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BRIEF REFLECTIONS ON AUTHORITARIAN NEOLIBERALISM

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If, as is true, one of the thorniest issues within the debate on neoliberalism is the role played by law and the state, then the book by Orsetta Giolo (2020) is to be favourably welcomed as it represents a useful contribution to the construction of a clearer framework on this problem that has indefinite boundaries.

Among the numerous opportunities for reflection offered by the text, it is certainly worth dwelling on the phenomenon that Giolo (2020) appropriately defines *neoliberal binarism*, that is, the reticular and authoritarian character of neoliberal law, corresponding to two different legal environments inhabited by different subjects: the first one is represented by governance and the metaphor of the network, aimed at promoting freedom and optimizing competition; the second one is represented by penal state, aimed at the annihilation of political agency and the exclusion of subjects that are not adjusted to neoliberal standards (p. 24).

It would be interesting to discuss with the author the existence of a double binary as a specific character already pertaining to liberalism – and just think of what Foucault defines disciplinary counter-law as the effective and institutionalized content of legal forms (Foucault, 1995; Tucci, 2015). However, this would take me away from the direction of Giolo's research, who on the contrary pushes her thesis forward to criticize those theories that confuse what should instead remain separate, i.e. neoliberalism and constitutionalism in relation to global order. If constitutionalism is oriented towards the protection of rights through the shaping of power, the model of the network read through the neoliberal grid justifies a very different project, namely

to favour an articulation of law and politics centred on the process of depoliticization, de-democratization and de-constitutionalization (Giolo, 2020, pp. 37-38). Giolo's polemical target are also, without distinction, recent populisms and sovereignisms, whose aversion to any form of authority beyond the state determines a paradoxical coincidence between their claims and those of neoliberalism. Insofar that the latter on the one hand dismantles internal and international legal systems, freeing private powers from control; and on the other hand, at the same time, claims the maintenance of the authoritarian strong state (p. 38).

Giolo (2020) believes that, unlike philosophical-political reflection, philosophy of law and legal theory have greatly neglected neoliberal authoritarianism (p. 34), and therefore formulates an invitation to rethink this phenomenon, which seems to me worthy of being accepted and, if possible, pushed even further.

I will make some considerations (that I already proposed in Brindisi, 2020) about the relationship between authoritarian neoliberalism, populism and democracy, at the centre of international debate in recent years, to try a dialogue with Giolo's thesis. I will do this, on the one hand, by discussing it on a historical and conceptual level, starting from different authors and in relation to the role of the neoliberal strong state in the depoliticization process to which the Author refers; on the other hand, by demonstrating a more stringent relationship between authoritarian neoliberalism and regressive populism.

This is an opportunity to go back in history and argue that neoliberal authoritarianism, exercised through expertising, penal systems or juridical-political regression, is linked to one's fear of the alleged authoritarian degenerations of democratic and social politics.

Thanks to Foucault, we know that neoliberalism legitimizes itself on a "state phobia" (Foucault, 2008, pp. 75-77 and 187-188) starting from the crisis of governmentality of the first half of the twentieth century, when interventionist policies are accused of being functional to a collectivist planning of the economy. However, as Foucault shows, neoliberalism does not demand less state or less law, but on the contrary a *strong state* that intervenes through a utilitarian use of the law on society. With the difference, compared to liberalism, that in neoliberalism the economy becomes the artificial foundation of politics and public law (p. 84), of a government that aims to fulfil the conditions of possibility not only of a market, but also of a competitive human being.

From the point of view of the field theory, it is really a matter of promoting a change of civilization and an anthropological transformation, since neoliberalism submits to

the economic field and its logic the centuries-old invention of jurists, namely the state as a universal field, an instrument of domination, certainly, but also a space susceptible to be historically conquered by social struggles. In fact, if a universal space can be an object of appropriation but also of conflict, as Bourdieu argued, the substitution of economic rationality for juridical rationality undermines the possibility of a public space in which to fight for emancipation. This is the reason why in the Nineties the sociologist took a tactical position in favor of welfare, albeit in view of the construction of a supranational welfare state capable of putting itself on the transnational level of the new forms of domination (Bourdieu, 1998, pp. 9-50; Laval, 2017 e 2018). The neoliberal conservative revolution, as he defined it, had the objective of returning progressive thought and action to the sphere of archaism, but it differed from the other and more famous conservative revolution, the Weimarian one, in the role attributed to economic science rather than exaltation of blood and soil. Consequently, Bourdieu invited the social sciences to mobilization as an effective condition of democracy, against neoliberal authoritarian technocracy and to avoid falling back into a populism that risked playing into the hands of authoritarianism.

Bourdieu did not point out, however, that populist solutions were thought of as forms of channeling economic and governmentality crises even by the neoliberal side, albeit in a nuanced way.

This is demonstrated by the relationship between the criticisms of democracy and the invocation of a strong state between the 1930s and the 1970s, which has been the subject of a recent reorientation of studies on neoliberalism thanks to the re-evaluation of the notion of *authoritarian liberalism* (or *neoliberalism*, or *national liberalism*), coined by Hermann Heller in reference to a speech by Carl Schmitt in front of German industrialists in 1932, containing a critique of democracy that will not be forgotten by neoliberals.

In fact, the Weimaran debate (Bisogni, 2005) elaborated the theories related to the crisis of liberal democracy as unable to contain the overload of questions addressed to the state: faced with a capitalist economy that produces inequality and conflict, the strategies implemented by conservative thought discussed the failure of the liberal rule of law and tried to prepare the instruments of government that could maintain that economy and control the masses, justifying themselves on the basis of a crisis of civilization.

In 1932 Schmitt condemned what he defined as a weak total state, with reference to the (vain) effort of the Weimar social democracy to control the economy, and therefore to the failure of the depoliticization of the economy envisaged by liberalism.

The total state that attempted to order the economy was as such for Schmitt only from a quantitative point of view, because in reality it was hostage to the democratic demands of redistribution. Aware of the fact that the creation of state-free spheres is a political process, Schmitt contrasted this weak total state with a "qualitative total state", capable of separating itself from the economy and governing the masses through the increase of technical means, making the distinction between friend and foe (Schmitt, 1998). Heller, who feared the collapse of Weimar (Pomarici, 2017), described this approach as *authoritarian liberalism* and observed that the state's renunciation of its authority in relation to the economic order meant nothing more than the authoritarian dismantling of social policy, certainly not the abstention of the state from politics in favor of big banks and big industrialists (Heller, 2015, p. 300): thus, after the proletariat had imposed its participation in legislative power, a bourgeoisie no longer self-confident repudiated its spiritual world, fascinated by a state that would technologically govern the masses and class conflict depoliticizing the economy and homogenizing society.

Neumann traced the Schmittian combination of political authoritarianism and economic liberalism back to Vilfredo Pareto —who had influenced Mussolini's early economic policy— and argued that Schmitt's thesis would have inspired Hitler's speech to the Reichstag on March 23rd, 1933 (Neumann, 2009, p. 49). A few years later he asserted that reactionaries had always recognized the importance of power, even when they had embraced political and economic liberalism, and in times of crisis they had deemed necessary a policy of funding that weakened the democratic movement. The jurist of the Frankfurt School, who valued the liberal rule of law, therefore concluded that authoritarianism arises from the need, on the part of the holders of economic power, of a strong state removed from popular control and capable of repressing the processes of democratization of the economy (Neumann, 1957a, pp. 220-223).

Well, the fear of a state object of social democracy and the prospect of a technical government of the social order have been adopted by many neoliberals. Without this implying any assimilation of neoliberalism and sovereign decision, whose logics are different (De Carolis, 2017), it is indeed possible to note, as Bonefeld did, that neoliberals (Euken, Hayek, Röpke, Rüstow, etc.) affirm the need for the political power to depoliticize economic relations and produce subjectivations based on competition, echoing Schmitt (Bonefeld, 2017, pp. 21-22).

The (political) depoliticization of the economy highlights that this is an artificial order that must be constructed by means of the state, which must create the friends of the market by identifying the "enemies" of freedom (Bonefeld, 2017, p. 49), because there

can be no freedom of competition in a mass democracy that invades the economic field. The Schmittian and Ordoliberal theoretical positions meet, as has rightly been pointed out, at the height of capitalism's need for "a space that politics continually cleans up of all obstacles, of what is not 'compliant'" (Galli, 2019, p. 52).

The strong state is therefore functional to counter what Heller and Neumann intended to enhance, that being internal antagonism. We thus understand that the "state phobia" mentioned by Foucault is also a phobia of the mobilization of the masses for the democratization of the economy.

We can then risk yet another definition of neoliberalism, which I hope Giolo agrees with, as a heterogeneous system aimed at imposing, in Canguilhemian terms, a competitive requirement on a democratic economic existence which represents a danger; since it is from this need – it seems to me – that we must focus on the variety of legal and political solutions devised to keep at bay the social pressures on institutions, to which the reactivations of traditional morality taken on nowadays by neo-nationalisms are not unrelated. With respect to this variety, Heller has offered a new key of intelligibility, as the following three recent 'uses' of his work testify – it being understood that the debate on Heller, Schmitt and liberalism is certainly broader and older. From the point of view of the critique of European legal architecture, Alexander Somek (2003) speaks of an *authoritarian constitutionalism* that can contain various characteristics of constitutional democracy, except for parliamentary democracy, which would represent an obstacle to the authoritarian achievement of social integration around the market (pp. 361-362). He is echoed by Wolfgang Streeck (2015), for whom the EU has shifted the governance of the economy towards institutions constitutionally designed to be free from political contestation (p. 365). Finally, and on a more general level, Grégoire Chamayou (2018) —to whom we owe, in my opinion, the most intelligent and in-depth analysis of authoritarian liberalism— shows how the Schmittian theses formed the matrix of the criticisms of the governability of democracy in the 1970s, which were aimed at devaluing political representation, preventing the socialization of the state, etc., as well as justifying the liberal dictatorships so appreciated by Hayek and the *Chicago Boys* (pp. 225-234); furthermore, from another point of view, he highlights the way in which neoliberal micro-political technologies have redefined individual micro-evaluations by inciting everyone to "suivre ses inclinations les plus insociables", producing an institutional and social fragmentation such as to favor a neopopulism that would make acceptable redistribution strategies against the popular classes (pp. 248-261).

Coming, however, to the relationship between neoliberalism, authoritarianism and populism, this has been revealed in its very announcement: just think of Stuart Hall's studies on authoritarian populism and the production of moral panic as the foundation of the pre-Thatcherian *Law and Order* (Hall et al., 1978, pp. 304-305), or those of Poulantzas (1978) on the transformation of the capitalist state into an authoritarian state, with reference both to the decline of the institutions of political democracy and formal freedoms, and to the establishment of a preventive institutional system for hegemony in the face of danger posed by the increase in popular struggles (pp. 226 and 233).

Alongside this, we should remember that the attempt to channel the crisis of governmentality of the 1970s into options that were not only expert or non-coercive, but also personalistic, is contained in the 1975 report of the Trilateral Commission on *The Crisis of Democracy* (Crozier, Huntington, Watanuki, 1975).

A legal scholar like Mario Dogliani (1994), who offers an interesting Hellerian reading of the Italian constitution (pp. 315-316), has clearly seen that the spread of populism dates back to that time and is linked to the promotion of "a change of the object of 'constitutional concern'": no longer the classical concern (for the tendency of the different forms of power to circumvent and override legal limits) but, in its place, the concern for the excess of pluralism and for the overload of questions it discharged on the institutions". Dogliani (2004) observes that the Trilateral report

> […] advocated the need to replace the image of the politically divided and organized people with the image of a people made up of legitimately self-interested individuals [...]; and it proposed a democracy based not on negotiation between representatives, but on direct popular investiture and on the personalization of *leadership*. (pp. 1-2)

To this we can add that the report condemned the indefinite expansion of democracy and posed the need for political apathy on the part of minority groups, whose pressures overload the political system and weaken the authority of the state and all social authorities (Crozier, Huntington, Watanuki, 1975, pp. 161-163). Hence the will to reorder the world by blocking emancipatory movements and offering traditional authority and leadership as imaginary compensation for the anxiety created by the promotion of economic individualism and of dismantling of democratic and social policies.

I come finally to our present, or rather to our immediate past, to that "new neoliberalism" as a combination of "anti-democratic authoritarianism, economic national-

ism and extended capitalist rationality" (Dardot-Laval, 2019), to try to offer a different reading of the relationship between neoliberal authoritarianism and populism that the one proposed by Giolo. Although, in fact, populisms can be treated indiscriminately from the point of view of their opposition to legal frameworks that go beyond the state (Giolo, 2020, p. 38), I believe that it is only regressive populism that coincides with the neoliberal project.

In relation to recent neo-nationalisms, Wendy Brown (2019) argues that neoliberal political reason has contributed to the rise of an undemocratic law based on a phobia towards politics as such, whereby the neoliberal reactivation of traditional morality in the place of social justice would be configured as the frankesteinian product of a neoliberalism that exploits "populist rage" to attack democracy (pp. 161-188). Even so – it seems to me – the one outlined by Brown does not represent a deviation from neoliberalism, as can be understood if we go back a few years.

In the network model, Giolo (2020) rightly denounces a fluid legal framework that does not allow the identification of power (pp. 30-31) and is therefore difficult to contest democratically, because, for example, it is legitimized by expertising but it is in fact functional to hegemonic interests of market construction (Bazzicalupo, 2020). This is a complaint that is not so far from the one addressed by Brown (2010) a few years ago to the state of our democracies: a situation in which non-democrats live in empty democracies in the throes of anxiety and fear, because they ignore domination mechanisms and fail to successfully challenge the dominant powers.

Well, anxiety, ignorance of the mechanisms of domination and crises, political apathy, they all represent exactly those socio-historical conditions of possibility for the formation of authoritarian legal and political frameworks isolated by Neumann (1975b) in his attempt, in many ways questionable, to elaborate a theory of political anxiety. The 'new neoliberalism' (pre-pandemic) coexists perfectly with the political, identity and gender regression that has swept through the West and that Neumann's categories make intelligible: loss of status of the middle classes as a result of the crisis; sense of abandonment and resentment on the part of previously socially protected individuals and social groups; conspiratorial use of history through propaganda (remember the recent spread of the Kalergi plan of ethnic replacement and destruction of European civilization and its spiritual base); social anger against conspirators and scapegoats (global elite, migrants); rejection of the political system; regressive identification processes with leaders; reaffirmation of the social authority of traditional morality; aestheticizing solutions of fusional communities based on a 'blood and soil' version of neoliberal sovereignty.

However, this cannot be said to be the case of left-wing populism, which is instead aimed at the democratization of the economy and institutions (Laclau, 2005; Preterossi, 2015; Mouffe, 2018; Somma, 2018; Tarizzo, 2020). Although, I would add, it is forced to clash with other disturbing and complex problems: on the one hand, in fact, it is evident that the current historical conditions making a populist movement possible are mainly of a regressive type, because neoliberalism has promoted anxious subjectivities structured around the logic of competition, for which it is difficult to think of a community project that calls into question power and relations of production, and it is on the contrary very easy to identify with a leader; on the other hand, a struggle for social law and for the democratization of the economy that does not want to fall into nationalism must be directed at the level of the effective processes of power of transnational order, which is what Bourdieu intended to do, while tactically defending the state. Ultimately, the legal-political imagination that is resolved in the framework of the state leads to neglect all the power-knowledge systems that are independent of legal architectures and that concretize them by betraying their form of rationality, as Foucault has shown. But this is a discourse, valid also with regard to constitutionalism, which obviously cannot be developed herein.

In conclusion, authoritarian neoliberalism can be thought of as a reactionary recoding of the anxiety produced by the economic crisis and functional to solving a crisis of governmentality, without affecting the relations of power and production.

It is quite evident how decisive will be the question about authoritarian neoliberalism that Giolo helps us to pose in its radicality in the post-pandemic world towards which we are heading.

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