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CRISIS OF DEMOCRACY: BEYOND MALAISE AND AUTOCRATIZATION

Murilo Gaspardo^a

^aAssociate professor of State Theory and Political Science, and Deputy Dean of the School of Human and Social Sciences of São Paulo State University (UNESP), Campus of Franca, Brazil. E-mail: murilo.gaspardo@unesp.br.

ABSTRACT.

Is Brazilian democracy in crisis? What are its causes and explanations? What is the legal-institutional dimension of this crisis? What are the specificities and common patterns of Brazil, as a Latin American and Global South country, in the face of the global context? The answers to these empirical research questions depend on the definition and adjustments of the theoretical lenses (analytical categories or concepts) through which they will be analysed. In this working paper we develop a distinction between: (1) conflicts, instabilities, problems of quality and structural limits that are inherent to the regular performance of liberal-representative democratic regimes; (2) democratic malaise; (3) autocratization; and (4) crisis of democracy. Based on these distinctions, we present elements for analysing the crisis of democracy based on the relationship between politics and law.

Keywords: Democracy, crisis, conceptual distinctions, Brazil, law, politics.

1. INTRODUCTION

Is Brazilian democracy in crisis? What are its causes and explanations? What is the legal-institutional dimension of this crisis? What are the specificities and common patterns of Brazil, as a Latin American and Global South country, in the face of the global context? The research project that seeks to answer these questions is divided into three parts: (1) a theoretical-conceptual discussion; (2) a qualitative empirical study of the Brazilian case; (3) a comparative theoretical and qualitative empirical study between the cases of Brazil, Chile, the United Kingdom and the United States. This working paper is dedicated to the first of these three tasks.

The answers to the empirical research questions depend on the definition and adjustments of the theoretical lenses (analytical categories or concepts) through which they will be analysed (Morlino, 2012). First, due to controversies regarding the concept of democracy itself. Secondly, due to the diversity of perspectives adopted to describe and explain the challenges of democracy. This work aims to map the concepts used by political and legal literature to describe the phenomenon, select the most appropriate theoretical lenses, and make the necessary adjustments for an investigation into the legal-institutional dimension of the issue and on what is characteristic of the first decades of the 21st century. In addition to the analytical focus, the lenses must be appropriate to the landscape that is intended to be observed – the legal-institutional arrangements and the historical-political framework of each case, without losing the ability of comparisons over time and space.

In this sense, it is necessary to distinguish: (1) conflicts, instabilities, problems of quality and structural limits that are inherent to the expected performance of liberal-representative democratic regimes; (2) democratic malaise; (3) autocratization; and (4) crisis of democracy. Based on these distinctions, we present elements for analysing the crisis of democracy based on the relationship between politics and law.

We developed a systematic study of the literature in three stages: (1) review of the bibliography

1. The comparative study between Brazil and the United Kingdom was also the object of my research during my visit to the Global South Unit/LSE (July 2023 – January 2024). The research is in progress and will be presented at the Annual Meeting of the Law and Society Association (L&S), in June 2024, in Denver, USA, under the title: “Between autocratization and malaise: the crisis of democracy in Brazil and in the UK”. Cf. the abstract approved: “Brazil and the United Kingdom are states with very different legal-institutional organization, political culture, levels of economic development and histories. However, both democratic regimes are facing major challenges since the second decade of the 21st century. Brazil, under Bolsonaro (2018 – 2022), went through a process of autocratization, which was interrupted due to the combination of institutional resilience, mobilization of civil society and chance, but this does not mean that the deep issues of the Brazilian political regime have been addressed. The UK, in turn, since at least the Brexit (2016), has been experiencing a kind of democratic malaise. The aim of this research is to investigate the specificities and common features of the crisis of democracy in Brazil and the UK, with an emphasis on the role of legal-institutional arrangements. How does political and legal literature describe and explain this phenomenon in both countries? Would it be possible to compare regimes with such different historical and institutional features? Would there be common descriptive and explanatory elements? The comparison between such different cases is especially interesting to build empirically grounded inferences about the possible global patterns of the crisis of the liberal-representative democracy. The research is developed within the methodological framework of Qualitative Comparative Analysis. First, we carried out a comprehensive bibliographic study, comparing analytical categories and explanatory hypotheses. We then organize and compare socioeconomic and quality of democracy data, as well as analyse news and political opinions published in newspapers with different ideological backgrounds. Departing from these theoretical and empirical references, we analyse the role of the political institutions in characterizing and explaining the crisis of democracy in both countries through the method of mapping legal-institutional arrangements”.

previously known and preparation of states-of-the art drafts; (2) large-scale research in indexing bibliographic platforms; (3) review of the state of the art drafts .

Considering the approach of this research, we start from an empirical and procedural concept of democracy. Empirical concepts are those that aim to describe democratic regimes and are used as tools for empirical research, and must be able to determine from their criteria whether a State is a democracy, an autocracy or some intermediate type (Morlino, 2012: 28-32). In this sense, considering existing democratic regimes to be very far from the ideal of democracy, and based on the principles of inclusion and participation, Dahl (1997: 41; 189) employs the concept of “polyarchy” to designate regimes in which there is participation, political competition and in which “opportunities for public contestation are available to the majority of the population”, as opposed to regimes in which there is political “hegemony”. We emphasize, from the outset, that there is no pure empirical concept of democracy – political concepts are always influenced by values and normativity.

From an empirical perspective, the expected performance of liberal-representative democratic regimes cannot be confused with the ideal or optimal – normative parameters that vary according to the values that guide them and that are expanded throughout history in terms of demands for inclusion, participation, accountability and responsiveness. The performance of a democratic regime low than the highest normative standards is not some kind of anomaly. Conflicts and turmoil are part of ordinary life in democracies. For instance, the election of right-wing or left-wing parties and leaders considered populist could only express the dissatisfaction of the majority of the population with the political establishment, within the democratic process of alternation of power (Eatwell & Goodwin, 2018). However, if they adopt measures and practices that confront democratic institutions they can threaten democracy (Crouch, 2020). Likewise, political crises – such as the installation of a Parliamentary Commission of Inquiry, the dismissal of ministers, the defeat of the Government in important votes, corruption scandals, or even the fall of a Government in the parliamentary system or an impeachment in presidentialism (when processed by institutions and in accordance with pre-established rules) – is not the same to a crisis of democracy. However, a serious and prolonged political crisis or an unresolved institutional deadlock can threaten democracy. According, for example, to the criteria formulated by Diamond and Morlino (2005), democratic regimes present different degrees of quality. Therefore, the low quality of democracy is one of its possible empirically expected way of performing, and not a crisis. However, there may be a limit beyond which the low quality of democracy leads to its collapse. Finally, there are inherent limits to liberal-representative democracy that can be widened, mitigated or narrowed,

2 This theoretical-conceptual study presents four complementary results containing the entire revised bibliography and which will be made available in open access databases in the near future: (1) graphic representations of the organization of concepts and analytical categories found in the literature (conceptual maps); (2) quantitative analysis reports (frequency of expressions, origins of work, impacts of productions etc.); (3) glossary of the crisis of democracy (concepts and their definitions; variations of the concept with similar content; origins and possible transformations; empirical examples of application (cases that were used to describe or explain); (4) “crisis of democracy library” based on concept maps.

3 According to Nobre (2022: 38), “‘limits’ have multiple meanings. From the perspective of a traditional theory, it can mean the prior extraction of what ‘democracy’ is, of what would be intrinsic and immutable to it. It can mean, in the same sense, the prior determination of what democracy can and cannot offer. It also can circumscribe a limit ‘beyond which there is no democracy’. As well it can mean an ideal model already available in theory, but which still needs to be realized in practice. In the opposite sense, limit can indicate what democracy could be but is not. In this case, there is no prior fixation of what democracy is, but a view that the very limits are in dispute. Or, to put it another

but not eliminated. By limits we do not mean that there is only one possible institutional design for democracy, or only one way to form coalitions or govern. They refer to the challenges of a complex and capitalist society – despite which, with turbulence and contradictions, in many places democracy has allowed progress in the ideals of tolerance, peaceful resolution of conflicts and “gradual renewal of society through free debate of ideas and changing mentalities and ways of living” (Bobbio, 2006: 50-51). It should be noted, however, that complex phenomena involve more gradation than “all or nothing” issues, so that situations which make up the expected performance of democracies, depending on their specific characteristics and intensity, can constitute a causal factor of democratic decline, but they cannot be confused with either autocratization or the crisis of democracy in the specific meaning in which we use it.

In addition to this introduction and the final comments, this working paper is composed of two parts: democratic malaise, populism and autocratization; and crisis of democracy.

2. DEMOCRATIC MALAISE, POPULISM AND AUTOCRATIZATION

The studies on democracy had been focusing on the processes of democratization (democratic transition and consolidation) in Latin America, Africa and Eastern Europe, as well as on problems of quality of democracy, since the third wave of democratization (Huntington, 1991) and the proclamation of the “universalization of Western liberal democracy as the final form of human government” (Fukuyama, 1989: 1). From the late 1990s and early 2000s, with the resurgence of populism in Latin America – especially with Hugo Chávez in Venezuela – the concern about threats to democracy became more present again (Plattner, 2012). But it is since the spread of populist and nationalist leaders, parties and movements in developed countries – especially the election of Donald Trump in the USA in 2016 – that there is a massive bibliographical production on the topic. So, it begins to be investigated if there is a “third wave of autocratization” or a “global decline of democracy” in progress. (Lührmann & Lindberg, 2019).

The main feature of this “third wave” would be the gradual erosion of democracy, by populist and authoritarian leaders elected in accordance with democratic processes, generally with the maintenance of the appearance of democratic institutions. Based on the case of the USA under Donald Trump, Levitsky and Ziblatt (2018: 13-17) argued that, despite the American legal-institutional framework, socioeconomic conditions and political culture, its democracy was in danger of dying – not because of a coup d'état led by “armed men”, but by the action of an elected leader – which had already occurred both through fast processes, as in Germany in 1933, and more gradual ones (Venezuela, Nicaragua, Hungary).

The most common meaning of populism within the contemporary debate is that used by Mudde

way: what democracy is (and the establishment of its limits, therefore) is the very object of political dispute. In theory and in practice. There are still positions that are completely foreign to these two approaches, which make use of the defense of democracy in a merely instrumental and strategic sense: authoritarian positions that claim democracy only to establish by force and violence what ‘democracy’ is”. (This and other translations were made by the author.) The meaning used in this work does not exactly correspond to any of these, but refers to the environment in which democracy is inserted, with which it can live, even transforming it – but the environment also imposes conditions for democracy.

⁴ This possible wave of democratic recession has also been highlighted by different indexes, such as V-Dem (Varieties of Democracy), Democracy Index 2022 (The Economist Intelligence, 2022), and Freedom House (2022).

(2004: 534): it is “an ideology that considers society fundamentally separated into two homogeneous and antagonistic groups, 'the pure people' versus 'the corrupt elite'”, with the populist leader being the legitimate representative of the “pure people”. Mounk (2019: 47, 50) understands that populism constitutes a form of expression of demands that are not institutionally met by liberal-representative democracy and, consequently, cannot be considered anti-democratic, but it is illiberal, as liberal institutions are understood as obstacles to the expression of these demands. In a similar way, Norris (2017: 1005) highlights that populist discourse delegitimizes the system of institutional checks and balances on the powers of the Executive, as well as weakens trust in the courts, elections, independent media, scientists, civil society and in the rule of law. On the other hand, there are approaches that understand populism as a possibility of revitalizing democracy – which could not be limited to the liberal-representative model (Laclau, 2018; Rancière, 2014). However, if populism is an outcome of the crisis of representation (or the void between representatives and the people), it is not a solution for this, as it is the representative institutions that allow a diverse and plural society to understand itself as a people (Cunliffe, Hoare, Jones & Ramsey, 2023: 109; 175).

Populism is, on the one hand, a way of expressing the democratic malaise; and, on the other, not a cure for it, but something that can aggravate it. Democratic malaise cannot be confused with mere discontent with the government and the politicians, which is part of the ordinary life of democracy. It is something deeper and more disturbing. Empirically, democratic malaise can be measured, for instance, through a significant increase in voting abstention, a drop in engagement with political parties and the decline of traditional parties, voter volatility, a drop in trust in parties and representative institutions, and by the election of populist leaders. According to the synthesis of Peña et al. (2017: 246), democratic malaise corresponds to “a combination of distrust in institutions, disapproval of government management and political disaffection”. From the perspective of Gregorio (2021: 2), democratic malaise is explained mainly by cultural variables, it refers to a disease of the “demos” resulting from the “long transition to postmodernity”, characterized, among other factors, by the exacerbation of individualism and the “loss of social meaning”. It is a very open and eminently sociological concept.

Autocratization is a more precise and appropriate concept for an analysis of the contemporary challenges of democracy from a legal-institutional perspective. Lührmann and Lindberg (2019: 1095-1010) state that the three terms most used in the literature to describe what is happening with democratic regimes would be “backsliding, breakdown of democracy and autocratization”, and they prefer autocratization, as opposed to democratization, because it is the most comprehensive: it enables the description of abrupt and gradual breakdown processes, as well as movements that occur in both democracies and autocracies. “Democracies can lose democratic traits to varying degrees without fully, and long before breaking down”. The category autocratization, understood based on Dahl’s idea of “polyarchy”, refers to a “substantial de-facto decline of core institutional requirements for electoral democracy” – which can occur with the permanence of formal legality. So it is difficult to identify the moment in which the “end of democracy” would take place. The https://stats.oecd.org/Index.aspx?DataSetCode=TIVA_2022_C1#

5 In an empirical study on the topic, Ruth-Lovell & Grahn (2023) conclude that there are no elements which demonstrate that populism contributes to the strengthening of democracy in its “equality” dimension, and there are many which suggest that it erodes its electoral and deliberative dimensions.

6 More recently, studies concluding that a wave of democratic decline is underway have been challenged. For example, Little & Meng (2023: 1-5) argue that those studies are based on “subjective indicators” that would not be

authors differentiate three types of autocratization: (a) “democratic recession” – to designate “autocratization processes that occur in democracies”; (b) “democratic breakdown”, to “capture when a democracy transforms into an autocracy”; and (c) “autocratic consolidation”, in reference to the “gradual declines of democratic traits in already authoritarian situations”.

Law can facilitate or hinder autocratization processes (Ginsburg & Huq, 2018), and these necessarily present a legal-institutional expression understood from categories such as constitutional breakdown, constitutional erosion, abusive constitutionalism (Landau, 2013) and autocratic legalism. The last concept, developed by Scheppele (2018), refers to the instrumentalization of law and constitutionalism for autocratization, in contradiction with its essence, which is precisely the legal limitation of power. This refers to a set of reforms carried out by legal and constitutional methods that promote the erosion or weakening of checks and balances mechanisms. Sá e Silva (2023: 294), in turn, highlights that this is not reduced to structural constitutional and legislative changes at “high levels of governance”, but, as new empirical studies have demonstrated, it also happens through infra-legal strategies (executive orders, ordinances, appointments to management positions, administrative actions) – as in the case of Bolsonaro in Brazil. Hence the formulation by Vieira, Glezer & Barbosa (2023: 592) of the category autocratic infralegalism as opposed to autocratic legalism and abusive constitutionalism.

The four cases that are the object of our comparative study face some kind of democratic malaise, but only in two of them the malaise and the emergence of populism lead to a process of autocratization: Brazil and the USA – unlike what is happening with Chile and the United Kingdom. But would there be a crisis of democracy in these four countries?

The concept of autocratization is suitable for a legal-institutional analysis of what happened with the Brazilian democratic regime during the Bolsonaro Government, and it is well translated into legal concepts such as autocratic legalism and autocratic infralegalism. However, it seems to be not enough for the analysis on deeper processes that, for example, precede Bolsonaro and continue after his defeat – as well to understand the case of the UK (between others), because it is based on a very procedural conception of democracy, does not properly consider the more substantive aspects of the problem and structures its analysis on the contrast between democracy and autocracy, which limits the understanding of the entire complexity of the phenomenon. Considering this, we then move on to discuss the concept of crisis of democracy.

3. CRISIS OF DEMOCRACY

Sufficient to reach such a conclusion. The authors carried out research based on indicators that they consider more objective – such as re-election rates of the head of the Executive or Government and the competitiveness of the opposition – and conclude that, although it cannot be ruled out that democratic setbacks are underway in some countries, such as Hungary, Poland and Venezuela, there would be no evidence of a global process of democratic decline. In the same sense, see Levitsky and Way (2023; 2015). In response to Little and Meng, Knutsen et. al. (2023: 36) argue that there are no indicators of democracy that are “free from human judgments”, and seek to demonstrate the adequacy of the V-Dem methodology. Other fields of investigation that have begun to be explored in recent years are those dedicated to identifying explanations for the democratic resilience (Boese, Edgell, Hellmeier, Maerz & Lindberg, 2021), as well as U-turn cases, such as Brazil and, perhaps, Poland. Regarding the latest, see, for example, forthcoming publications from the V-Dem Project.

In the common usage of the expression, crisis has the meaning of something in decline, of malfunction, of insecurity. In its Greek origin, it was used in the fields of Law, Theology and Medicine (Koselleck, 2006: 358) – derived from “krino”, it meant “to separate, elect, judge, decide, measure, fight, combat” (Koselleck, 1999: 202; 2012: 132). Until the beginning of the first modernity, its prevailing meaning was that linked to the Medicine: “it designated the decisive stage for the development of a disease, in which what has not yet been decided will be decided” (Koselleck, 1999: 203). Since the 17th century, the concept began to spread (used metaphorically) to other domains, such as History, Psychology, Economics and Politics. (Koselleck, 1999: 14-15). Also starting from the Greek origin of the word, Przeworski (2020: 14) states that crises

Are situations that cannot last and in which a decision needs to be made. They emerge when the status quo is unsustainable and nothing has yet replaced it. (...) Crises can be more acute or less acute: in some, the point of no return may be imminent, but there are crises that drag on indefinitely, with all their morbid symptoms. The intuition of crises described in Gramsci's maxim is that the current situation is somehow unsustainable, that some threat to democracy has already materialized, but democratic institutions continue to function.

In short, crisis is a situation that demands a decision due to its unsustainability, but it is not clear how it will be resolved, what will come next, and what would be the alternatives (autocratization is not the only one). Crisis is the opposite of normality, so we reject the paradoxical idea of permanent crisis. The phenomenon can have different durations, but it must be determined in time – at least its beginning when the outcome is not yet fully known.

Castells (2018: 7-10) refers to a historical context of multiple crises: economic, environmental, wars, post-truth, of democracy – the last of which results in the inability to address the others. The crisis of democracy manifests itself in the “rupture of the relationship between rulers and ruled”, a “distrust in institutions” that “delegitimizes political representation” (crisis of political legitimacy). It is “the gradual collapse of a model of representation and governance: liberal democracy”. It would not, therefore, be a rejection of democracy itself, but of the liberal democracy. The consequence of this would be the opening of possibilities for the “radicalization of democracy”, as well as for the constitution of “a post-liberal order (or chaos)”. In this understanding of crisis, ideas of collapse and unsustainability are also present, as well as of a moment that requires decision.

In the same sense, Chevallier (2009: 183-196), in a previous analysis, stated that “the transformations that the State undergoes are inseparable from a redefinition of the political bond, that is, the relationship between rulers and ruled, and more generally of the consistency of the social bond, that is, of the relationship between individuals and the community”. It implies that “the change in the State configuration must be considered as the revelation of a deeper reevaluation of democratic logic.” Despite we live in a time when democracy is considered the only game in the town, the idea of a crisis of democracy would be neither a myth nor a “constitutive element of the democratic regime”, but has features which are typical of the present time. This novelty should be sought in the shocks that “struck the foundations of the political order”. Therefore, the crisis of democracy must be understood within the scope of the crisis of the State itself and of the sociability (the political community that sustains and legitimizes institutionalized power), or else we will have an incomplete understanding of the issue.

Let us consider, by the way, Crouch's (2020: ix-x; 2-3; 7-8; 19; 39-40) concept of post-democracy, which allows a more substantive discussion on the challenges of democracy. It refers to the tendency of shifting the decision-making locus, especially economic ones, for centers of power other than the democratic-representative ones. Although government and parliaments continue to work normally, decisions are in fact made elsewhere. In the words of the author (2020), "its institutions and habits remained: contested elections took place; governments could be brought down and peacefully replaced; political debate seemed fierce. But its vivacity and vigour had declined: parties and governments did not so much respond to desires articulated autonomously by groups of citizens, but manipulated issues and public opinion". In this context, demands would not be formulated by voters and channelled by representatives – but, on the contrary, voters would respond to propaganda techniques to which they are subjected. The author uses the word "post" to refer to a situation in which, after reaching a peak, democracy loses importance, with the values that guided its construction being, to some extent, preserved in its "practices, attitudes, values and institutions". It is not, therefore, a condition in which a democratic society and regime no longer exist. The main explanations for this would be globalization – which "had removed major economic decision to levels that could not be reached from where democracy was concentrated: the nation-state"; and the loss of meaning of the "divisions of class and religion that had once enabled ordinary citizens to acquire a political identity", and that guided their political-party engagement. This process is guided by neoliberalism, an ideology that "has turned this weakening of the nation-state into a virtue". The transfer of power from political-democratic spheres to private ones has led to an increase in inequalities and in the influence of these inequalities on the politics. In this context, "democracy and market continue to be used together as the primary legitimation of the evolving political system of dominant corporate power, because this latter lacks any legitimation of its own."

Wilkinson (2021) radicalizes this perspective based on the idea of authoritarian liberalism. By authoritarian liberalism, the author understands the depoliticization of economic decisions, or their removal from popular sovereignty and elected representatives, so that they are taken "rationally" and as far as possible from political pressures and from the State itself. The author explains that "authoritarian liberalism" is the regular way of the operation of the liberal democracy. Although this phenomenon is usually presented as "part of the neoliberal turn to 'post democracy'" during the 1970s and 1980s – when, in fact, it has deepened – it would actually be an older expression of the fear that popular sovereignty could "undermine the liberal economy", or of the "more basic tension in the constitutional State between the forces of capitalism and democracy" (Wilkinson, 2018: 3). Consequently, in Wilkinson's (2021) understanding, the advance of authoritarian populism associated with the decline of democracy would be "as much an effect of democratic decay as its cause. To be sure, populism then also may accelerate that decay, but it's not the underlying reason. Populism is the effect of a soft authoritarian liberalism that can no longer maintain ideological hegemony."

7 Discussing the issue of sovereignty, Loughlin (2017: 72) notes that: "the critical question is: if an elaborate governing network has been instituted such that the bearers of sovereignty ('the people') retain the formal right but no longer possess the effective capacity to alter governmental arrangements then has sovereignty been eroded of meaning?" This issue does not only apply to the case of the European Union, but to other restrictions imposed on sovereignty, such as the financial market.

8 The term authoritarian liberalism was originally presented by Heller, 2015 (originally published in 1933).

9 Cf. some references that the author uses for this analysis: Heller (2015), Polanyi (2000), and Streeck (2012). Cf. also Dardot & Laval 2016. For a specific analysis on Brazil, cf. Saad Filho & Morais 2018.

Cunliffe, Hoare, Jones, & Ramsey (2023: vi; 2-3; 35) links Brexit, the malaise with democracy and the advance of populism, not just in the United Kingdom, to the “exhaustion and breakdown of the neoliberal world order; of the end of the post-political era that followed the end of the Cold War”. At the heart of the authors’ argument is the fact that “the political authority of the nation-state is the precondition of democracy. Sovereign nations are not necessarily democratic, but no true democracy can exist without sovereignty.” The main explanation for this is the “neoliberal revolt what caused the voiding of representative democracy”, as all parties converged on the neoliberal agenda since the 1970s and 1980s, eliminating substantive competition between alternative projects, reducing disputes to who would be “the most efficient administrator of the status quo”. The authors (2023: 148) also highlight the fact that “the destruction of the workers’ movement is the historical origin of the void that dominates contemporary western politics”, because there are no political forces capable of opposing neoliberalism.

From this perspective, neoliberalism is the central explanation for the crisis of democracy and the deep origins of the crisis date back to the 1970s. However, the 2008 World Economic Crisis is a momentous in this process: in addition to its impacts on living conditions and the fiscal situation of States, it also implied a crisis of legitimacy for the neoliberalism and the mainstream political parties. There is a great discontent without means for political expression through traditional parties and unions. There is an absence of alternative discourse and substantive distinct projects. As a result, politics has become very fickle – there are no stable links between voters, parties and political leaders, and electoral preferences change quickly. This context also favours the emergence of populist leaders.

Post-democracy and authoritarian liberalism are concepts that have their own analytical focus and, therefore, cannot be confused with the concept of crisis. In fact, authoritarian liberalism (Wilkinson, 2021) would be much more an expression of liberal-representative democracy’s limits, than a specific phenomenon of the present time. If the thesis of Cunliffe, Hoare, Jones, & Ramsey (2023) about the limitation of sovereignty by the “neoliberal revolt” represents a novelty that began in the 1970s for a central State with an imperial past like the UK, the same does not apply to countries with a colonial past in which sovereignty has always faced external and internal blockages, such as Brazil. A peculiarity of the Brazilian case is the coincidence of the “neoliberal revolt” with the democratization process. There was not an established democracy to be limited or emptied by the transfer of decisions to other centers of power or by the absence of substantive political alternatives – or a kind of post-democracy (Crouch, 2020). Democratization, globalization and the “neoliberal revolt” took place simultaneously. The main contributions of these authors to our formulation on the contemporary crisis of democracy are the centrality of the element authority to understand democracy, and the substantive reading of the issue, which includes the discussion on neoliberalism.

However, we need an analytical category which allows us to verify and understand whether there is something specific in the XXI century, and what would be the common patterns across the liberal-representative democracies from the Global North and the Global South, beyond the well known limits and paradoxes of that model of democracy in a capitalist and complex society.

10 Mair (2015) also discuss the problem of the substantive emptying of politics, with an emphasis on political parties.

Recognizing the limitations of the concept and yet provisionally, *we use the expression structural crisis of democracy.*

The structural crisis of democracy is a multidimensional phenomenon which corresponds to the deep problems that transcend the populism, the democratic malaise and the autocratization, and, as already highlighted, it should not be confused with a “permanent crisis” or conditions that are part of the ordinary life of the democracies, including its limits. The structural crisis does not necessarily lead to the “death of democracy”, but it leaves the regime in fragile conditions, so, at any moment, a process of autocratization can happen (or be resumed). There is also the risk of emptying democracy of its substance – that is, the decisions taken by democratic processes would become irrelevant or, at least, relatively powerless, in many fields of collective life (especially in the economy), although the entire democratic form is preserved.

Hazards to democracy have always existed – it is a fragile regime by its very nature. But there are peculiar issues in the contemporary context that need to be distinguished and understood. For example, globalization and interdependence impose limits on the ability of States to respond satisfactorily to challenges such as climate change, financial crises and pandemics, at the same time as there is a democratic deficit and growing impasses in global governance. Digital media, in addition to the phenomena of dissemination of misinformation and hate speech, have drastically altered the forms of sociability and political action. Democratic institutions face difficulties in processing the combination of the growing prominent sociocultural conflicts (feminist and LGBTQIA+ movements versus religious neoconservatism, cosmopolitanism versus nationalism etc.) and the socioeconomic ones (growth of inequality, “breakage of the generational pact” etc.). All of these, however, are ideologically interpolated through the neoliberalism and the crisis of democracy.

Thus, we highlight the following constitutive elements of the concept of crisis of democracy: (1) it corresponds to a form of impasse or unsustainability of the political regime without outcomes or alternatives well determined; (2) it is a time-bound phenomenon; (3) it cannot be confused with conditions inherent to the empirically expected performance of democracy, neither with malaise nor with autocratization – although it has relations with the last two; (3) it is structural, not conjunctural; (4) it affects both the form, the procedures, and the substance, the essence of democracy; (5) this is not a pathology internal to the model or an external threat, but rather a dysfunctionality of the model itself in the face of the environment in which it operates; (6) it presents a legal-institutional expression.

From the perspective of the relations between law and politics and in a very synthetic way, the structural crisis of democracy corresponds to the incongruity of the legal-institutional arrangements that structure liberal-representative democracies with the ongoing economic, political, socio-cultural and technological developments, in such a way that they become increasingly incapable of fulfilling their functions of inclusive and peaceful mediation of social conflicts and of generating legitimacy for state action. Its most important institutional expression is the crisis of political parties – not just of the so-called mainstream parties, but the parties themselves as institutions responsible for organizing public opinion and institutional channelling the social conflicts. If they seem to face increasing difficulties in fulfilling this role, what would be the alternative for mediating political conflicts? In principle, it does not yet exist. This is the most elementary expression of the idea of crisis.

4. FINAL COMMENTS

It is necessary to differentiate between groups of analytical categories used to describe the challenges of democracy in the beginning of the XXI century: (1) the ordinary expected performance of democracies – which includes the possibility of electing populist leaders, political crises, problems with the quality of democracy and its structural limits; (2) malaise; (3) autocratization; (4) post-democracy and authoritarian liberalism; and (5) crisis of democracy. These phenomena are not necessarily exclusive, they can be concomitant and present reciprocal influences. Each one has a specific research agenda, or we could have agendas that articulate them, but it is necessary to be clear about their differences.

The crisis of democracy cannot be confused with structural limits, or with the paradoxical idea of “permanent crisis”, or even with autocratization. It does not refer to the transformation of a democratic regime into an autocracy, nor to a set of substantive changes in such a direction without a regime change having occurred. It is not about the reversible degeneration of a political regime, which can be contained or reversed (democratic resilience, or U-turn), but about its dysfunctionality – or its incongruity with certain economic, political, social and technological transformations. It is a deeper and more structural phenomenon than malaise and has a legal-institutional expression. The crisis of democracy is ultimately related to the crisis of the State itself, it is a problem of authority (legitimate power in the Weberian sense). It also refers to the institutional forms available for mediating social conflicts, organizing public debate and making collective decisions. It is a concept that should serve to investigate a time-limited phenomenon: is there a crisis of democracy? When did it start? What's new at the beginning of the 21st century? We will use this theoretical framework and try to answer these questions through a qualitative empirical comparative study between the cases of Brazil, Chile, the USA and the UK, based on the method of mapping legal-institutional arrangements.

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