.

Finally, we have the *Mediate Ethical State* (*Rechtsstaat*), whose main characteristic is legitimacy. "The State or political power is legitimized or justified by its **origin**, by the **technique** with which power is exercised and by its **finality**" (Salgado, 1998, own translation). Thus, in contemporary times, the origin of power is no longer in itself or in the divine, but in the will of the people, organized technically and procedurally on the basis of pre-established rules, whose purpose is the realization of fundamental rights. We can see the historical accumulation of the Ethical State, which has managed to mediatize itself from its previous moments in the form of the *Rechtsstaat*. However, there is currently a fissure within the ethical State: the *poiethical State*.

As we said earlier, in the contemporary context, neoliberalism is seen not just as an economic policy of austerity, but as the *Spirit of this Time* (*Zeitgeist*). In neoliberalism, the *poiethical State* emerges as a new form of organization, whose *ethos* is shifted towards *poiein* (production). Here, the culture of freedom is replaced by production as an end, and the Market begins to direct State action.

In the poiethical State, the articles resulting from the production process determine all preceding and subsequent actions. In contrast, in the Ethical State, the good is what directs action according to the subject's own laws (*nomos*), the absolute end of moral action. So, the poiethical State, centered on economic production, is not guided by the realization of fundamental rights. Salgado even says that the neoliberal society of entrepreneurs is seen as a society of enslaved people, in which men have become an instrument for something and for others.

The structural changes brought by neoliberalism have profound consequences for all aspects of human life. The replacement of *politicians* by *managers*, of *government* by *governance*, and of *citizens* by *consumers*, reveals a paradigmatic turn in the function and purpose of the State. The creation of a bureaucratic body that exercises sovereignty on behalf of the economic corpus of civil society raises questions about the possibility of autocratic liberalism and the nature of authoritarian and "progressive neoliberalism".

The poiethical State is the institutional structure of the *Malaise State*. In which, the products are not fundamental rights, much less ethical commitment, but economic activity itself. Under the robes of *scientificity*, which is supposed to bring efficiency, the *economical* subjugates the *political*, the *juridical* and the *social*. The very legitimacy won by the vote, meaning the will of the people, which was once the fundamental attribute for political power, is now displaced by the economy. Justification is no longer democratic, but determined by technicians, or rather economists.

As we see it, this rupture of the Ethical State is the cause of the unresolved discontents of contemporary times. It is from this subversion that the current contradictions and anxieties arise. In this regard, we will show some of the reactions to the ethical breakdown of the Rule of Law in contemporary times and then try to establish possible solutions.

2.2 Political consequences

Once we have unveiled the institutional structure of *the individual malaise State*, the poiethical State, we must now focus on the political reactions to this internal rupture in the *Rechtsstaat*. Our intention will be to briefly deal with three reactions to this phenomenon, such as the rise of *right-wing populism*, the *inability of the left to create utopias* and the *policies of disconcertment*, all of them supported by popular will. It is important to realize that these consequences overlap and relate to each other, however, what should be emphasized is the significant popular support they receive in the current scenario. This is a novelty in political history that is not temporary and seems to be decisive for the future.

The first dimension that we want to address is the election of far-right populist governments. Candidates who have always been seen as outsiders and had no chance of victory, but who now have at least half of the popular support. Despite the particular scenarios that each country that elects this type of government has, it is clear that there is a cross-cutting or international effort to establish anti-systemic or anti-democratic agendas in current political discussions.

If we consider the notion of representation proposed by Ernesto Laclau (2013, p. 232), which consists in “a movement of the represented towards the representative and a correlative movement of the representative towards the represented”, voters seek to vent their discontent on those candidates who most reflect and will continue to reflect their discontent in a reciprocal movement made possible by social media. The ability to participate in the dissemination of the leader’s message has increased intensely with the use of social media. In this process, the leader positions himself as a “producer of symbols”, which are democratized for those represented through the production or reproduction of montages, memes, photos, texts and messages. By sharing them, voters have the feeling of power in their hands, or rather, they are certain of participating in a moral inquisition that has its end in itself.

Following Laclau’s line of thought, we can see how powerful the empty signifiers in contemporary times are. With the increase in the amount of information and the fact that it is no longer necessary to identify the issuer of messages, the plurality and capacity for appropriating terms that lose their meaning and retain their circumstantial significance also intensify. In order to represent a set of demands or justify anti-democratic actions, all sorts of empty signifiers are used; indeed, they have become hegemonic in political debates and in the construction of narratives on the internet. This phenomenon is linked to the failure of the institutional structure to react to the crises of the present. In addition, in the symbolic dimension, we can see an inability on the part of democratic political agents, especially those on the left, to propose possible alternatives or futures. Nothing appears other than entry into the traditional political game, whose incapacity to make effective changes in the system creates generalized discontent among the population. Entering the system of checks and balances, in which there is no way out of the problem, is seen as the only possible way to gain rights and overcome the adversities of economic and social injustice. However, when faced with the structure of the poiethical State, any margin of agency is simply reduced to technically pre-established economic interests.

In the book *What should the left Propose?* Roberto Mangabeira Unger uses the term “dictatorship of no alternatives” to characterize one of the dimensions of what we are experiencing today. According to the Brazilian philosopher, the causes of this dictatorship also go back to Marxist thinking, which perceives the capitalist system as something indivisible, implying that to change it would require a revolution of the entire capitalist system, which ended up annihilating any attempt at change. Gradually, this condition of unity led theorists to think what Mark Fischer (2009) summarized in one sentence: “it is easier to

imagine an end to the world than an end to capitalism". Thus, for Unger, it is possible to think of changes to parts of the system that could bring effective improvements to the human lives. However, left-wing political groups preferred the pacifying and conflict-mitigating path with the divine entity, certainly not occupied by human beings, of the market: the inclusion of the lower classes would come through consumption, no longer through emancipation, instead through inclusion in the system of needs.

The consequence of this consumer citizenship was discontent, a lack of meaning, false inclusion and, above all, a feeling of betrayal towards those who sold a utopia of real citizen inclusion for the lower classes: the Left. Liberal democracy was unable to respond to the changes in labor caused by technological advances and the neoliberal scenario created by itself. The population, dissatisfied and betrayed, sought solutions to the *status quo* that repressed them: the prophets of the time now came from the *alternative right*. Preaching better futures, spiritual salvation, structural changes and moral cleanliness. The Right has become, despite its demagoguery, the most attractive route for the excluded.

The Right began to dream up and sell new possibilities, in other words, it began to structure its utopias (Almeida, 2018) — often linked to the very market that causes injustice — against the traditional political system that is perceived as inefficient, incapable, immoral and corrupt. This allowed the emergence of what Pablo Stefanoni (2022, p. 42, own translation) calls a *neoreactionary utopia*: "neoreaction is a cult movement, anti-modern and futuristic, of disillusioned libertarians who have decided that freedom is one thing and democracy another, and that change cannot be achieved through politics." There is a replacement of the socialist paradise with a "libertarian supremacy" that hates classical conservatives and is based on three versions: the first on the opposition of *statism* versus *anti-statism*; the second on the dyad of *Westernism* versus *anti-Westernism*, and a diffuse geopolitical strand on a distorted nationalism.

This retroutopic structure has enabled the practice of what Catalan philosopher Gonçal Mayos (2020) calls the *policies of disconcertment*. These are post-2008 political and social events that question majority theories and disconcert the consensus of diagnoses of the present and citizen projects for the future. Like an orchestra in which the instruments go out of tune, the results of the post-2008 political instability, and more recently post-Covid19, have caused a disorientation in the intellectual and political direction the world was taking. The minimum consensus necessary for human beings to live in community have been so shaken that there has been a general disorientation in the citizenship, which is lost in the different and confusing hyperaccelerated sounds that try to govern the present.

Mayos indicates waves of the policies of disconcertment in the form of left-wing and right-wing populisms. The first wave began between 2011 and 2013. At that time, there were a series of demonstrations calling for a democratic way out of the imposed system, but with a diffuse and lost tendency. These include the Arab Spring, Occupy Wall Street and the June 2013 protests in Brazil. Although they gave impetus to later movements and political parties, it seems that the mobilizing force of that wave is no longer present.

This was followed by the second wave of policies of disconcertment, from 2015-2016. This moment was marked by right-wing populisms that began to gain strength and maximum importance on the political agenda. These populist eruptions are still present today, with a mobilizing capacity beyond any other force, even if they lose important major elections. We are dealing here with the phenomena of Brexit and the electoral victories of Trump, Bolsonaro, Orbán, Duterte and so on.

As we have argued, these waves are the result of social discontent linked to an important desire on the part of citizens to redefine the institutions, functioning and practice of liberal democracy. The problem with these results is that they are not intended to build

something new, but to simply destroy what is in place. It seems that the system has created so many mechanisms for stability that it has prevented any change towards the improvement and effective inclusion of the lower and excluded classes, who remain the majority. The driving force behind the system's destruction needs to be redirected with the intention of reimagining and rebuilding it. To do this, we need a powerful Philosophy of the State, which has to be capable of maintaining democracy and the conquests of fundamental rights, but especially prepared to deal with the boiling malaise of contemporary times.

3 DEMOCRATIC EXPERIMENTALISM

3.1 *Institutional Imagination*

We will attempt to show that a State Philosophy capable of contesting the poiethical State is the one that practices institutional imagination. Given the contemporary double frustration of the Left, which has failed to build a post-capitalist order (or even to imagine one!) and has also failed to maintain real socialism, a dissonant proposal is emerging: democratic experimentalism (Unger, 2005; Teixeira 2010). What does it mean? The notion of experimentalism, proposed by Roberto Mangabeira Unger, seeks to bring the *ideal* closer to the *possible*, in other words, to reduce the gap between the imaginary and the viable.

This experimentalism carries an institutional vein. It is a collective agency in which creativity is maximized, discovery is pursued, and learning is permanent. Based on the assumption that what is possible is not predetermined but circumstantial (Unger, 1997), institutional experimentalism proposes that the process of transforming a society does not depend only on crises, but rather that it needs to be introjected within society itself as an attribute that constitutes and defines it. Through a programmatic imagination, institutions would no longer be immutable entities whose main role is to prevent instability and, as a result, end up hindering or delaying any kind of transformation (Teixeira 2009), but would become flexible to the point of enhancing political engagement and the construction of a better society (Unger, 2007).

Carlos Sávio Teixeira and Tiago Medeiros (2021) distinguish between two practices or ways of understanding institutions in Brazil, but which can be applied to other countries and contexts. The first is *immanentist institutionalism*, whose understanding of institutions is that they are designed to contain instability. This is the majority view in Western political thought, which sees them as stable, predetermined entities that fulfil their role as a brake or counterweight to any kind of political upheaval. In the opposite direction is *transcendental institutionalism*, which believes that institutions are artefacts that allow people to overcome their circumstances (*fortuna*) and make the best use of them (*virtú*) to propose the needed transformations for the emancipation of society.

The crisis currently facing liberal institutions, based on *immanentist institucionalism*, is unprecedented. Not only because of the seriousness of the circumstances imposed on them, but especially because of the accumulation of defeats that institutions, as a stable and immutable entity whose aim is to prevent instability, have suffered over time. Contrary to what was promised, they do not offer a response that is up to the challenges posed by social life. In this context of defeat, we argue that the crisis does not lie in some practical flaw in the functioning of a particular political institution. The crisis is precisely because they are obeying the concepts that founded them, they are consistent with their traditional conception. In other words, merely wanting to repair some institutional flaw or insufficiency will not resolve the inability to deal with the effervescent problems of human coexistence. It is not enough to change the institutions, we have to change the very concepts that justify, constitute and sustain them. Institutional awareness towards a change in meaning must precede institutional reconfiguration, which is also necessary. If we succeed in rethinking the

concepts that cut across power, we can cause an experimentalist outbreak, i.e. a chain reaction that will bring more effective and permanent results.

3.2 Flexibility leads to instability or, even worse, to authoritarianism?

The flexibility of institutions, while it can be an attribute that offers the possibility of creative adaptation and response to social demands, also seems to generate an authoritarian risk. The same qualities that make institutions adaptable and capable of fostering innovation can also open pathways for authoritarian tendencies. Here we will try to think about possible problems caused by institutional flexibility and reflect on whether they are enough to prevent the attempt at restructuring.

Flexible institutions, designed to adapt and evolve, may inadvertently weaken the established checks and balances system that is allegedly important for preventing certain crises, such as the mismanagement of health security during the Pandemic, or even the populisms that we have already discussed. We can agree that the outcomes of these catastrophes could have been much worse without a certain institutional rigidity in the current system. However, the level of change being proposed is so great that it would be incoherent and unfair to suggest that a similar situation would happen in the case of a current institutional experimentalism. In addition, it can also be said that as institutional rigidity diminishes, the safeguards that ensure power is distributed and regulated can be compromised. This erosion of checks and balances could create opportunities for authoritarian leaders to centralize power, undermining the democratic process. That is why institutional experimentalism must come with a democratic commitment at its conceptual bases. Any adaptability needs to pursue the democratic value not just as a rule, but as the very instrument of change itself. But how can experimentalism be democratized? Unger's proposed democratic experimentalism is also accompanied by an intense increase in political temperature.

To increase political temperature, we must intensify the political engagement and dynamism within the public sphere (Unger, 2018). However, to accomplish this objective greater citizen participation is required, also a more vigorous political debate, and a willingness to question and reform the traditional institutions. The central idea is to create a more vibrant and responsive democracy, in which politics is not seen as something distant and unchangeable, but as an active and constantly evolving field of life itself.

Other authoritarian risk of the institutional flexibility is the probable facility that leaders could manipulate rules and norms for their own benefit. By changing laws, avoiding traditional procedures or reshaping institutional roles under the guise of necessary reforms or emergency measures, they can entrench their power and reduce their responsibility. This manipulation is particularly insidious because it can be presented as part of a legitimate process of institutional adjustment.

However, the problem with the perceived and understandable risk is that authoritarian governments within the "stable" institutional structure seem capable of causing similar damage by violating fundamental rights and impeding social gains. In other words, the present political State already manipulates democratic institutions to fulfil economic wills. Once again, institutional changes need to be democratized to prevent authoritarianism. The fact that today's rigid institutional structure of power makes it possible for a government leader to do so much damage to a country's democracy just in a single mandate, even if he was stopped at one point, does not demonstrate the strength of these institutions, but rather their weakness.

The last point to emphasize is the possible problem of legitimacy. If institutions are perceived as too malleable, seems to rise a risk of losing their legitimacy and public trust.

From this perspective, flexibility and permanent institutional change could lead to a lack of identity and recognition for people. As result, this weakening could lead to a scenario where decisive and strong leadership becomes attractive, particularly in times of crisis. Authoritarians could use this perceived instability to argue for more centralized control, ostensibly to restore order and stability. However, the very same stable institutions seem to cause the same consequences in contemporary times. In which disbelief and lack of confidence in the political class generates a desire to destroy the system and correct its injustices through simple violence. The discontent is so strong that it poses a real threat to legitimacy and public confidence in the State. However, what is sought by voting for authoritarian leaders when there are crises is actually no more than real change. The legitimacy of today's institutions is already collapsing because of their rigidity and slowness in dealing with the problems of the present. The desperate population is looking for a quick and morally attractive way out of any problem. Regardless of the situation, authoritarianism is regarded as the instrument to be utilized (and occasionally discarded) to achieve radical, immediate, and effective change. In a flexible power structure, in which institutions have a greater capacity to change and adapt, they would already be one quick, safe and effective way out, and still democratic. The legitimacy of institutions, therefore, is not manufactured by their stagnation and rigidity over time, but rather in their capacity to solve problems and fulfil collective desires, i.e. to represent citizens' wishes. That is why flexibility would increase the degree of institutional legitimacy because the nature of the structure would be justified by its democratically achieved results.

CONCLUSION

The objective of this text has been to argue that contemporary discontent is the consequence of the State's failure to address the crises that arise in the present age, thereby establishing a connection between the development of the *Rechtsstaat* and the growth of citizen discontent. It is possible to identify the causes of the so-called *malaise state* in hyperindividualism, and not less relevant than that was the role of neoliberalism in the disaster of universalizing the welfare promises of the 20th century.

It was intended to expose the inability of traditional politics and rigidly institutionalized structures to offer solutions to those discontented. Nor have the current authoritarian alternatives of populism been able to fulfil their promises of going beyond the system and offering a quick way out of the crises. Even worse, they have created a more complex situation in which the strengthening and crystallization of the old institutions appears to be the only solution to avoid an even bigger catastrophe.

The classical institutional thought which sustains the current system proved to be insufficient for the nowadays' problems. Apparently, the *poiethical State* has developed a dual capacity to generate discontent and, at the same time, to prevent any effective solution, strengthening itself with its own internal crises. We have pretended to reveal the necessity of a State Philosophy capable of overcoming the fallacies created by the *poiethical State*. By changing the concepts behind this malaise state, would be possible to relocate the political in the center of public policy, where now lies the economic as the supreme value.

To summarize, we argue that the rigid institutional structure of the *malaise state* prevents effective changes in the lives of the population. The reality is that destructive discontent generates political and social consequences that intensify the crisis, which seems far from being resolved. Simply correcting some institution on a one-off basis does not have the needed capacity and strength to deal with the scope of the malaise.

Democratic experimentalism has emerged as part of a contemporary State philosophy, offering tools for dealing with this complexity. At first glance, institutional

imagination seems to presuppose a risky flexibility that is already being used by populist governments to implement their authoritarianism. We have tried to show that this counterargument is problematic and does not seem sustainable. Democratic experimentalism seeks a conceptual reform of institutions, promoting flexibility and adaptability a instrument of increasing the legitimacy and responsiveness of the State to social demands, avoiding both stagnation and authoritarianism.



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